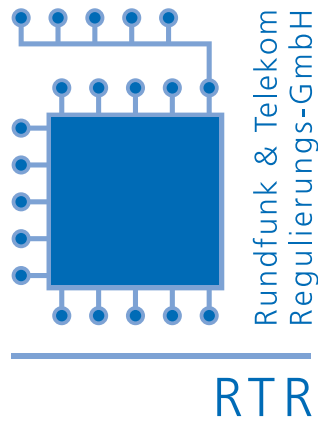


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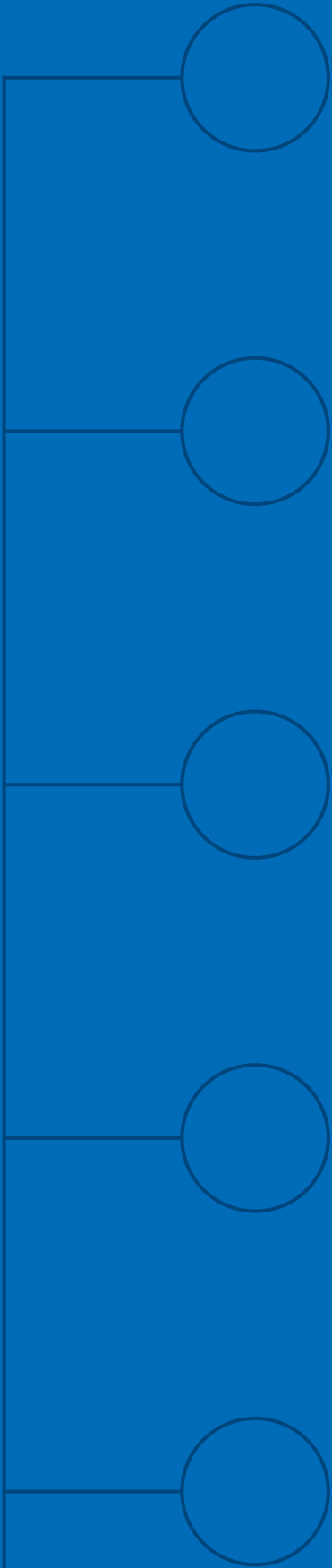




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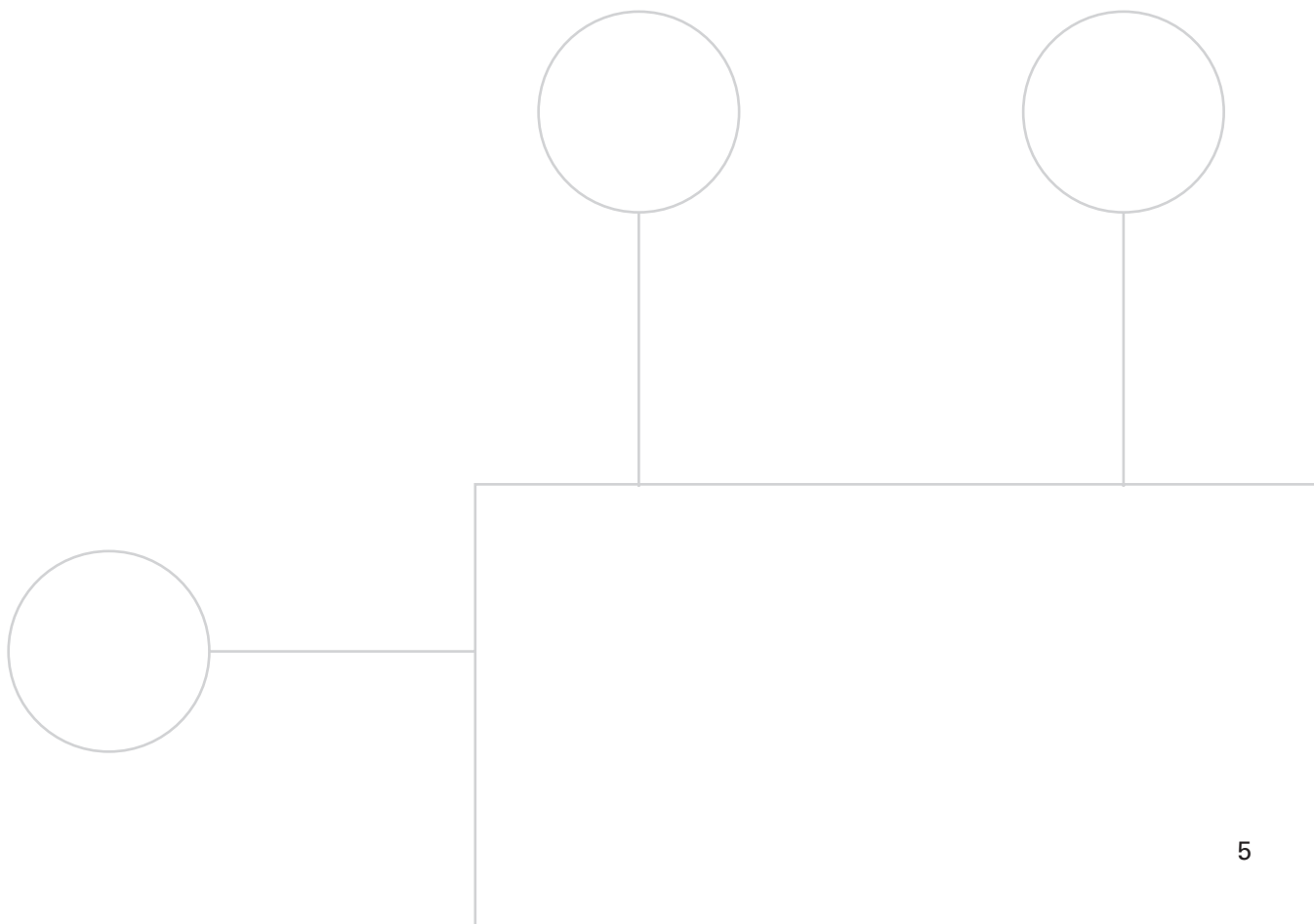
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Preface

Already in previous years, Telekom-Control GmbH (TKC), and Rundfunk und Telekom Regulierungs-GmbH (RTR-GmbH) since 2001, has submitted reports on a regular basis that have provided information on the regulatory activities and relevant developments on the respective markets. The Communications Report 2002, Part 1, shall continue this tradition of positioning RTR-GmbH as independent information platform.

Mainly for reasons of customer orientation, we have decided to publish Part 1 of the Communications Report 2002 already in May 2003, while Part 2 will be presented to the interested public at the end of the year. This course of action is obvious: essential market data of the media sector which provide information on ranges and market shares of the print and electronic media are for the most part already available in March of the respective following year, whereas the telecommunications data will have been processed only in the second half of the year. This data has to be collected independently by RTR-GmbH through comprehensive research. In the current year 2003, an even greater delay is to be expected, as, due to the change in the legal framework, a set of clearly more refined instruments for market analysis in the telecommunications sector will be used for the first time.

Thus, the Communications Report, Part 1, focuses on explaining the situation of the Austrian media markets, as a result of analysing the findings of standardised and recognised market research instruments, e.g. the Media Analysis, the "Radiotest" and the "Teletest". This information is contained in section 2 of this report.

From the Telecommunications Department two cross-sectional issues are described: section 5 illustrates the issue of "broadband in Austria", as handled within the framework of the Broadband Initiative 2003 of RTR-GmbH. Alternative models for dispute resolution (ADR – Alternative Dispute Resolutions) shall play an important role in the Telecommunications Department in the future. Section 6 shows the design, the fundamental principles and the planned process scheme for ADR proceedings.

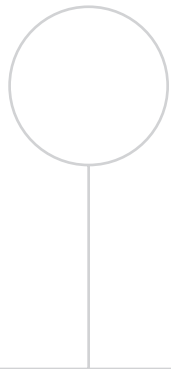
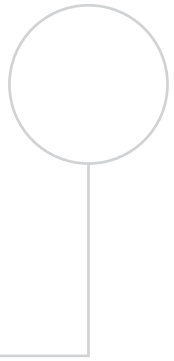
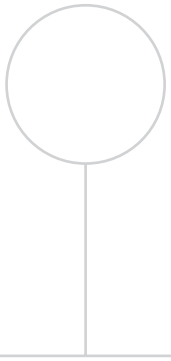
Section 1, 3 and 4 contain a summary of the regulatory work carried out in 2002 by the two Departments and the decision-making bodies, i.e. the Austrian Communications Authority (KommAustria) for the Broadcasting Department and the Telekom-Control-Commission (TKK) for the Telecommunications Department. Short sections describing the international activities of RTR-GmbH and the regulatory environment of the convergence regulator complete these descriptions. The report ends with information on the company (section 7).

We hope that in presenting Part 1 of the Communications Report 2002 and by restructuring the product in substance and design we have taken into account the constructive suggestions and the encouragement by our readers. Against this background, it is a pleasure to be able to present a comprehensive and well-founded publication, which, following the dictates of "convergence" and transparency, gives a profound insight into our activities. This report shall make informative reading in a way that is as exciting as the development of the markets attended to by RTR-GmbH.

Vienna, May 2003

Dr. Alfred Grinschgl

Dr. Georg Serentschy



1. The Activities of the Broadcasting Department

1.1 General conditions of broadcasting regulation

The year of report 2002 is the first full business year of RTR-GmbH and thus of the Broadcasting Department (RTR-GmbH started its business activities on 01.04.2001). Pursuant to § 5 (1) KommAustria Act (KOG), the main task of the Broadcasting Department is to provide administrative support to KommAustria. KommAustria, in turn, has to perform the following functions in the scope of its administrative activities, as outlined in § 2 (1) KOG ("Tasks and objectives of KommAustria"):

- to issue licences for the provision of broadcasting,
- to issue licences for operating the technical equipment required for the provision of broadcasting,
- to execute legal supervisory control over private broadcasters.

In this respect, frequency administration and management for the entire broadcasting sector in Austria (private broadcasters and Austrian Broadcasting Corporation ORF) are among the major and most comprehensive functions of KommAustria and RTR-GmbH. Broadcasting frequencies, mainly in the analogue field, are still a scarce resource. A special task in this connection is therefore to protect Austria's interests in the framework of international conferences.

Further tasks of RTR-GmbH:

- tasks related to digitisation of broadcasting (§§ 21 ff PrTV-G),
- development and management of a competence centre, in particular with regard to issues of the convergence of media and telecommunications (§ 9 KOG),
- conducting of proceedings for the resolution of disputes (§ 8 KOG).

Basically, it may be stated that the opening of the market and licensing of private radio broadcasters in Austria is still a very recent matter in the Austrian

media development: after two private radio broadcasters had been licensed for the first time in September 1995, private radio broadcasters were licensed in all regions and provinces of Austria on 01.04.1998. As in many other European countries, previously the broadcasting market had been characterised by the monopoly of the broadcasting station operating under public law (ORF). Even five years later, the process of establishing a dual broadcasting system cannot be considered as completed. For the start of nationwide and regional private television, the basis was actually created with the Private Television Act (PrTV-G) (in force since 01.08.2001). In 2002, the technical discussion concentrated on the awarding of licences for nationwide private television and conurbation area television – 18 years after the first private television station in Germany had taken up operation (RTLplus).

The opening of a media market with monopolistic structures needs an institution which, on the one hand, ensures the issuing of licences as a basis for interference-free operation and, on the other hand, exercises legal supervisory control over all (private) broadcasters. In the issuing of licences the regulatory authority has to follow a selection procedure ("beauty contest", § 6 PrR-G as well as §§ 7 and 8 PrTV-G), after reviewing the legal requirements as well as the technical, organisational and financial capabilities. Here, the contribution to the diversity of opinion, the extent of self-produced programme parts as well as the reference to Austria or the reference of the programme to the service area are to be taken into account.

Before the KOG took effect, two different authorities had been responsible for licences and for assignment of transmission capacities (Private Broadcasting Authority, Telecommunications Offices). With the KOG, the "one-stop shopping" principle is complied with, i.e. the required official licences are now issued by one authority.

1.2 Regulatory activities in the field of radio broadcasting

1.2.1 Licences and assignment of new transmission capacities (terrestrial)

In the business year 2002, numerous licensing proceedings were conducted in the field of radio broadcasting that were based on applications pursuant to § 12 PrR-G and resulted in new radio broadcasters being licensed. These proceedings referred to transmission capacities that had not yet been assigned for use to a private radio broadcaster or the ORF.

§ 12 PrR-G stipulates that transmission capacities still unassigned shall be allocated in the order specified in § 10 PrR-G:

- assignment of transmission capacities to the ORF takes top priority but will take place only if they are necessary to meet the service obligation pursuant to § 3 ORF-G;
- next, there is improvement of the service situation of radio broadcasters already licensed, which, however, does not imply geographical extension;
- finally, transmission capacities shall be provided according to their availability for nationwide private radio broadcasting. Currently, however, the creation of a nationwide service area does not seem realistic due to the present frequency situation;
- in a further step, KommAustria has to examine if the transmission capacity applied for shall be used for creating a new service area (license holder) or for extending an existing one. Both options represent legally equal alternatives. Criteria for decision are diversity of opinion, economic efficiency of the radio programme as well as consideration for political, social and cultural perspectives.

In any case, double and multiple coverage shall be avoided as far as possible.

Applications for assignment of new transmission capacities can be filed with KommAustria any time. These applications have to contain the essential technical parameters about the intended use of the transmission capacity. If the application is for the

creation of a new service area at the same time, also all information required to apply for a licence pursuant to § 5 PrR-G shall be submitted. The subsequent procedure comprises, *inter alia*, the following steps: if the transmission capacity applied for seems realisable in terms of frequencies, this will be published in the "Wiener Zeitung" and on the web site of RTR-GmbH. This publication allows other interested persons (competitors) to raise an objection and to claim the transmission capacity for themselves within a period of four weeks (for improvement of service under an existing license or for the extension or new creation of a service area). If there is no objection, the transmission capacity can be assigned to the applicant. Justified objections, however, have the effect that the transmission capacity will have to be put out to public tender ("Wiener Zeitung", dailies, web site of RTR-GmbH), which allows for applications to be filed within a period of time to be defined. If, subsequently, different applications are made, i.e. for improvement, for extension or for the creation of a new service area, they shall be examined subject to the order specified in § 10 PrR-G.

1.2.1.1 Eight new radio licences

For the following service areas a total of eight new licences for the provision of radio services were issued:

- Oberes Ennstal (Ennstaler Lokalradio GmbH),
- Graz 97.9 MHz (Medienprojektverein Steiermark – Das Soundportal),
- Graz 92.6 MHz (Radio Helsinki – Verein Freies Radio Steiermark),
- Hollabrunn 94.5 MHz/Retz 102.2 MHz (Verein Medien- und Kommunikationszentrum nördliches Niederösterreich – Gym Radio Hollabrunn),
- Tulln 99.4 MHz (Donauradio Wien GmbH – Radio Arabella),
- Wels 98.3 MHz (Die Meine Welle Wels Privatrado GmbH),
- Graz 94.2 MHz (Gerhard Werner – Musik aus alten Rillen),
- Hartberg 102.2 MHz (Medienprojektverein Steiermark – Das Soundportal).

Some of these licences were not legally effective by 31.12.2002.

The proceedings "Oberes Ennstal" were based on a ruling of the Constitutional Court (VfGH) that had quashed the decision of the former Private Radio Authority, which is why the licence had to be put out to tender again. In the proceedings "Graz 97.9 MHz", "Graz 92.6 MHz" as well as "Hollabrunn 94.5 MHz/Retz 102.2 MHz", following a selection procedure, the licences were issued to the radio broadcasters which had held educational licences limited for one year, pursuant to § 3 (5) 2 PrR-G, for these transmission capacities. In the case of "Tulln 99.4 MHz", KommAustria had to weigh the creation of a new service area against the extension of an already existing one. After thorough consideration, *inter alia*, of the criteria of economic efficiency and diversity of opinion (in this service area and its immediate environment several radio broadcasters already hold licences, in which the "Kronenzeitung" or its associated media companies have interests), eventually, a new licence was to be given preference. The licences "Wels 98.3 MHz", "Graz 94.2 MHz" and "Hartberg 102.2 MHz" were also granted in the course of beauty contests.

1.2.1.2 Two extensions of existing service areas

Two proceedings carried out pursuant to § 12 in connection with § 10 PrR-G resulted in the extension of already existing service areas:

- Jennersdorf 96.6 MHz (association "Mehrsprachiges Offenes Radio – MORA" & Partner GmbH),
- Weiz 88.7 MHz (Grazer Stadtradio GmbH – Krone Hitr@dio).

"Jennersdorf 96.6 MHz" was added to the existing service area of the association "Mehrsprachiges Offenes Radio – MORA" & Partner GmbH (Mora), because the service area did not seem to have sufficient economical stability to warrant the creation of an additional and independent radio licence and also the political, social and cultural perspectives favoured an extension of the licence of "Mora" (in

the interest of the ethnic groups living in Burgenland). "Weiz 88.7 MHz" was added to the existing service area of Grazer Stadtradio GmbH ("Graz 107.5 MHz – Krone Hitr@dio") to extend its existing service area, not only for reasons of economical soundness but also with regard to the programme offer already existing.

1.2.1.3 Three cases of assigning transmission capacities for improvement of service

Furthermore, in the year under review, three proceedings resulted in the assignment of transmission capacities for improvement of the service quality in existing service areas:

- St. Georgen/Attergau 89.9 MHz (Life Radio GmbH & Co KG),
- Braunau-Oberrothenbuch 106.5 MHz (Life Radio GmbH & Co KG),
- Salzburg 97.3 MHz (Sendeanlagen GmbH).

The transmission capacity "St. Georgen/Attergau 89.9 MHz" was added to the existing service area "Upper Austria" of Life Radio GmbH & Co KG to close service gaps in particular along the "Westautobahn" A1 in the area of the "Attersee". Since this transmission capacity had not been applied for by Life Radio but by a different licensee who would have extended the service area geographically, on the basis of the PrR-G, the original applicant was entitled to claim from Live Radio reimbursement of the costs for preparing the technical design required for its application.

The transmission capacities "Braunau-Oberrothenbuch 106.5 MHz" as well as "Salzburg 97.3 MHz" were assigned to existing service areas for improvement of the service quality to the original applicants.

1.2.1.4 Application for nationwide radio services dismissed

Moreover, KommAustria was to dismiss an application for the assignment of transmission capacities for the provision of nationwide radio services because the transmission capacities applied for were the ones that had already been assigned to the ORF with legally binding effect for the distribution of its radio programme "FM4".

1.2.1.5 Four cases of assigning transmission capacities to existing broadcasters

In two cases, for lack of objections, assignment to the applicants took place without the respective proceedings; in two other cases, the transmission capacities applied for were assigned to holders of legally effective radio licences under the transitional provision of § 32 (4) PrR-G stipulating that in proceedings already pending when the PrR-G took legal effect §§ 12 and 13 PrR-G were not to be applied.

1.2.1.6 Eight pending proceedings

Additional eight assignment proceedings were pending at different stages. These were: "Bregenz 91.5 MHz", "Villach 6 – Genotthöhe 99.7 MHz", "St. Johann im Pongau 107.5 MHz", "Freistadt 107.1 MHz", "Friesach 101.1 MHz", "Steuerberg 102.1 MHz", "Brückl 96.1 MHz" and "Bad Aussee 104.2 MHz".

1.2.1.7 Application for temporary licence dismissed

Moreover, in the field of radio broadcasting, an application by Frau Hitt Radio GmbH for a temporary licence, which had been filed in connection with a complaint pending with the VfGH, was dismissed.

1.2.2 Withdrawal of transmission capacities

In the scope of frequency planning and frequency assignment functions KommAustria, by virtue of office, is also obliged, pursuant to § 11 PrR-G, to continuously review the assignment of transmission capacities to the service areas, as well as to the ORF, for compliance with the criteria of § 10

PrR-G and to withdraw the right to use individual transmission capacities which have not been used for programme distribution on a regular basis for more than two years. Furthermore, KommAustria regularly has to review the assignment of transmission capacities for any double and multiple usages. In exercising these functions, in 2002, KommAustria withdrew from the ORF the medium-wave transmission capacities "Wien-Bisamberg 585 kHz" and "Dornbirn-Lauterach 1026 kHz", as they had not been used for regular programme distribution for over two years. Additionally, an application by Donauwelle Radio Privat Niederösterreich GmbH for withdrawal of transmission capacities assigned to the ORF for alleged double and/or multiple coverage was dismissed. Both rulings are legally effective.

1.2.3 Satellite licence to "Radio Maria"

In the year under review, KommAustria granted a licence for the provision of satellite radio services to the association "Maria heute – Verein zur Verbreitung grenzenloser Nächstenliebe" (station name "Radio Maria") for a term of ten years. Now the association distributes a special interest radio programme via the ASTRA 1C satellite, focusing on religious and social contents. This licence has legal effect. The specific characteristic of such proceedings is that – although they refer to radio broadcasting – they are governed by the PrTV-G, which is due to the fact that most of the provisions of the former Cable and Satellite Broadcasting Act (KSRG), which had governed both radio and TV, were incorporated in the PrTV-G. Basically, an applicant for satellite broadcasting (radio and TV) has to fulfil the same conditions that also apply to granting a licence for analogue terrestrial television. In addition, technical information about the intended satellite distribution as well as a usage agreement with a satellite operator have to be submitted. In return, such an applicant need not submit to a selection procedure, as the argument of frequency scarcity does not apply.

1.2.4 Event and educational radio programmes

Pursuant to § 3 (5) PrR-G, limited licences for so-called “event radio programmes” (for a maximum of three months) and for “educational radio programmes” (for a maximum of one year) can be granted.

In 2002, KommAustria granted an event radio licence for a public event, i.e. the Gutenstein festival.

In the field of educational radio programmes, a total of five proceedings were completed, in four of which licences were granted for one year, whereas one application was dismissed:

- Medienprojektverein Steiermark:
Graz, frequency 97.9 MHz,
- Verein freies Radio Steiermark –
Radio Helsinki: Graz, frequency 92.6 MHz,
- Medien- und Kommunikationszentrum
nördliches Niederösterreich – Gym Radio:
Bezirk Hollabrunn,
- Verein zur Schaffung und zum Betrieb unabhängiger
Fachhochschulradios – FH Radio 94.4 MHz:
St. Pölten, 94.4 MHz,
- the application for granting an educational radio
licence to Göttweig convent was dismissed for
lack of evidence of a functional connection between
the educational activity and the institution.

One case (BG/BRG Freistadt) was reviewed in terms of telecommunications technology in 2002 and will be completed in 2003.

1.2.5 “Site sharing” proceedings in the field of radio broadcasting

Pursuant to § 15 (1) PrR-G, private radio programmes can also be distributed via transmitting stations of the ORF if this is technically acceptable. In this respect, the ORF has to reach a contractual arrangement with the radio broadcaster about an adequate charge. In case of disputes, KommAustria will decide on the adequacy of the charge or the technical acceptability. Under this statutory provision, in 2002, two so-called site sharing proceedings in the field of radio broadcasting were pending:

- the application filed by Donauwelle Radio Privat Niederösterreich GmbH (Krone HitR@dio Niederösterreich) was directed at the provisions governing the charges of an ORF contract that had been fulfilled for several years and had also been modified once by mutual agreement. KommAustria dismissed the application, since the statutory provisions assume that in trying to conclude a contract with the ORF no agreement is reached and that therefore a dispute exists. It is not the subject matter of a decision according to § 15 (3) PrR-G or § 7 ORF-G, respectively, to establish the reasonableness of conditions governing a contract that had been fulfilled by both parties for several years and had eventually been modified by mutual agreement, because this is not a dispute within the meaning of these provisions. The appeal from this ruling was not yet decided during the period under review;
- contrary to that, Welle 1 Linz Radio GmbH (also Krone HitR@dio) demanded re-determination of a reasonable charge for the shared use of an ORF transmitter. In this particular case, too, a legally effective contract already existed between the applicant and the ORF, whose modification was demanded in terms of the amount of the charge to be paid. These proceedings were not completed at the end of the period under review.

1.2.6 Legal supervisory control over radio broadcasters

1.2.6.1 Infringement proceedings pursuant to § 25 PrR-G

KommAustria had to institute ten proceedings regarding complaints by licence holders who claimed that their rights had been injured by infringements of other radio broadcasters and that they had thus suffered a loss. In most cases, hearings took place. In six cases, the complaints filed for violation of the provisions on the maximum permitted relay of programmes of other radio broadcasters (maximum of 60 % of a programme frame containing presentations or commercials; § 17 PrR-G) were dismissed (and meanwhile took legal effect) or dropped. The following complaints had been lodged: N & C Privatrado GmbH (Radio Energy) against Donauwelle Radio Privat Niederösterreich GmbH (Krone Hitr@adio); Antenne Kärnten Regionalradio GmbH against Radio Villach Privatrado GmbH (Krone Hitr@adio, two proceedings); Life Radio GmbH & Co. KG against Welle 1 Linz Radio GmbH (Krone Hitr@adio); and Antenne Steiermark Regionalradio GmbH against Grazer Stadtradio GmbH (Krone Hitr@adio). Antenne Wien Privat Radio Betriebsgesellschaft m.b.H. withdrew its complaint against Donauwelle Radio Privat Niederösterreich GmbH while the proceedings were still pending.

Two further complaints asserted that the PrR-G had been violated by the provision of radio broadcasting without licence: in the case of the Burgenland minority radio station "Antenne 4" its associate, the association "Mora", argued that the licence had never taken legal effect for lack of legal capacity at the time of application. This complaint was dismissed for lack of the applicant's legitimation (legally effective).

In another case, Lokalradio Völkermarkt/Wolfsberg GmbH complained about the provision of radio broadcasting services by Privatrado Unterkärnten GmbH (Krone Hitr@adio) that had lost the originally

granted licence in the appellate proceedings with legal effect. Since Privatrado Unterkärnten GmbH (Krone Hitr@adio) was subsequently entitled to continue broadcasting of its radio programme, after the appeal from the ruling had been granted suspensive effect by the VfGH, the appellant withdrew its motion.

Two complaints under § 25 PrR-G resulted in withdrawal proceedings according to § 28 PrR-G (admissibility or inadmissibility of the transfer of licences in the areas of Gmunden and Steyr). For more detailed information on this subject see 1.2.6.2.

Additionally, three proceedings regarding legal supervisory control pursuant to § 25 PrR-G were conducted by virtue of office:

Infringement proceedings were instituted against the association "Mora" for repeated failure of the licensee to submit programme recordings. The mere presentation of lists with the broadcast music titles was not sufficient to meet the legal recording obligation pursuant to § 22 PrR-G, so that infringement was established (legally effective). By means of additional procedural steps an appropriate recording system was eventually set up.

In two cases, KommAustria established a violation of the permitted relay of programmes of other radio broadcasters (maximum of 60 % of daily airtime), pursuant to § 17 PrR-G. Both RTVision Allgemeiner Medienverein (Gmunden area) and Mrs. Irmgard Savio (Steyr area) had relayed a programme frame, comprising presentations and commercials, to an extent of more than 60 % of daily airtime.

1.2.6.2 Proceedings for withdrawal of licence pursuant to § 28 PrR-G

In case of specially qualified infringements the licence of the radio broadcaster can be withdrawn pursuant to § 28 PrR-G. The first in a number of consecutive steps to be performed according to § 28 PrR-G before the radio licence is finally withdrawn, is that these specially qualified infringements have to be identified and, at the same time, re-establishment of the lawful state has to be ordered. In two complaints, which led to withdrawal proceedings pursuant to § 28 PrR-G, Life Radio GmbH & Co KG (Upper Austria) alleged a violation of the PrR-G by RTVision Allgemeiner Medienverein (Gmunden) as well as by Mrs. Irmgard Savio (Steyr). In both cases, fundamental programme changes and inadmissible transfer of the licence by the licensee to another person were asserted. In the case of RTVision Allgemeiner Medienverein, a fundamental change in the originally licensed programme (as free alternative radio) was established (and is legally effective by now). In the case regarding withdrawal of the licence from Mrs. Irmgard Savio, however, the combination of broadcasting a programme frame relayed by Donauwelle Radio Privat Niederösterreich GmbH (Krone Hitr@dio) and self-produced programme parts was not regarded as fundamental programme change and the establishment of an operating company was not considered an inadmissible transfer of the licence (legally effective). On the other hand, a fundamental change in the programme approved in the licence notice was established in the case regarding withdrawal of the licence from Radio Starlet Programm- und Werbe-gesellschaft mbH (Spittal an der Drau), since a basically automated music programme in the adult contemporary format was broadcast instead of a special interest programme (Country and Western) (not yet legally effective).

A fundamental programme change was also established in the withdrawal proceedings against the association "Mora" whose licence had provided

for a programme that should take account of the ethnic groups in Burgenland to a considerable extent. Instead, a music programme was distributed that was purely commercial, in part completely without presentations but, above all, it was broadcast in the Hungarian and Croatian languages only to a rudimentary extent. In addition, it was ascertained that the obligation to make continuous programme recordings had been grossly violated several times, which ascertainment is legally effective, while the ruling by KommAustria on the unlawful programme changes is still pending in the second instance.

Criminal proceedings according to § 27 (3) PrR-G were instituted against the managing director of the association "Mehrsprachiges offenes Radio – MORRA" & Partner GmbH for non-compliance with the obligation to notify changes in ownership structure pursuant to § 7(5) PrR-G, and dismissed again.

1.2.6.3 Obligation to notify changes in ownership pursuant to § 7 (5) and (6) PrR-G

§§ 7 to 9 PrR-G stipulate licensing requirements (*inter alia*, reasons for exclusion as well as provisions intended to prevent excessively high media concentration for the purposes of diversity of opinion) that have to be complied with during the entire licence term. A violation of these licensing requirements constitutes a ground for revocation of the licence.

To enable the regulatory authority to review compliance with these provisions, § 7 (5) PrR-G provides that any change in the ownership or membership structures (of the radio broadcaster directly and the parent companies indirectly) shall be notified to the regulatory authority. In special cases (if a new partner directly takes over more than 50 % of a radio broadcaster's shares) a statement by KommAustria has to be obtained prior to this change in ownership whether the provisions of §§ 7 to 9 PrR-G are complied with also in the changed circumstances.

With regard to changes in ownership, the year 2002 was mainly characterised by consolidation processes. The old Regional Radio Act (RRG) had still advocated the idea of internal pluralism and, in the course of licensing procedures, had urged the applicants to form broadcaster cooperations. This created a number of radio broadcasters with heterogeneous and heavily fragmented owner structures at first, which, in practice, caused conflicts among the owners. Now, there is the tendency that the major shareholders take over the shares of the others. These consolidation tendencies often involve increased cooperation between radio broadcasters with regard to the programme (presence using a common brand, relay of programme frames etc.).

Changes in ownership of radio broadcasters controlled by Mediaprint Group (brands: Krone Hitr@dio and HitFM): Kitzbüheler Lokalradio GmbH (Krone Hitr@dio Kitzbühel), Grazer Stadtradio GmbH (Krone Hitr@dio Graz), Welle 1 Linz RadiogmbH (Krone Hitr@dio Linz), RTVision Allgemeiner Medienverein (Krone Hitr@dio Salzkammergut), Teleport Waldviertel Information und Kommunikation GmbH (HitFM Waldviertel), HitFM Privatrado GmbH (HitFM St. Pölten), Krone Radio Salzburg GmbH (Krone Hitr@dio Salzburg), Privatrado Burgenland 1 GmbH & Co KG (Krone Hitr@dio Burgenland) and Antenne Innviertel Rundfunk GmbH (Krone Hitr@dio Innviertel). Two of these changes in ownership were subject to previous declaratory proceedings pursuant to § 7 (6) PrR-G (takeover of more than 50 % of the shares).

Changes in ownership of radio broadcasters now under the control of Styria Medien AG (after the change in ownership was effected): the transfers of the shares in Lokalradio Gute Laune GmbH and Privatrado Wörthersee GmbH (now both Radio Harmonie) were to be reviewed in advance pursuant to § 7 (6) PrR-G; the respective multiple changes in ownership of Antenne Kärnten Regionalradio GmbH and Antenne Steiermark Regionalradio GmbH took place among the present partners or at a higher level, respectively, and therefore required only notification.

At the (present) subsidiaries of MOIRA Media Service GmbH changes in ownership were performed in respect of Digi Hit Programm Consulting GmbH (now HitFM Mostviertel) and the association "Mehrsprachiges offenes Radio – MORA" & Partner GmbH (now HitFM Burgenland). With regard to Digi Hit Programm Consulting GmbH, KommAustria had previously examined two changes in ownership, planned at first but not carried out after all, pursuant to § 7 (6) PrR-G, for conformity with §§ 7 to 9 PrR-G. In respect of the British GWR Group, declaratory proceedings were conducted, pursuant to § 7 (6) PrR-G, regarding Project Medien GmbH (Arabella Unterland, Tyrol). Notifications of restructuring activities at higher levels referred to Antenne Salzburg GmbH and Antenne Wien Privatrado BetriebsgmbH.

Furthermore, changes in ownership occurred at both radio broadcasters of Osttiroler Bote Privatstiftung: while a capital increase of Radio Osttirol GmbH produced a shift in the shares of the partners, the 100 % takeover of Grizzly Radio & TV GmbH by Osttiroler Bote Privatstiftung was to be previously examined by the regulatory authority pursuant to § 7 (6) PrR-G. The changes in N & C Privatrado Betriebs GmbH (Radio Energy) where the French NRJ Group increased its overall shares also served for consolidation purposes. Party FM NÖ Süd RadiobetriebsgmbH also notified an internal shift in shares.

During the period under review, KommAustria (apart from examining the notifications of changes in ownership) completed seven proceedings pursuant to § 7 (6) PrR-G with legal effect, establishing in each of which that the provisions of §§ 7 to 9 PrR-G were complied with also under the planned changed circumstances.

1.2.7 Proceedings in radio broadcasting subject to telecommunications law

For reasons of administrative streamlining (“one-stop shop”) KommAustria is not only responsible for licensing under broadcasting law but also for licensing under telecommunications law of radio communications systems for the provision of broadcasting services (for private broadcasters and the ORF) pursuant to the Telecommunications Act (TKG). If an application under telecommunications law refers to licensing of a new radio communications system, this will result in publication and, possibly, a subsequent tendering procedure pursuant to §§ 12 and 13 PrR-G.

Applications solely under telecommunications law refer mainly to intended changes regarding radio communications systems, such as the installation of new transmitter antennas, change of sites or increase in performance. Such applications are at first examined by the Broadcasting Frequency Management Division for compatibility with existing domestic and foreign transmitters. In most cases, an international coordination procedure is required (as is the case when a completely new transmission capacity is applied for), in which approval by the potentially affected neighbouring states needs to be obtained. Then the requested change regarding the radio communications system licence can be approved.

In 2002, KommAustria approved 14 changes regarding radio communications systems for private broadcasters. At the end of the year, five additional applications were pending.

1.2.8 Transmitting stations of the ORF

KommAustria, within the framework of its responsibility for all broadcasters, started to document and record all radio and television transmitting stations of the ORF and the private broadcasters. The ORF alone has more than 1,700 transmitting stations at approx. 470 locations in Austria.

The ORF instituted 20 proceedings for the award of a licence or modification of the licence for re-broadcast reception and transmitting stations for terrestrial analogue radio broadcasting (VHF). Inter-

national coordination procedures were initiated and mostly completed during the year under review, for several of these stations trial operation was approved. Finally, numerous VHF tunnel radio systems of the ORF were licensed, which allow to receive Ö3 without interruption on the motorway and dual carriageway network of Autobahnen- und Schnellstraßen-Finanzierungs-AG (ASFINAG) (also several private radio broadcasters provide their services in the motorway tunnels) as well as a new RDS PI code for the ORF programme “Radio Tirol”. Such licences are issued for a term of ten years.

1.2.9 Digital Broadcasting (T-DAB) and short wave

In the field of digital radio broadcasting, the licences granted to the ORF for the installation and operation of several transmitting stations were extended until 31.12.2003 for further technical testing of the T-DAB synchronised network in Vienna and Innsbruck. In the field of short wave broadcasting, the ORF was licensed to use frequencies from the WARC-92 extension bands (5900–5950 kHz, 7300–7350 kHz and 9400–9500 kHz) for the period between 27.10.2002 and 30.03.2003.

1.3 Regulatory activities in the field of television

The adoption of the PrTV-G, BGBl I No. 84/2001, which took legal effect on 01.08.2001, for the first time allowed also for private television in Austria. The PrTV-G forms the basis for the issuing of a nationwide terrestrial analogue licence as well as of regional terrestrial analogue licences. In specific conurbation areas (Vienna, Linz and Salzburg) regional private television is made possible, by so-called frequency splitting, on frequencies previously reserved only for the ORF. In addition, the PrTV-G authorises KommAustria to enable the introduction of digital terrestrial television in Austria within the next few years and conduct the tendering and frequency administration procedures also in the future world of digital broadcasting. Also, the provision of satellite broadcasting services (radio and television) requires a licence by KommAustria,

pursuant to the provisions of the PrTV-G, since the previous provisions of the Cable and Satellite Broadcasting Act (KSRG) have been incorporated in the PrTV-G. The provision of cable broadcasting (radio and television), however, only needs to be notified to KommAustria.

1.3.1 Nationwide licence for ATV

The invitation to tender for a nationwide licence and regional licences for analogue terrestrial private television (GZ KOA 3.001/01-2) was issued on 06.08.2001, the deadline for the submission of corresponding applications was 07.11.2001. The notice of KommAustria of 31.01.2002, KOA 3.005/02-24, completed the procedure for the award of the nationwide licence, in which initially seven applicants had participated.

In the end, four applicants were to be assessed in the selection procedure; three applications had been withdrawn in the course of the procedure or had not been handled any further for procedural reasons. This – probably the most important – private television licence was granted for a term of ten years to ATV Privatfernseh-GmbH. The competitor Kanal 1 Fernsehbetriebsgesellschaft m.b.H. had been defeated in the selection procedure and was rejected pursuant to § 7 PrTV-G. The other two applications were dismissed for lack of financial capabilities, pursuant to § 5 (1) PrTV-G, and were not included in the selection procedure.

On the whole, ATV met the criteria of greater diversity of opinion, supply of a larger part of the population as well as stronger reference to Austria to a greater extent than its competitor Kanal 1 Fernsehbetriebsgesellschaft m.b.H., thus complying with the fundamental objectives of the law in a better way. The licence was confirmed by the notice of the Federal Communications Senate (BKS) of 22.04.2002 and is therefore legally effective.

Shareholder of ATV is ATV Privat-TV Services AG, which has the following shareholders structure:

- Concorde Media Beteiligungs GmbH, 161,200 no-par-value shares, corresponds to a share of 26%,

- Erste Bank der Österreichischen Sparkassen AG, 15,600 no-par-value shares, corresponds to a share of 2.52%,
- Generali Holding Vienna AG, 12,400 no-par-value shares, corresponds to a share of 2%.
- Ingebe Medien Holding GmbH, 182,800 no-par-value shares, corresponds to a share of 29.48%,
- SBS Broadcasting S.A., 124,000 no-par-value shares, corresponds to a share of 20%.
- Tele-München FernsehgmBH & Co Produktionsgesellschaft, 43,400 no-par-value shares, corresponds to a share of 7%,
- UPC Programming B.V., 80,600 no-par-value shares, corresponds to a share of 13%.

1.3.2 Private television for Vienna, Linz, Salzburg and further licences

Since § 16 (2) PrTV-G explicitly provides for the option of applying for regional licences, using the transmission capacities of Annex 1 to the PrTV-G or of the ORF pursuant to § 13 PrTV-G, applicants involved in the procedure for the issuing of licences for regional television knew for sure, only after the licence for nationwide television had been issued with legally binding effect, which transmission capacities would be actually used for nationwide television and which were thus still available for regional licences. Therefore, after the notice of the nationwide licence had taken effect on 29.04.2002, the 20 applicants who had filed their applications for regional television with KommAustria within the specified time were advised of the transmission capacities assigned to the holder of the nationwide licence and of the option of modifying their applications.

Five applicants did not take up this option and were subsequently rejected by notice of KommAustria. Nine applications were withdrawn in the course of the procedure or dismissed for procedural reasons. The procedures for granting licences for conurbation area television in Vienna, Linz and Salzburg were completed on 29.07.2002:

By means of the notice of KommAustria of 29.07.2002, KOA 3.100/02-1, PULS CITY TV GmbH was granted a licence for the provision of television services in Vienna, channel 34, for a term of ten years. In the selection procedure the applicant complied with the selection criteria pursuant to §§ 7 and 8 PrTV-G to a greater extent than its competitor, smart.city.tv Fernseh- und Rundfunk GmbH, and was expected to make a more significant contribution to the television programmes distributed in the service area (self-produced programmes, in particular, afternoon programmes about local events in Vienna). Another competitor in this procedure did not succeed in proving its technical, financial and organisational capabilities and was not included in the selection procedure.

PULS CITY TV GmbH is owned by the following shareholders: Gewista-Werbegesellschaft m.b.H. with 30 %, Online Media Beteiligungs GmbH with 24.9 % as well as VSV Beteiligungs- und Verwaltungs GmbH with 45.1 %.

In the procedures regarding the service areas Linz and Salzburg, KommAustria did not have to make any selections, as the competitors still remaining were not able to prove their technical, financial and organisational capabilities, as provided in the PrTV-G:

- in Linz, channel 41, the licence was awarded by the notice of 29.07.2002, KOA 3.110/02-1, to Privatfernsehen GmbH (shareholder is WOOTO.COM Online Medien AG of which 50 % are owned by Styria Medien AG and 50 % by Holzhey Privatstiftung) for a term of ten years;
- in Salzburg, channel 36, the licence was awarded by the notice of 29.07.2002, KOA 3.120/02-1, to Salzburg TV Fernsehgesellschaft mbH (shareholders of Salzburg TV are Dr. Walter Ferdinand Wegscheider, Quehenberger Privatstiftung as well as several private persons) for a term of ten years.

Both licensees had previously been providing a cable programme in the respective service area; they have many years of experience in the making of programmes.

The procedures for awarding four additional licences for the provision of television were completed during the period under review:

- service area Voitsberg/Bärnbach/Köflach: WKK Lokal-TV of Weststeirische Kabel-TV GmbH & Co KEG,
- service area Steyr: RTV Regionalfernsehen GmbH,
- service area Bad Ischl: Christian Parzer,
- service area Bad Kleinkirchheim: Bad Kleinkirchheimer Sat-Kabelfernsehen GmbH.

These cases were conducted as single-party proceedings, as there were no competitors for the respective transmission capacities and service areas. One case of awarding a licence for parts of Tyrol had been still pending but was not completed during the period under review.

All licences awarded pursuant to the PrTV-G during the period under review are legally effective.

1.3.3 Shared use of ORF transmitting stations and frequency sharing

§ 19 PrTV-G stipulates that analogue terrestrial television programmes can be distributed also via transmitting stations of the ORF. To this end, the ORF has to conclude a contractual arrangement with the radio broadcaster about an adequate charge (obligation to contract). If no contractual agreement is reached within six weeks following a corresponding request, the regulatory authority, after being invoked by one of the parties involved, will decide on the adequacy of the charge or on technical acceptability.

On 26.02.2002, ATV made such a request pursuant to § 19 PrTV-G. Apart from the charge to be paid, the essential points at issue were the start-up date during the initial expansion phase (18 of a total of 74 requested transmitting sites) as well as numerous contractual collateral clauses, in particular on termination of the contract, liability in case of breach of the contract and safeguarding of payments.

The ruling by KommAustria of 04.07.2002 was modelled on a draft contract already initialled at the management level between ATV and the ORF, which in the end was not effective due to the lack of approval by the ATV supervisory board, but carried "presumed adequacy" according to KommAustria. The respective ruling by KommAustria on the basis of which broadcasting operations were announced to start on 01.06.2003 was, on the whole, confirmed by the BKS.

The three licensees for conurbation area TV in Vienna, Linz and Salzburg have in common that they have to share frequencies with the ORF, which previously has transmitted the programme ORF 2 on the channels now assigned to the private broadcasters for occasional use. Therefore, the licensees have to reach an agreement with the ORF on the conditions of shared use of the transmission capacity (§ 13 PrTV-G) and, if required, on shared use of the transmitting stations (§ 19 PrTV-G).

Salzburg TV Fernsehgesellschaft mbH was able to conclude an agreement with ORF and started broadcasting operations on 06.12.2002.

PULS CITY TV GmbH made a request to KommAustria on 28.11.2002 for a ruling pursuant to § 13 (5) in connection with § 19 (3) PrTV-G, since no agreement with the ORF on shared use could be reached after a negotiating period of six weeks. In the course of the proceedings, an economic expert opinion on the question of an adequate charge for shared use was prepared and on 18.12.2002 a hearing took place. The proceedings were not completed during the period under review.

The licensee for conurbation area TV in Linz will reach a contractual agreement with the ORF only in the course of 2003.

1.3.4 Proceedings of the ORF subject to telecommunications law

KommAustria is also responsible for granting licences under telecommunications law for the installation and operation of broadcasting transmitters of the ORF (not only of private broadcasters). The respective activities in the field of radio broadcasting as well as the fact that all radio and television transmitting stations are documented

and recorded were already described earlier in this section. 32 proceedings were instituted for modification of the licences for rebroadcast reception and transmitting stations; four of these systems were permitted test operation. International coordination procedures were instituted and mostly completed in 2002.

In the scope of the technical preparation for the introduction of digital terrestrial television, the ORF was granted a licence to install and operate the respective transmitting stations at the broadcasting site GRAZ 7-Ries in order to carry out a test transmission for Digital Video Broadcasting-Terrestrial (DVB-T) from 12.12.2002 until 20.12.2002.

1.4 Satellite

The procedure for the award of licences for satellite broadcasting was laid down, consistently for radio and television, in the PrTV-G (this was already reported in the chapter on radio broadcasting). In the year under review, the following proceedings were completed:

- Kanal 1 Fernsehbetriebsgesellschaft m.b.H.: licence for a full programme (focus: entertainment, shows and information), distribution via EUROBIRD,
- FASHION TV Programmgesellschaft m.b.H.: licence for a fashion and sports programme, distribution via EUTELSAT HOTBIRD 3,
- Premiere Pay-TV Programm Service- und Betriebs GmbH (now Premiere Fernsehen GmbH): licence for a pay-TV programme with special reference to Austria, distribution via ASTRA,
- SAT.1 Privatrundfunk und Programmgesellschaft m.b.H.: changeover of the satellite supply and programme change for a limited period regarding the licence already issued.

1.5 Cable

In the field of cable broadcasting, the activities of the regulatory authority are confined to legal supervisory control; distribution orders can be issued in the course of must-carry procedures. For the provision of cable broadcasting services no licence is required. However, the start-up of cable broadcasting has to be notified to the regulatory authority

pursuant to § 9 PrTV-G; in substance, the provider is subject to legal supervisory control of KommAustria to the same extent as other Austrian broadcasters. Also, unchanged, simultaneous distribution of received programmes, as it is usually performed by cable network operators, does not require licensing but only notification to KommAustria.

During the period under review, the notifications received were continuously processed to be able to keep a complete and up-to-date list of broadcasters. In several cases, the question of delimiting the activity of a mere cable network operator (distribution of existing programmes) from that of a broadcaster has arisen. This had been triggered by complaints about the unencrypted transmission of programmes in specific cable networks, which are distributed by (foreign) broadcasters via satellites only in encrypted form because their contents might be morally harmful to young people. Since “distribution” by cable network operators means unchanged and complete transmission of the received programmes, a cable network operator performing decryption without order or approval of the programme provider shall be regarded as broadcaster and will thus be responsible for the programme shown.

In the cases made known to KommAustria, this problem could be solved in so far as the respective programmes can be received only if they contain a protection for young persons or they are no longer transmitted at all. In this connection, three administrative penal proceedings were instituted, which were, dismissed pursuant to § 21 VStG (Administrative Offences Act; refraining from punishment in case of slight negligence and insignificant consequences).

The question which programmes will be fed into a cable network is usually settled by contracts between the respective cable network operator and the broadcasters. Subject to special requirements, KommAustria may instruct a cable network operator, pursuant to § 20 PrTV-G, to feed a cable broadcasting programme of local relevance into its cable network (so-called must-carry procedure). This constitutes a certain corrective to the quasi-monopolist position of the cable network operator.

A request for granting a distribution order was filed with KommAustria, in which ATV Aichfeld Film- und Videoproduktion GmbH demanded that its programme be fed into the cable network of Stadtwerke Judenburg AG. The request was dismissed, since the period of six weeks provided in § 20 (4) PrTV-G, during which the opportunity for contract negotiations must be given before the regulatory authority is invoked, had not been observed. Furthermore, requests for the establishment of an infringement and institution of prohibition proceedings against Stadtwerke Judenburg AG were filed. As Stadtwerke Judenburg AG, however, only act as cable network operator, these requests were futile and had to be dismissed. The rulings are not legally effective. In connection with these proceedings, the activities of a cable television provider became apparent, which had not notified its activities. Administrative penal proceedings were instituted and concluded with legally binding effect by issuing a penal order.

1.6 Broadcasting frequency management and frequency coordination

1.6.1 The multinational work basis for frequency management

Frequency management and coordination are an integral part of the routine work of KommAustria and RTR-GmbH. The following broadcasting services are covered: medium wave, short wave, VHF radio, TV broadcasting, digital terrestrial audio broadcasting (T-DAB), digital terrestrial TV broadcasting (DVB-T). Partly, also other radio services are operated in the frequency bands dedicated to broadcasting. The media authority KommAustria is responsible for the licences, under telecommunications law, for radio communications systems that provide broadcasting services. Upon consultation with KommAustria, other radio services in the broadcasting frequency bands come within the competence of the telecommunications authorities of the Federal Ministry of Transport, Innovation and Technology (BMVIT) (e.g. wireless microphones).

To ensure efficient usage of the frequency spectrum and to avoid interference between individual radio services or stations, coordination is required on a national basis but also internationally with the neighbouring states. The fundamental rules for international coordination activities are laid down, *inter alia*, in the Radio Regulations of the International Telecommunication Union (ITU). As a matter of principle, on the basis of the International Telecommunication Convention, a radio station may be put into operation only if it has been previously coordinated on an international basis with all telecommunications authorities of the states concerned (irradiated field strength exceeds a defined threshold value). Further coordination rules are contained in international agreements, which are either established within the ITU (at the Regional Radiocommunication Conferences – RRC) or within the framework of agreements and conventions within the Conférence Européenne des Administrations des Postes et des Télécommunications (CEPT).

Specifically, broadcasting frequency management is governed by the following agreements:

- “Stockholm 61” (ITU conference): TV analogue,
- “Chester 97” (CEPT agreement): TV digital,
- “Geneva 84” (ITU conference): VHF broadcasting/analogue,
- “Special arrangement of Wiesbaden 95 revised at Maastricht 2002” (band III) as well as “Special arrangement Maastricht 2002” (L band): T-DAB,
- Radio Regulations,
- International “High Frequency Coordination Conference” (HFCC): short wave,
- “Geneva 75” (ITU conference): medium wave.

New transmission capacities are usually made accessible after positive conclusion of coordination procedures. Another option is to conclude special agreements in the course of bilateral and multilateral frequency negotiations or international conferences (RRC), with the latter usually resulting in the reorganisation of transmission capacities in frequency sub-bands.


In 2001, the start signal was given for the preparation of an RRC for 2004/2005, which is to replace part of the “Stockholm 61” agreement and thus automatically also the “Chester 97” agreement. The planning region will comprise the European Broadcasting Area, numerous states in Asia west of 170 degrees east longitude as well as the African Broadcasting Area. At the forthcoming conference in 2005, for the first time, planning will be done only for digital broadcasting services in the broadcasting frequency bands III, IV and V.

1.6.2 Activities in the field of frequency management

Several bilateral, trilateral and multilateral frequency negotiations with the authorities of our neighbours Switzerland, Germany, Czech Republic, Slovakia, Hungary, Slovenia and Croatia in 2002 were conducted to prepare the introduction of DVB-T. The meetings were held in Mainz, Vienna, Bratislava, Sopron and Obermayerhofen (*inter alia*, regarding channels for the DVB-T test operation Graz). The frequency negotiations, which will be continued in 2003, aim at making new transmission capacities accessible for DVB-T – partly by careful rearrangement of the transmission capacities currently used for analogue operation, partly in the field of channels 61 – 69, which previously had been reserved for military radio services in many of our neighbouring states.

In 2002, Austria initiated coordination procedures for a total of 91 broadcasting transmitters, i.e. 41 radio broadcasting and 7 television transmitters as well as 43 DVB-T transmitters. In the same year, RTR-GmbH handled 491 foreign coordination requests (215 radio, 73 television and 203 DVB-T requests). This statistics does not include the coordination request of about 8,000 Italian television stations, although for the majority of these stations it would not have been necessary to conduct a coordination procedure with Austria.

The number of countries to be included in the coordination process mainly depends on the sea level of the transmitter, the mean ground elevation surrounding the transmitter in an area of 3–15 km and



the radiated power by sectors and, thus, varies according to the transmission capacity to be coordinated. Mostly, the number of countries actually affected is lower than the one that is determined on the basis of the coordination guidelines used.

Coordination of individual transmission capacities usually takes three to six months, some coordination procedures, however, last for years. In coordination requests it is not only examined if the newly requested transmission capacity will cause interference with operative broadcasting transmitters but also if any rights in the form of entries contained in the corresponding frequency plans are violated. The ITU Radiocommunication Bureau in Geneva performs frequency plan administration.

Every coordination procedure consists of two stages: in the first stage, bilateral coordination with the neighbouring countries takes place. Then the results are reported to the ITU. The ITU publishes all requests in a circular specifying a period during which the institutions responsible in the countries may object. If there is no objection, the respective transmission capacity will be published once more, which means that it is included in the respective frequency plan. With this, the transmission capacity obtains international property rights.

1.6.3 Participation in licensing procedures

Another task involved in frequency management is the examination of the coordination probability of applications for approval of new broadcasting transmitters pursuant to the PrR-G und the PrTV-G. Expert opinions are submitted to KommAustria as a basis for decision in preparing the notices. On the basis of the VHF study of Deutsche Telekom AG in 2001, in 2002 additional results were processed and coordination procedures were initiated. From among the 20 newly identified transmission capacities, eight coordination cases were completed with positive results. About one third of the requests could not be handled further due to incompatibilities abroad or interim rearrangements in Austria.

The eight coordination cases that had been completed with positive results resulted in tendering procedures pursuant to the PrR-G. These tendering documents contained the rough outline of the technical parameters as well as the technical range to be expected (geographically as well as inhabitants/households). Subsequently, about 50 applications were received, which were to be examined for completeness, plausibility and implementability with the aid of expert opinions on frequency matters. Additional expert opinions for the area west of Vienna, the city of Salzburg and Braunau were prepared. About 40 smaller expert opinions were prepared in reply to private radio applications. To substantiate the results of the calculations in the expert opinions, in 2002 trips were made for measurement purposes together with the applicants and partly also with the responsible radio supervision bodies or with the ORF.

In the expert opinions focusing on frequency matters the coverage capability of new transmission capacities, any double and multiple coverage, active and passive interference capabilities, intermediate frequency interference, coordination probability and, not least, compatibility of broadcasting transmitters with flight navigation systems are examined. On behalf of the ORF, a total of 55 radio and 40 television applications focusing on frequency matters were handled mostly for changes referring to the characteristic technical parameters of a transmitting station or, by virtue of office, because of completed coordination procedures.

After all seven applications received for nationwide private television had been inspected in general for completeness and plausibility, technical expert opinions on population coverage to be achieved were prepared for the four remaining candidates. For regional private television a total of 21 applications were checked for completeness and plausibility and/or frequency related implementability. Another task is keeping the frequency book. All VHF and television broadcasting transmitters that are approved are to be included in the frequency book. The current data is made available to the public on the web site of RTR-GmbH (<http://www.rtr.at>).

1.7 International activities of the Broadcasting Department and KommAustria

1.7.1 European Platform of Regulatory Authorities (EPRA)

KommAustria is a member of EPRA (<http://www.epra.org>). During the period under review, delegates of the regulatory authority attended the plenary meetings of EPRA in May (Brussels) and in October (Ljubljana), where representatives of about 40 European broadcasting authorities discussed issues related to convergence regulation, the development of digital television, advertising, regulation of broadcasting under public law, media concentration, political advertising and the European media policy.

1.7.2 Conférence Européenne des Administrations des Postes et des Télécommunications (CEPT)

Three meetings of the CEPT working group "FM PT24" were attended. This group deals with the introduction of DVB-T in Europe as well as with the preparations for the revision of the "Stockholm 61" agreement. All technical bases and all regulatory requirements have to be finished by the end of 2003 as an overall report. The ITU is in charge of the preparatory work for this conference. In the "FM PT24" group, European interests are focused so that they can be advocated in the ITU more efficiently. Within CEPT, also data collection according to resolution 5 of the "Chester 97" agreement is carried out. It is the objective of the data collection of the European Radiocommunication Office (ERO) to have accurate data of all internationally coordinated TV transmitters in Europe available for the Stockholm follow-up conference. It was the task of RTR-GmbH to review the TV transmitter data of all neighbouring countries of Austria and to provide also the respective data of Austria. In February

2002, all data that had been coordinated prior to 25.07.1997 had to be completely processed and any objections by neighbouring states had to be clarified. By 29.11.2002, all changes due to coordination activities after the stated date were to be submitted to the ERO in a defined format.

1.7.3 Maastricht conference

From 10.06.2002 to 18.06.2002, a CEPT T-DAB planning meeting was held at Maastricht. Three delegates represented KommAustria and RTR-GmbH. Delegates from all CEPT member states attended the conference. The purpose of the conference was to plan further European-wide coverage with seven additional frequency blocks for digital radio in the L band.

The original "Wiesbaden 95" and "Bonn 96" arrangements were split into two separate arrangements: "Wiesbaden revised at Maastricht 02" and "Maastricht 02". The first deals only with frequency band III, the second applies only to the L band (1.5 GHz). Due to the separation of the two arrangements, now two separate frequency plans exist. From the 1,922 allotments requested by the participating administrations, in the end, almost all requests could be fulfilled, due to the bilateral agreements and due to pooling of allotments in individual countries. For the future use of the T-DAB allotments transitional time schedules were agreed with regard to phasing out the other radio services. The radio services in Austria that are located in the respective frequency range will be phased out in 2005.

In defining the allotments requested by Austria, for each of which a T-DAB block was to be planned, this time smaller areas were defined – contrary to the planning meeting at Wiesbaden 1995 where the boundaries of the areas were identical with the province boundaries – to take into account requests for a local radio scene if necessary. 43 allotments were planned; to all of them a T-DAB frequency

block was allocated at the planning meeting. 36 allotments can be taken into operation immediately without any limitations by other radio services of foreign administrations. For seven allotments the respective administrations issued transitional requirements to protect other radio services.

1.7.4 International Telecommunication Union (ITU)

Within the framework of the ITU the Task Group (TG) 6/8 was established in 2002 to prepare the "Stockholm 61" follow-up conference 2004/2005. A total of three meetings were held in which RTR-GmbH was represented. By the end of 2003, the technical report by the TG 6/8 shall be completed. This report shall serve as basis for decision for future planning at the "Stockholm 61" follow-up conference. The activities and results of the ITU study commissions were observed on the basis of the existing documentation.

1.7.5 Digital Broadcasting Expert Group (DBEG)

The DBEG was established by the ONP Committee (Open Telecommunications Network Provision, Directive 90/387/EC) in October 2000. In the group, the exchange of practical experiences of the EU member states in the implementation of Directive 95/47/EC (TV signals directive) takes place and support with regard to the introduction of digital broadcasting is given. The work of the group thus provides important assistance to the activities of the regulatory authority in connection with the working group "Digital Platform Austria". In the DBEG, both the Federal Chancellery and the regulatory authority are represented. In 2002, one meeting was held.

1.8 Cooperation with the telecommunications offices and radio supervision bodies

As already mentioned, KommAustria is also responsible for deciding on applications for licences for the installation and operation of radio communications systems and on later modifications of these licences pursuant to § 81 TKG with regard to private broadcasters and the ORF. Since supervision of the broadcasting transmitters, however, is the duty of the telecommunications offices (Vienna, Linz, Innsbruck and Graz) and, as second instance, the National Telecommunications Authority (BMVIT), an administrative agreement was worked out between the Federal Chancellery and the BMVIT to govern cooperation between KommAustria and the telecommunications offices. The central issues of this agreement focus on mutual information as well as cooperation in the enforcement of the TKG and in frequency management.

1.9 Tasks in the field of competition law

Since 01.07.2002, the amendment of the Restrictive Trade Practices Act (KartGNov) 2002 and the new Competition Act (WettbG) have conferred powers to the sectoral regulatory authorities established at the federal level also in respect of general competition law. "Regulators" are authorities established under federal law, which are responsible for regulatory tasks with regard to specific sectors, i.e. for example the TTK for the telecommunications sector and KommAustria for the media sector. They are expected to make a valuable contribution to the enforcement of restrictive trade practices law, in particular, in the field of supervising abuse of SMP companies, as they have specialist knowledge of the relevant conditions in the respective economic sector from their official activities.

The powers include mainly rights to make requests in restrictive trade practices proceedings, such as requests to stop abuse of significant market power. In addition, the Restrictive Trade Practices Court can rely on the expertise of the regulators and ask them for statements on issues referring to the respective economic sector. Such statements can be also given without request.

Moreover, the WettbG provides for cooperation and information exchange between the newly created competition authority and the regulators. Also, KommAustria has to be given an opportunity for comment if the media sector (not only electronic media) is concerned.

In this connection, the second half of 2002 was characterised by the definition of processes for cooperation with the Federal Competition Authority. Subsequently, KommAustria had to deal with five proceedings of the Federal Competition Authority.

1.10 Federal Communications Senate (BKS) und Constitutional Court (VfGH)

Appeals were filed with the BKS against numerous notices of KommAustria, in particular, against the licences awarded in selection procedures involving several applicants. In 2002, the BKS decided on 23 appeals, the rulings by KommAustria being upheld in the majority of cases; at the end of 2002, only five appeals were pending. In 2002, the VfGH also took a landmark decision in which not only the establishment of the BKS but also essential parts of the PrR-G were upheld as constitutional (VfGH 25.09.2002, B 110/02-9 et alia).

1.11 Working group “Digital Platform Austria”

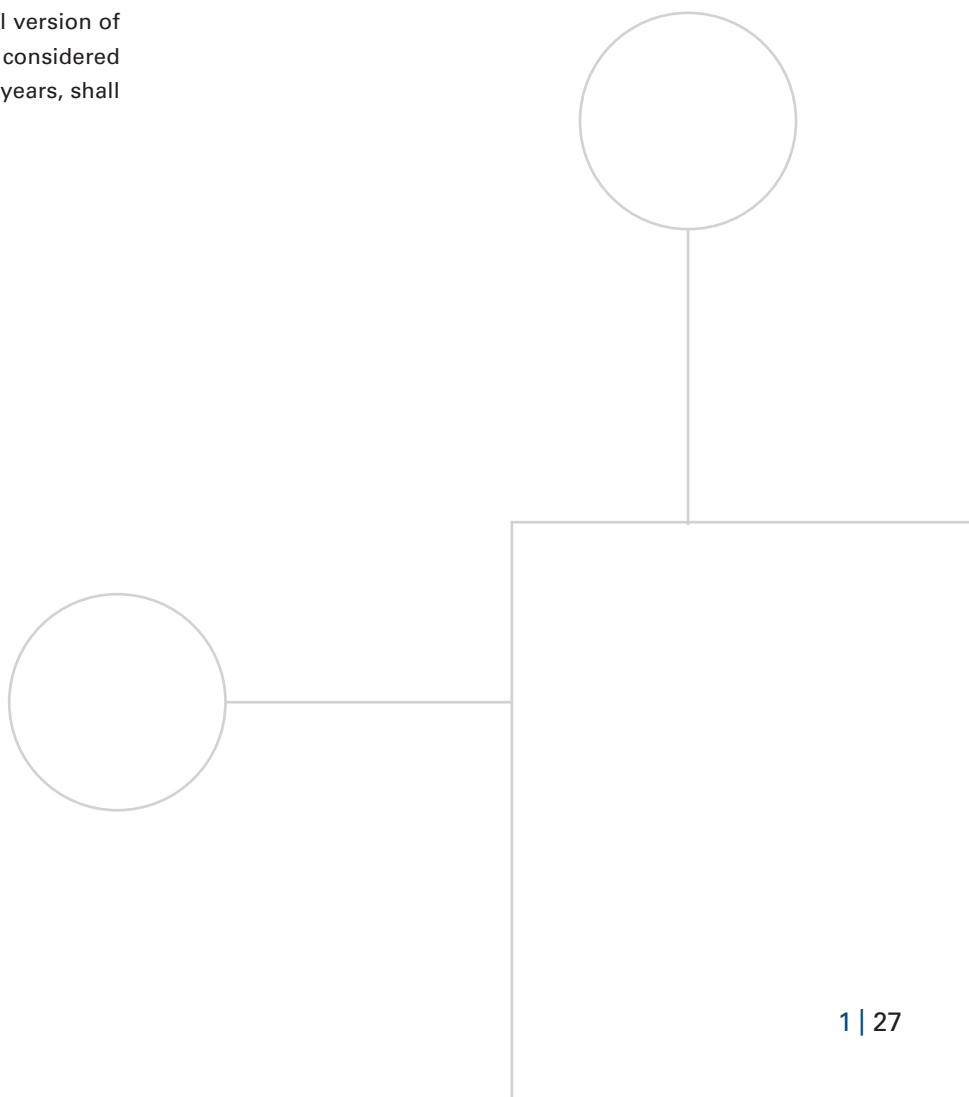
Digitisation of broadcasting is one of the priorities in the activities of KommAustria and RTR-GmbH. Digitisation of the broadcasting transmission media is an irreversible technological development which is taking place all over the world; by now, the “Digital Video Broadcasting” (DVB) technology, a European development, has become accepted as technical standard everywhere, except for the American continent.

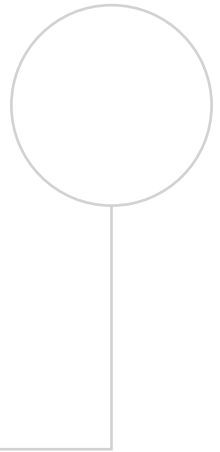
The legal basis for digitisation in Austria was laid, in particular, by the PrTV-G (Section 6). There the legislator stipulates that the regulatory authority has to enable the start of operation of DVB-T in 2003. This legal requirement will be met by a DVB-T test operation in Graz in autumn 2003. This test operation shall not only supply valuable technical experiences for the future planning of a digital transmitter network but also provide information about the behaviour of TV consumers in using new services that become technically feasible only through DVB-T. This includes mobile applications (TV reception in cars, trains or on PDAs or mobile phones in combination with UMTS) as well as interactive TV formats (“televoting”) and broadcasting data services, such as electronic programme guides (EPG) or greatly extended broadcast videotext. In the entire EU area, digitisation of the broadcasting transmission media (cable, satellite and terrestrial) plays an important role in technological policy. While digitisation of the cable networks and satellite transmission is mainly driven by the market, the situation with regard to terrestrial distribution is clearly more complex, which is why the regulatory authority places a special focus on this issue. Because of Austria being close to the German media market language-wise and the special topographical situation resulting in a dramatic shortage of frequencies, digitisation of terrestrial broadcasting in Austria constitutes a particular challenge to media policy.



The regulatory authority has been commissioned to prepare a "digitisation plan" which is to contain a strategy for the nationwide introduction of DVB-T, a more or less frictionless switchover as well as a time schedule, until the TV transmission capacities used in analogue operation are finally turned off (Analogue Turn Off, ATO). In working out this plan the regulatory authority is supported by the working group "Digital Platform Austria", pursuant to § 21 PrTV-G, which was established by the Federal Chancellor for this purpose and is managed by RTR-GmbH. The plan will be prepared in cooperation with the Federal Chancellery, taking into consideration European developments, and in close cooperation with the ORF as major market player and operator of the terrestrial transmitter network in Austria. In addition, "Digital Platform Austria" also makes recommendations to the "Digitisation Reports" which are presented to the National Council every year. Publication of the first "Digitisation Report" whose results are based on the work of "Digital Platform Austria" is expected to take place in the first half of 2003. An initial version of the "Digitisation Plan", which is to be considered as work in progress over the next few years, shall be available at the end of 2003.

The activities of the working group "Digital Platform Austria" started with an inaugural event on 29.01.2002 at the Ares Tower in Vienna. Some 270 experts from all areas, industries and institutions affected by digitisation accepted the invitation to participate in this working group. To be able to cover the different complexes of problems in greater detail, three expert panels on "Law", "Technology" and "Market/Content" were installed. Within these expert panels numerous individual events took place in 2002, with speakers from Austria and abroad, where the different aspects of digitisation were discussed. A mid-term review of these events was presented in the course of a plenary meeting of the working group on 05.07.2002 at Siemens Forum in Vienna.

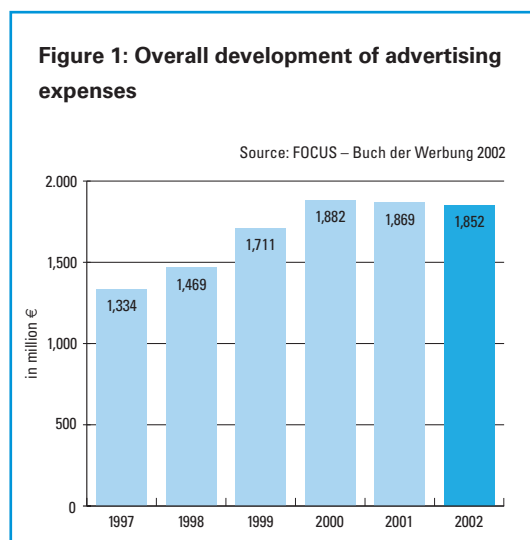




2. Development of the Austrian media markets

2.1 General remarks on the media year 2002

The media market in Austria 2002 has to be seen against the background of the international development and, thus, of a prolonged bad economic situation. While in the 1990's advertising expenses were still growing at disproportionate rates, in 2001, for the first time after almost a decade, stagnation and declining developments occurred. This trend was confirmed also in 2002. The advertising expenses that are regularly surveyed by Focus Media Research dropped again, after declining by 0.7 % in 2001. The gross advertising expenses of 2002 are now € 1.852 billion, which is a deficit of 0.9 % compared to the previous year.



The reasons for this further decline are basically the same as in 2001: the lull in growth continuing in the markets relevant to the global economy, stagnation at the international stock exchanges, political uncertainty (international terrorism, fear of war etc.). In 2002, however, increased expenses, such as higher production and distribution costs, put the media under additional pressure.

Changes on the supplier and product sides did not produce any significant effects in 2002. Against the background of diversity of opinion and media concentration, the most characteristic feature of the Austrian media landscape is, first of all, that the Austrian Broadcasting Corporation (ORF) in the electronic sector, the "Kronen Zeitung" in the field of daily papers and Verlagsgruppe NEWS in the magazine sector each have significant market power or market dominant positions. This fact has been observed for years; the media performance data published at regular intervals does not show any substantial changes of this initial situation.

Of considerable importance with regard to the Austrian electronic media is that, for the first time, licences for private terrestrial television were granted, in the course of which the licence for a nationwide terrestrial television programme was issued to the station ATV, which previously had been receivable in most Austrian cable networks. Its terrestrial start of operation with a new programme pattern and new design (ATV+) is scheduled for June 2003.

By international comparison, the Austrian media market is regarded as a small market, which, however, is characterised by strong tendencies of concentration and dominant market positions. In television, private programmes (except for ATV as, in fact, nationwide private TV broadcaster) could be received only via local cable networks in the past; in the year under review, also local private TV broadcasters took up terrestrial television operations for the first time. Therefore, the nationwide TV stations ORF1 and ORF2, which continue to dominate the market, were and are faced with a great number of foreign private and public-law programmes which compete with the ORF in the households supplied via cable networks or TV satellites. Of these, the majority of private German-language stations offer so-called "Austria windows" that constitute platforms for the Austrian ad-

vertising industry. However, they hardly have any independent programme parts and therefore are of no importance (yet) with regard to the diversity of opinion. In addition, it shall be noted that, with a single exception (SAT.1 Österreich), all these providers are not "established broadcasters" in Austria under broadcasting law.

On the basis of an independent Austrian licence for satellite television, the programme provider Premiere Fernsehen GmbH took up television operation as per 26.10.2002, under the title "Premiere Austria". The programme content is of Austrian relevance throughout; in addition "full eroticism" (with technical protection for young persons) is offered.

In the field of radio broadcasting, the ORF with its four radio channels (Ö1, Ö3, FM4 as well as the regional programmes Ö2) maintained its significant market power. All 64 private radio broadcasters¹ that have a licence for terrestrial broadcasting of their programmes attained a total market share of only 21% in the target group aged 14 to 49 that is relevant to advertising, while the ORF reached a total of 77% (Radiotest 2002). These figures already show that today, eight years after the launch of the first Austrian private radio programme and after achieving blanket coverage of all federal provinces with private radio programmes in 1998, a balanced "dual broadcasting market" in the field of radio broadcasting has not yet been established in Austria.

In the field of print media, the "Kronen Zeitung", 50% of which are owned by the German WAZ Group and 50% by Hans Dichand, has a unique market position in Europe. In 2002, on an annual average, it reached 43.4% of all Austrians over 14 years of age every day (Media Analysis 2002). But also the magazine sector is characterised by the significant market power of the publishing group NEWS that succeeded in further strengthening its position in 2002, following the merger with the trend-profil Group in 2001. The discussions and reservations about this merger did not subside in 2002 either, but no measures were taken.

Another specific characteristic of the Austrian print media, in particular, of daily papers and magazines, is the fact that a considerable number of published and market relevant titles are under the control of owners that are not Austrian but established within the EU (especially Germany). This applies, for example, to the following companies:

- the "Kronen Zeitung", with a 50% share of the German WAZ Group (Westdeutsche Allgemeine Zeitung),
- the daily paper "Kurier" (share of WAZ 49.4%),
- the "Tiroler Tageszeitung" (65% Verlagsgruppe Springer)²,
- the daily paper "Der Standard" (49% Süddeutscher Verlag),
- the daily paper "WirtschaftsBlatt" (50% Bonnier Group),
- the Verlagsgruppe NEWS, *inter alia*, with the titles "NEWS", "Format", "Trend", "profil", "tv media", "e-media" and "WOMAN" (56.03% indirectly owned by the German publishing group Gruner + Jahr that belongs to the Bertelsmann Group).

2.2 Advertising expenses

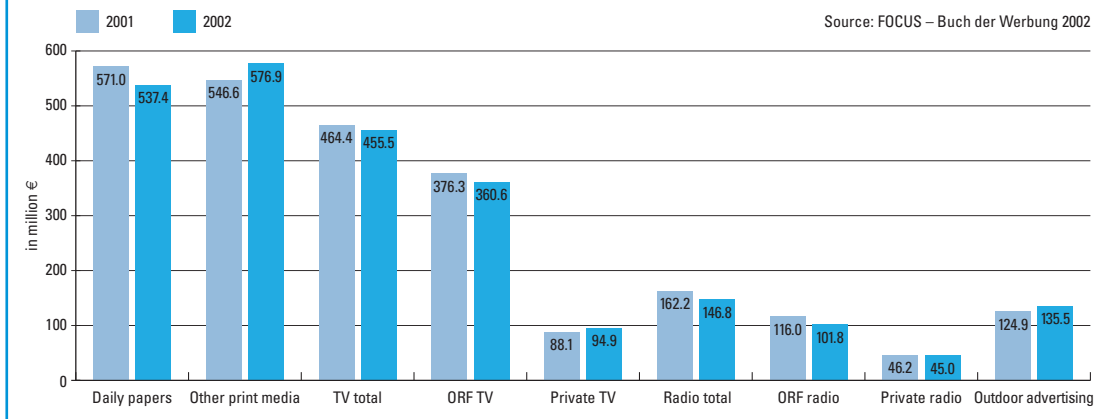
The decline in advertising expenses in 2002 was reflected in all media sectors equally, with the exception of private television, parts of the print sector and outdoor advertising. The increase in outdoor advertising certainly had to do with the federal elections in autumn 2002. It is, however, remarkable that the rate of increase in private TV³ was 7.7% in 2002, while the ORF television sector showed a decline of 4.2%. The decrease in revenue in the field of ORF television, which was mainly due to the economic situation, however, did not cause any significant shift in proportions: the two television channels of the ORF, with € 360.6 million, had revenues that were almost four times as high as those of the private providers of "Austria windows" and cable TV programmes, which together attained gross revenues of € 94.9 million. With regard to the decrease of advertising expenses 2002 in the radio broadcasting sector, it shall be

¹ As per December 2002: additionally, one broadcaster only via cable, two further broadcasters only via satellite.

² As per 01.01.2003, the 65% share of Verlagsgruppe Springer was sold back again to the Austrian 35% shareholder, the community of heirs of the founder of the "Tiroler Tageszeitung", Joseph Stephan Moser.

³ Refers almost exclusively to the "Austria windows" already mentioned.

Figure 2: Advertising expenses 2001 vs. 2002



pointed out that this effect was intended by the ORF as well as by the legislator, since, under the new ORF-G, the ORF has to include the so-called “ring” commercials⁴ in the 5-minute advertising limit of the regional programmes, which is why this form of advertising has become unattractive to the ORF (§ 13 (6) ORF-G). According to RMS (Radio Marketing Service GmbH), the marketing company of the private radio broadcasters, the private radio companies succeeded in canvassing the majority of the ORF’s former “Ö2 ring customers”. The decline in advertising expenses at the private radio broadcasters is in part a merely statistical problem, since in the FOCUS account the figures of the former “Ö3 Plus” customers⁵ were not shown separately from the commercials acquired by the respective private radio broadcasters themselves and were therefore too high.

Looking at the structure of the advertising expenses, it can be seen that the major part of the overall advertising expenses (classical advertising expenses: € 1.852 billion), i.e. 60 %, accounted for the print media in 2002: 29% of the overall advertising expenses were attributable to daily papers, 7.8 % to regional weekly papers, 18.7 % to magazines and journals and additional 4.6 % to technical journals.

About one fourth (€ 455.5 million) of all advertising expenses still accounted for the TV sector, of which 19.5 % were attributable to the ORF and 5.1 % to private TV broadcasters.

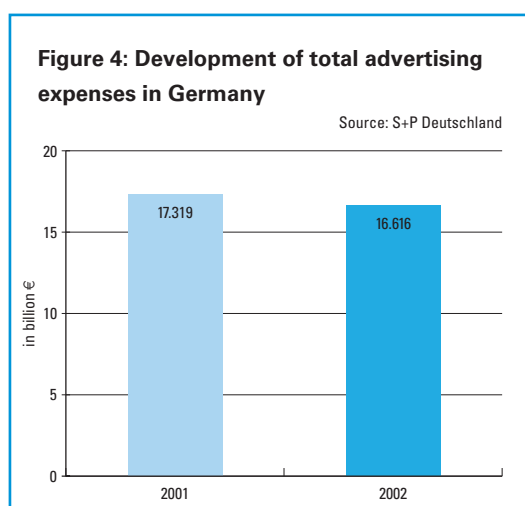
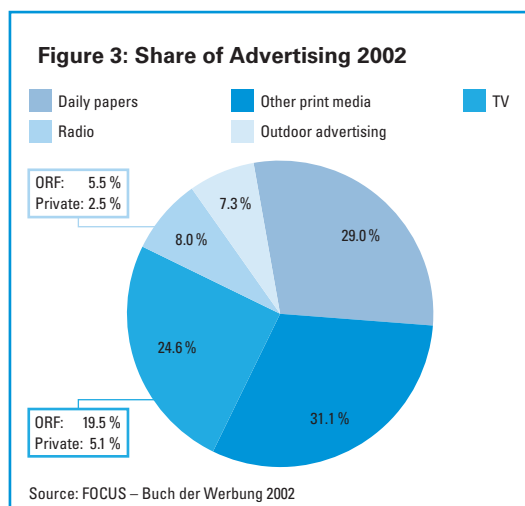
8 % (€ 146.8 million) of the advertising expenses (ORF: 5.5 %, private radio broadcasters: approx. 2.5 %) were attributable to the radio sector. The share of radio broadcasting in the overall advertising expenses is high by international comparison. For TV, the opposite is true. 7,3 % (€ 135.5 million) of all advertising expenses were invested in outdoor advertising (billboards, electric signs, advertising on public transportation).

The media situation in the Federal Republic of Germany, the largest media market of Europe, has a considerable impact on the situation in Austria, due to its geographical and economic proximity and as part of the same language area. It has to be stated that the decline in advertising expenses 2002 in Germany was by far more dramatic than in Austria. With a gross volume of classical advertising expenses of a total of € 16.616 billion, the decline in Germany was 4 %, i.e. € 703 million, compared to 2001, while, as mentioned before, the decline in Austria was “only” 0.9 %.

4 “Ring” commercials are broadcast in more than one province-wide programme simultaneously.

5 In this combination, the stations “Ö3”, “88.6 – Der Musiksender”, “Radio RPN”, “Burgenland 1” and “92,9 RTL” were jointly marketed.

At first glance, this decline of 4 % does not seem to be that high but, expressed in concrete figures, it amounts to € 703 million after all, which, by comparison, corresponds to roughly 40 % of the overall advertising expenses in Austria in 2002. In addition, it has to be taken into account that these figures are all gross amounts and it can be assumed that, especially in economically difficult times, the rebate policy of the media providers will result in a clearly higher decline in net figures.



Also, it has to be noticed that the decline in advertising expenses in Germany was not equally drastic in all media sectors. It was mainly the print and TV sectors that caused this poor overall result 2002. Compared to the previous year, the decline was 4.2 % in television, 2.3 % in daily papers and 6.4 % in other print products (e.g. magazines).

The entire media situation of 2002 in Germany was characterised by crises and insolvencies: staff reductions that did not even spare prestigious publishing houses, large-scale insolvencies like that of the Kirch Group, or the sale of the cable TV networks of Deutsche Telekom AG that failed on the first go. The profound differences in the Austrian and German markets that exist despite all common interests are also underlined by the fact that the share of print advertising in Austria is particularly high and that of TV advertising is clearly capable of development. In 2002, the share of TV advertising was 44 % in the highly competitive German advertising market (in Austria about 25 %), while all print media had a total share of 48 % (in Austria 60 %). This is due to the fact that, with the lasting establishment of many private TV stations in Germany during the 1990's, the advertising revenue increased as a whole and that of the television broadcasters, in particular, increased explosively.

As regards the advertising expenses per inhabitant, the Austrian advertising industry reached, and even exceeded, the level of the Federal Republic of Germany in the course of the past decade. In 2002, per capita advertising expenses in Austria were € 231.00 (2001: € 230.00) while in Germany they were only € 202.00 (2001: € 207.00). The comparison of the per capita advertising expenses, too, and the fact that in this segment the decline was markedly higher in Germany than in Austria shows clearly that in 2002 the German advertising industry suffered a much greater decline in growth than the Austrian.

Finally, considering the online advertising expenses, which are not included in the figures presented so far, the following can be stated: in Austria,

Figure 5: Advertising expenses in Germany 2001 vs. 2002

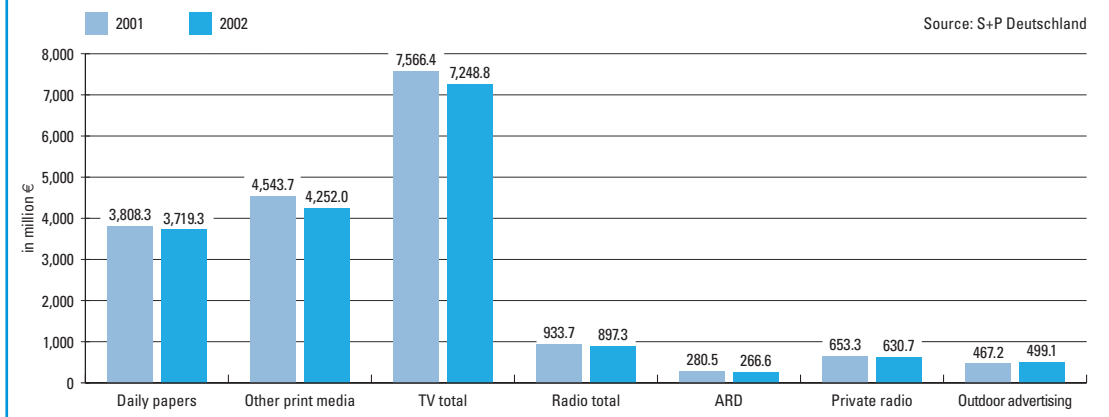
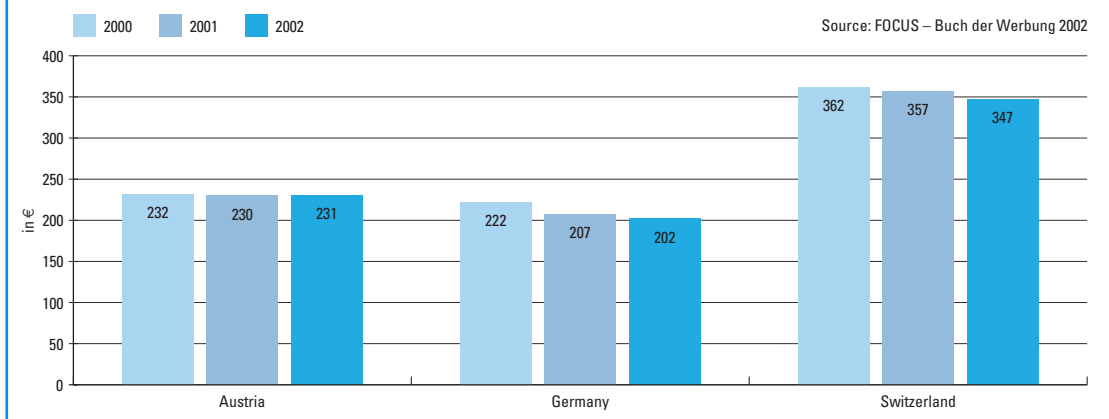


Figure 6: Per capita advertising expenses



online advertising expenses decreased from € 14.8 million in 2001 to € 10.6 million in 2002. This is a decline of 28 %, compared to an increase of 21 % for the same segment and period in Germany. This might be seen as an indication that in Austria classical advertising forms are relied on to a much greater extent than in Germany, especially when the atmosphere in the media and communications industry is not particularly pleasant, as it was the case in 2002.

2.3 Television

In Austria, the PrTV-G and the awards of private licences for terrestrial distribution of private television programmes under this act in 2002 gave the starting signal for the establishment of a dual broadcasting system also in the field of television. Licences were awarded for eight local and regional areas, including the cities of Vienna, Linz and Salzburg. One nationwide licence for terrestrial distribution was awarded to ATV. Whereas the broadcasters in Salzburg and Linz went on air

terrestrially with their programmes, which had been previously broadcast in the local cable networks, already in autumn 2002 and April 2003, the holder of the licence for Vienna and its surroundings (Puls City TV) and ATV want to start in or even before summer 2003.

The Austrian television market is regarded differently also among experts, due to the lack of experience of inner-Austrian competition until 2002. In any case, with regard to the diversity of opinion and the usage habits of the viewers, television is a sensitive area of media policy. The television programmes of the ORF, in particular, which account for about half of all market shares in the

television viewer market, play an important role in opinion forming. Especially, the information channels of the ORF (not only the news broadcasts in the narrower sense) are regarded as very important also for political opinion forming.

The importance of television for social and communications policies goes hand in hand with the households being equipped with TV sets. In 2002, 3.25 million households were found to be equipped with at least one, in many cases also with several TV sets. This overall figure corresponds to a degree of saturation of 98% of all households (Media Analysis 2002) and has not changed in the past few years. Any further increase in the degree of saturation with regard to TV sets available is hardly possible.

As in almost all countries, also Austrian TV consumers receive the TV signal via three different platforms. In the 1960's and 1970's, the programmes were distributed almost exclusively via terrestrial transmitter systems; in the 1980's, especially in Vienna and in larger cities, distribution of the programmes via cable TV networks was added. This took account of the steadily increasing number of available TV programmes on the international and European markets. Considerations at the local level directed at townscape preservation to avoid roofs being cluttered with aerials that had gained considerable importance favoured the establishment of cable networks for the distribution

Figure 7: Development of TV households

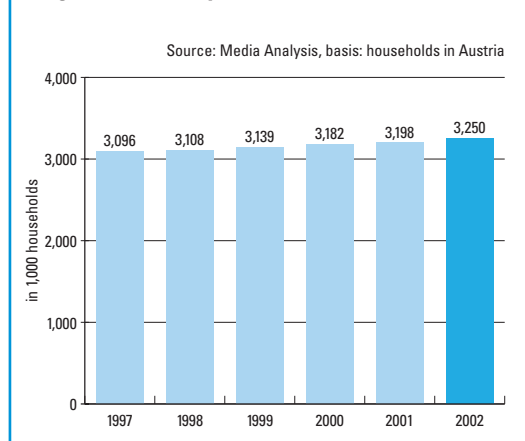
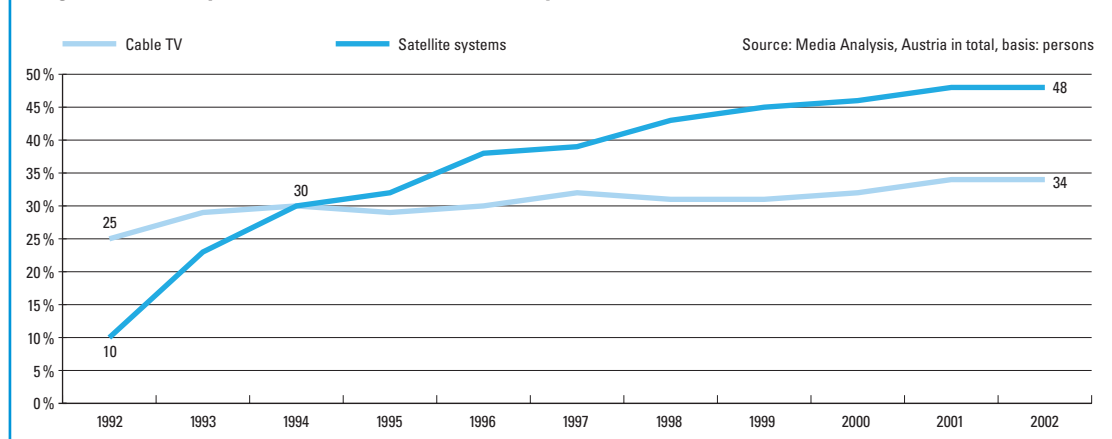


Figure 8: Development of cable TV vs. satellite systems



of television programmes. In the 1990's, it became more common to receive TV programmes via broadcasting satellites, especially on the outskirts or outside the cities that, until then, had not been covered by the cable TV networks.

The number of Austrians who received their programmes via broadcasting satellites drew even with that supplied via cable networks only in 1994 (30 % each). Since then, the number of persons supplied via satellite and via cable increased to 48 % and 34 %, respectively, with both figures stagnating at present.

The increase in cable and satellite supply of the past few years, naturally, went hand in hand with the

decline in the number of households exclusively supplied via terrestrial transmitter systems. While in 1997 29.3 % of the households still received TV programmes via house aerials, this figure was only 18 % in 2002. On the other hand, the number of households⁶ supplied via satellite increased from 35.7 % (1997) to 45 % (2002) over the same period. As the ORF also broadcasts its programmes via satellite, though only digitally, the households supplied by broadcasting satellites usually need terrestrial transmitter systems to be able to receive the ORF TV programmes, unless they are equipped with digital TV receivers (approx. 10 % of the households with satellite supply).

Figure 9: Development of reception situation

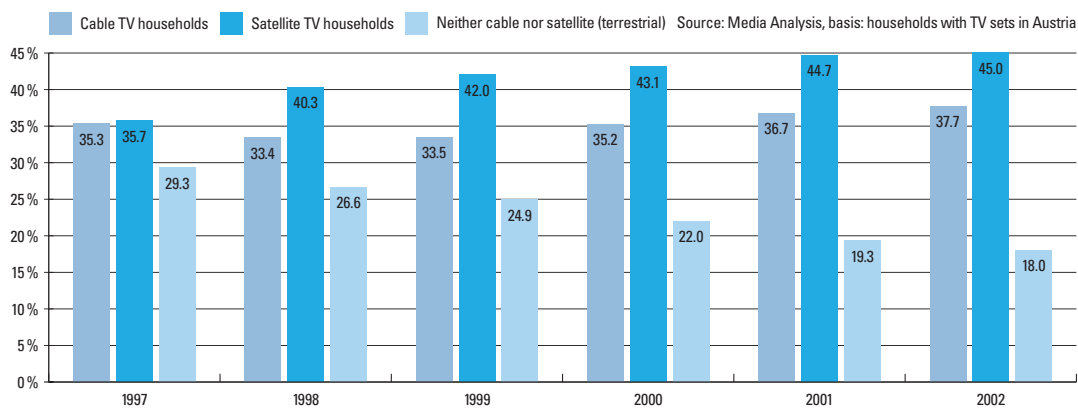
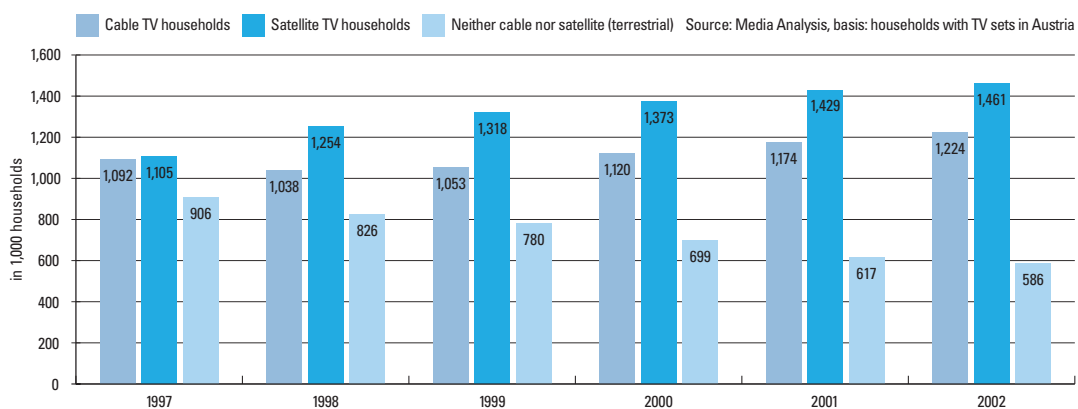


Figure 10: Development of reception situation



⁶ Reference to the data material: these figures refer to the total number of households, while the satellite supply rate of 48 % mentioned previously refers to the number of persons.

Converted into persons with TV sets in households that can receive only terrestrial programmes, there were about 1.094 million persons in 2002, with the majority attributable to the federal capital of Vienna (248,000 persons), followed by Lower Austria with 228,000 persons. These figures are quite significant because, contrary to the west of Austria where it has always been possible to receive also foreign German-language programmes via house aerials, it is only in 2003 that in the east of Austria quite a considerable number of people are offered an alternative to the ORF programmes for the first time by the start of terrestrial private television.

As mentioned before, programmes are also transmitted digitally via satellite (and cable), with the advantage that the transmission quality is better and a greater number of programmes can be broadcast. Virtually all TV programmes so far distributed in analogue mode are offered digitally via satellite and often also via cable.

The number of "digital households" is still not very high, even if a major increase took place during the period under review. While in 2001 only 230,000 households in Austria had digital TV receivers, at the end of 2002 digital penetration was already 340,000 households, i.e. an increase of almost 50%. While only 3% of the Austrian cable households made use of digital television at the end of 2002 (this figure has not changed for two years), 22% of the households equipped with satellites received their TV programmes digitally, which is an increase

of more than 100% since the end of 2001. In addition to the ORF programmes, the digital programmes viewed in Austria are mainly the pay-TV channel Premiere, as well as several free public-law and private satellite programmes from Germany. With regard to the development of the viewing habits, the increase of the previous years continued also in 2002: the average viewing time of the Austrians over 12 years of age increased from 152 to 162 minutes, i.e. an increase of 6.6% in one year! This figure corresponds to the accumulated increase of the preceding 5-year period. In the cable and satellite segments, too, almost the same increase can be seen. It is noticeable that users of cable TV programmes watched TV longest by far, i.e. 180 minutes in 2002.

The viewing habits of the Austrians are recorded within the framework of the "Teletest", which is a method for electronically determining the behaviour regarding programme selection and viewing times on the basis of 1,500 test households selected according to demoscopic criteria.

The Teletest 2002 shows a daily reach of 70.2% on an annual average, i.e. 70.2% of all persons over 12 years of age watched at least one minute of one of the television programmes available on the market every day. While the increase was steadily small over the past few years (1997: 66.3%, 2001: 67.9%), it was significantly higher from 2001 to 2002 at 3.4%. Here, the stations of the Austrian Broadcasting Corporation, ORF1 and ORF2,

Figure 11: Reception situation 2002 – terrestrial only

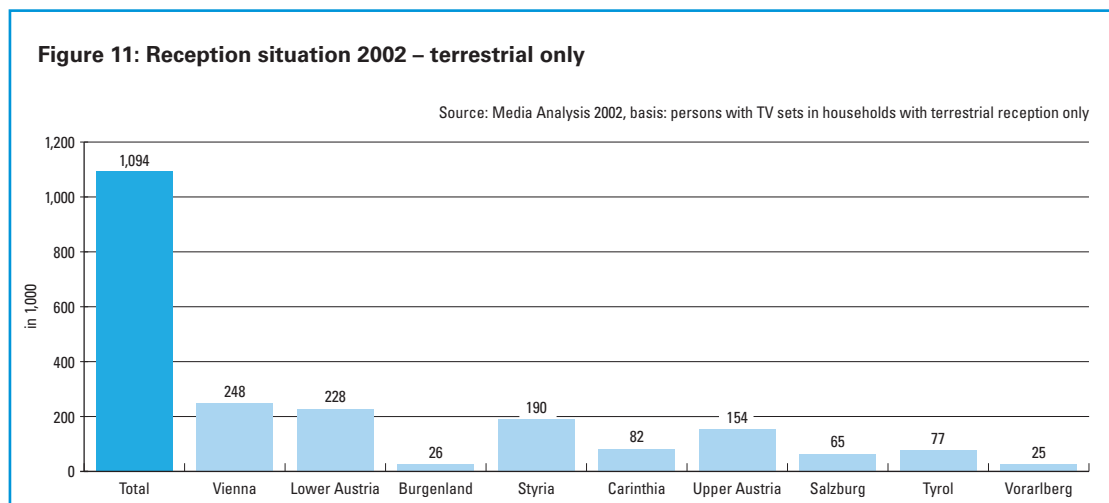


Figure 12: Development of viewing time

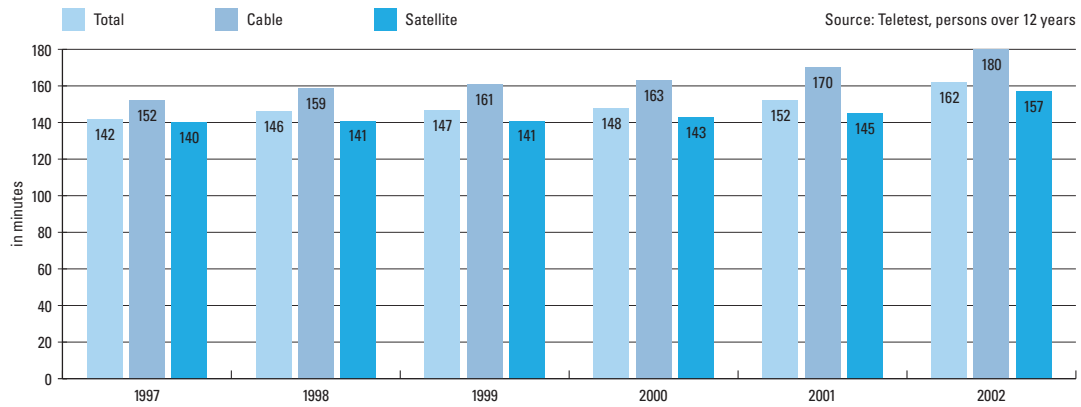


Figure 13: TV daily reach 2002

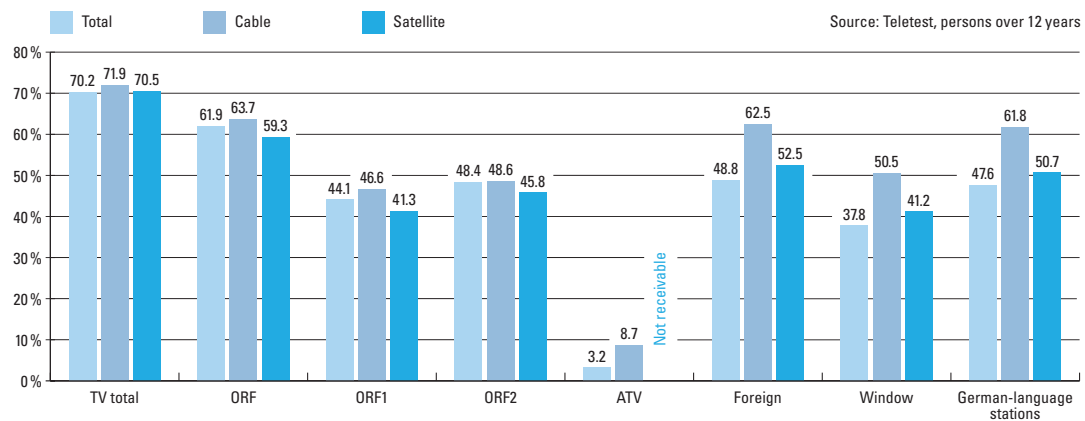
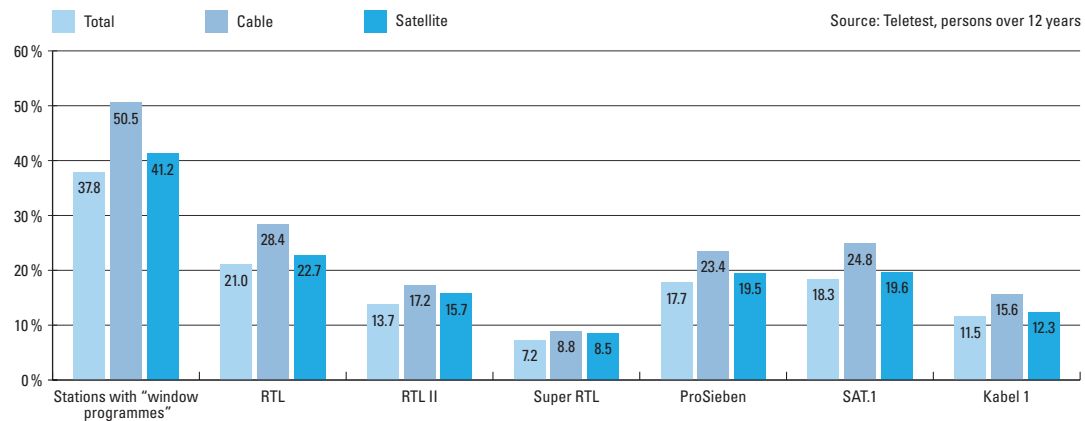


Figure 14: TV daily reach 2002 – stations with “window programmes”



achieved the highest reach figures with 44.1 % and 48.4 %, respectively, which were considerably higher than in the previous year (2001: ORF1 42.9 %, ORF2 46.7 %). Since, in 2002, the Austrian private channel ATV could only be received in cable networks, its total reach was only 3.2 % (in cable networks, however, ATV achieved a daily reach of 8.7 %). The foreign (almost exclusively German-

language) programmes viewed in Austria achieved much higher reach figures that came very close to the ORF in the cable households. With a daily reach of 63.7 %, the ORF was only slightly ahead of the foreign stations (62.5 %) in the cable households in 2002.

The foreign stations that also offer the aforementioned "Austria windows" in the cable households were also watched frequently: 50.5 % of the Austrians watched one of the programmes of RTL, RTL II, Super RTL, VIVA, ProSieben, SAT.1 and Kabel 1 in 2002. The latter three stations also offer programme formats especially produced for the Austrian market, so-called "advertainment programmes", i.e. theme programmes creating a programme environment that is of interest to the advertising industry.

With regard to ATV, it turned out that this channel achieved a much greater reach in the Vienna cable network (2002: 14.6 %) than on average throughout Austria (2002: 8.7 %; see Figure 13). This significance is probably related not only to the image of ATV as Viennese channel but also to the privileged position with regard to frequency assignment provided by the Viennese cable operator UPC Telekabel

Figure 15: TV daily reach 2002 – Vienna cable households

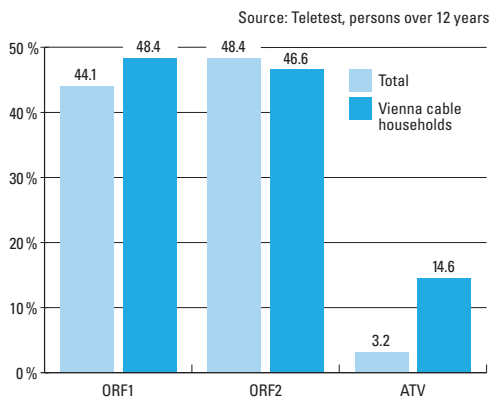


Figure 16: Television market shares 2002

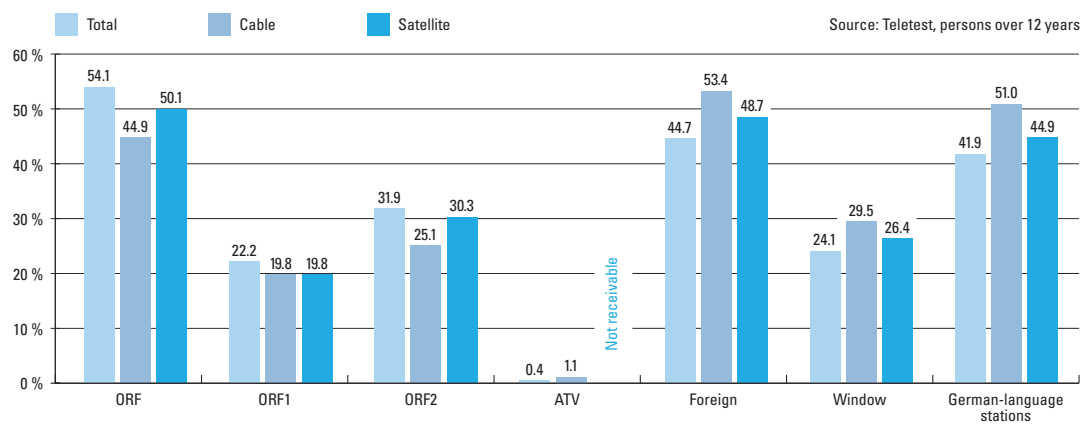
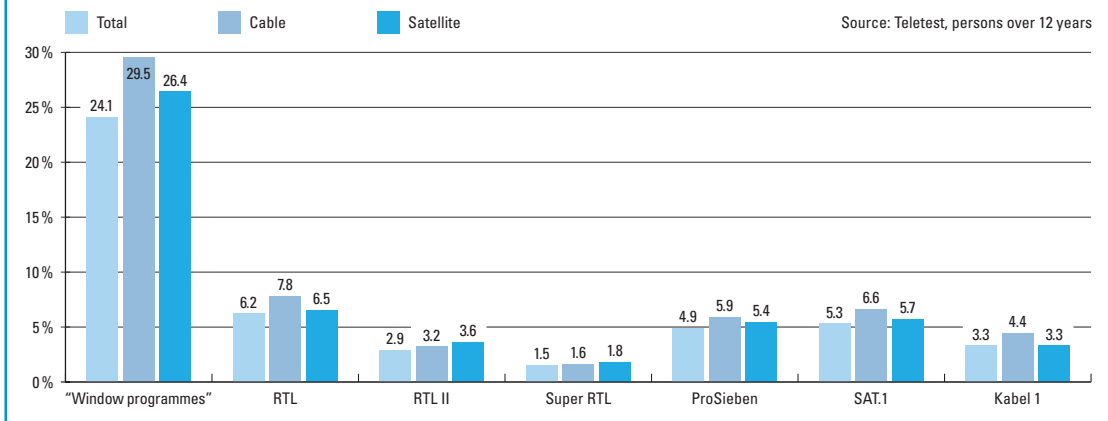


Figure 17: Television market shares 2002 – stations with “window programmes”



(channel position 3). This fact illustrates once again the special importance of non-discriminatory and equal access to the communications platforms for everyone.

Apart from the daily reach figures, the market shares, which are also surveyed by means of the Teletest, are of major importance to the advertising industry. On the basis of all Austrians over 12 years of age, the ORF, with a market share of 54.1%, was clearly ahead of the foreign stations with 44.7% in 2002. The German-language TV stations reached a market share of 41.9% and that with Austrian advertising windows 24.1%. However, in the households supplied via cable networks the market shares of the ORF, with 44.9%, were behind those of the foreign stations with 53.4% also in 2002. The market shares of the ORF, however, were considerably higher than those of the “window programmes” which achieved a market share of 29.5%. Among the “window programmes”, in 2002, RTL maintained the highest market shares with 6.2%, followed by SAT.1 with 5.3% and ProSieben with 4.9%.

2.4 Radio broadcasting

The development of the liberalised radio broadcasting market in Austria has so far taken place in several stages. Already in 1995, two regional private radio stations in Salzburg and Styria took up operation. For reasons resulting from broadcasting law (unconstitutionality of the original legal basis), however, it was possible only in April 1998 to start the nationwide supply of all Austrian federal provinces with private radio. In 2002, i.e. five years after private radio broadcasting had been officially introduced in Austria, the development towards a balanced dual broadcasting system was not yet completed.

On the part of the providers, there were no major changes in 2002. On the one hand, “Krone Hitradio”, a station network, tried to further stabilise its brand launched only in summer 2001 and to increase its technical service range by means of additional partner stations; on the other hand, many new providers applied for the new frequencies that were put out to tender and assigned by the media authority KommAustria in 2002.

The private radio broadcasters already operating on the market keep stressing the importance of co-operation among the broadcasters, especially in the small-scale structure of the Austrian market. Particularly in the past few years, the tendency for different kinds of networks to form has been observed increasingly also on the Austrian radio broadcasting market. In the programme area, "Hit FM" and "Arabella" as well as the stations of the Antenne Group shall be pointed out as examples, in addition to "Krone Hitr@dio" already mentioned. This development is accompanied also by the tendency towards an increasing concentration in the ownership structures of the Austrian private radio broadcasters.

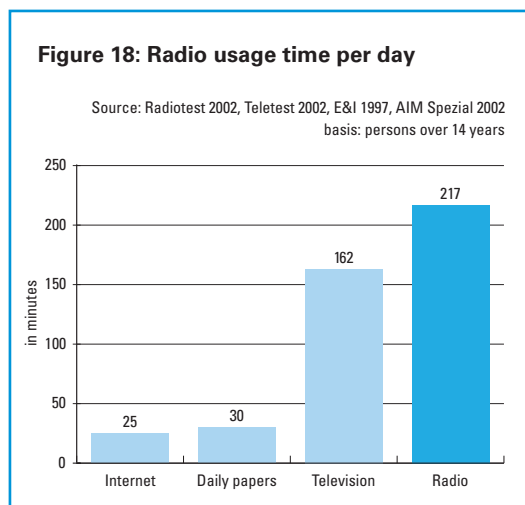
Another observation refers to the positioning of the stations on the market. In December 2001, "Radio Arabella" started in Vienna with a hit and oldie music programme that succeeded in taking the lead among private broadcasters in Vienna only after six months. Experts consider it important that this programme format, and others, that focus more precisely on the specific wishes of target groups apparently find greater acceptance on the listener market than more general offers, as the Austrian radio market is still dominated all too clearly by "Hitradio Ö3" of the ORF.

This data is surveyed by means of the "Radiotest", a market research instrument that is recognised by the entire market. On behalf of the ORF and

private radio stations jointly, telephone interviews (2002: more than 28,000) are conducted by the FESSEL-GfK market research institute every day and in all political districts of Austria. The results are published every six months and are the basis for the strategic decisions of the programme makers and radio media planning of the advertising industry.

The preconditions for a competitive radio market are also found in the Austrian media usage pattern which, analogously to international comparison, shows that radio is the medium most frequently used by far, compared to all other media. In 2002 in Austria, radio usage of persons over 14 years of age was 217 minutes (2001: 213 minutes), followed by TV usage with 162 minutes (2001: 152 minutes). So, while the quantitative usage of the daily papers remained the same (30 minutes a day), compared to 2001, the electronic media experienced increases⁷. Over the past six years, the listening time per day was first seen to fluctuate but finally sort of levelled off. It can be noticed that the daily listening time and, thus, radio usage increased significantly directly after private radio programmes had been introduced. While in 1997 usage time had been only 209 minutes a day in the 14-49 target group relevant to the advertising industry, this figure went up to 230 minutes two years later, i.e. increased by 10%. After a preliminary high of 234 minutes in 2000, radio usage in the 14-49 target group was 227 minutes a day in 2002.

Not only is the average usage time extremely high with the medium radio but also radio broadcasting, of all media types, is the one that reaches the largest number of people. In 2002, 84.3% of persons over ten years of age were reached by at least one station of the market for 15 minutes a day; in the 14-49 group this figure was 86.4% and remained almost unchanged over the past few years, as saturation seemed to have been achieved. Examining the preceding years, it can be noticed that, with the introduction of private radio broadcasting, daily reach increased considerably once again from 1998 (78.4%) to 1999 (82.2%), despite the generally high degree of coverage of the population with radio programmes.



⁷ Internet usage also increased from 20 minutes in 2001 to 25 minutes in 2002.

Figure 19: Development of listening time

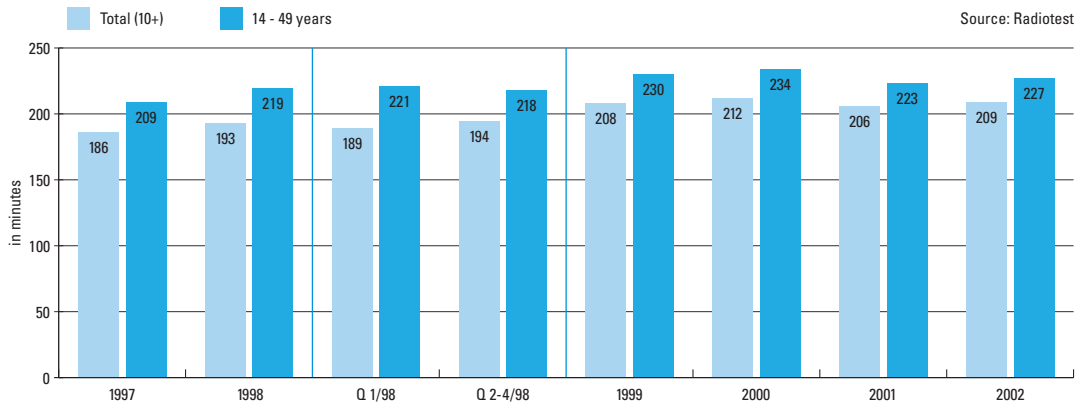


Figure 20: Development of radio – daily reach

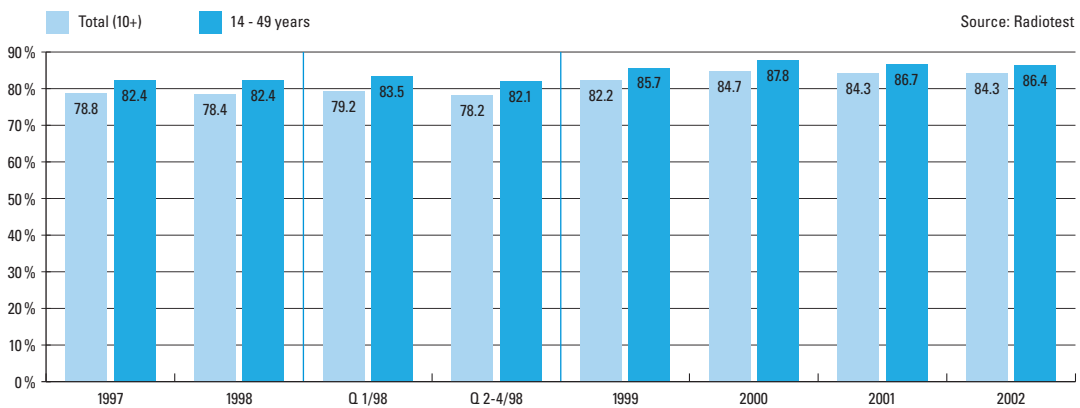


Figure 21: Radio daily reach 2002

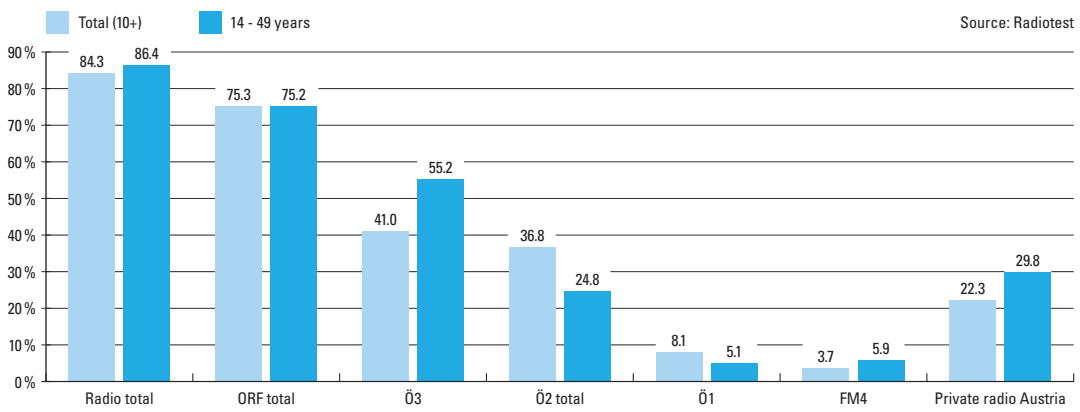
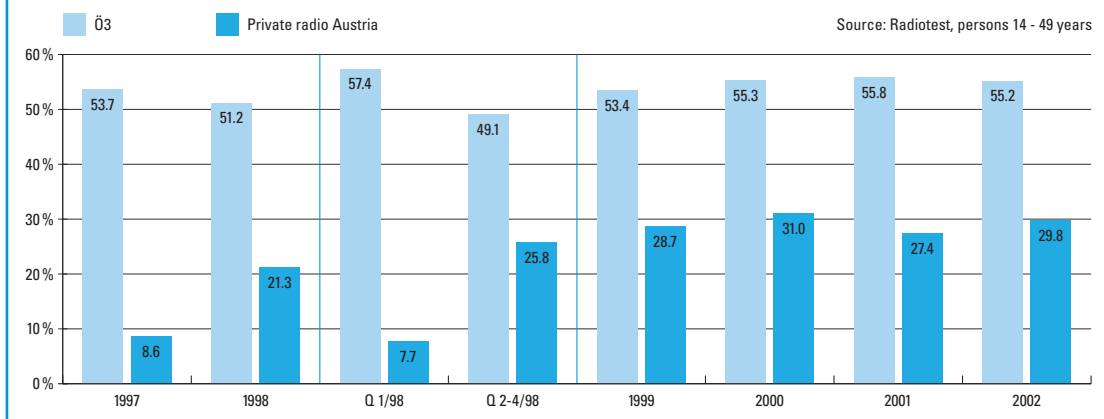


Figure 22: Development of Ö3 vs. private radio stations



As already stated, the ORF operates three nationwide programmes (Ö1, Ö3, FM4) and the respective regional programmes of the nine federal provinces (“Radio Burgenland”, “Radio Kärnten” etc.) under the brand label Ö2. The proportion of the ORF programmes to the private competitors clearly reflects the imbalance between these two columns of the dual broadcasting system in Austria. Compared to all persons over 10 years of age, in 2002 the total daily reach of the ORF was 75.3%, while all private radio stations together reached only 22.3%. Since the private radio stations focus on the target groups relevant to the advertising industry, their results were better for the 14-49 age group with 29.8% in 2002, but in this segment, too, the ORF reached 75.2%.

A direct comparison of the two major competitors for the 14-49 target group (Ö3 and private radio stations) clearly shows that although the reach of Ö3 decreased for a short time upon the introduction of private radio broadcasting in 1998, it recovered very fast and for three years now has been higher than before private radio broadcasting was introduced. The daily reach of “Hitradio Ö3” among the 14-49 age group was 55.2% in 2002, while the private radio stations reached 29.8%.

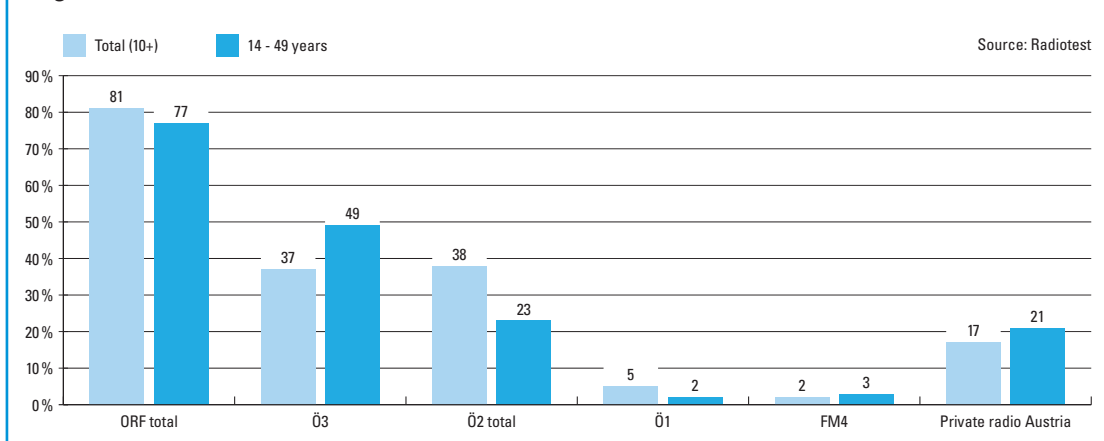
In addition to the daily reach figures, the Radiotest also shows the market shares. They indicate which percentage of the total of radio minutes listened to is attributable to the respective radio station. In the 14-49 age group, Ö3 reached a market share of 49% in 2002, while the private radio stations reached 21% altogether; with 23%, the ORF regional programmes (Ö2) were slightly ahead of the private radio stations.

Figure 23: ORF radio programmes and selected private radio stations – daily reach (in %)

	Total	Vienna	Lower Austria	Burgenland	Styria	Carinthia	Upper Austria	Salzburg	Tyrol incl. East Tyrol	Vorarlberg
Total daily reach										
Radio total	84.3	81.5	84.9	86.0	85.5	85.3	84.5	85.1	85.0	83.7
ORF total	75.3	68.3	77.0	80.1	77.0	81.0	75.9	75.4	77.1	76.0
Private stations										
Austria total	22.3	29.3	21.6	17.9	22.7	13.8	21.3	22.0	21.1	15.0
Other stations total	3.9	3.2	2.4	2.4	1.9	2.8	5.8	6.9	4.8	9.5
Daily reach ORF										
Ö1	8.1	11.6	7.0	5.8	7.1	8.0	7.3	8.4	6.5	6.7
Ö3	41.0	35.1	43.2	38.9	40.4	45.3	43.2	41.5	43.0	42.2
FM4	3.7	4.6	3.4	2.7	2.6	3.8	3.7	4.7	3.5	4.0
ORF regional radio (Ö2) total	36.8	28.9	37.7	47.1	41.7	42.3	35.1	35.7	38.6	39.5
Radio Wien	4.4	15.2	6.6	1.8	–	–	–	–	–	–
Radio Niederösterreich	8.4	11.0	29.9	3.1	0.5	–	1.8	–	–	–
Radio Burgenland	3.4	5.8	2.5	43.0	1.3	–	–	–	–	–
Radio Steiermark	6.4	–	0.6	3.2	40.5	0.7	0.3	0.5	–	–
Radio Kärnten	3.0	–	–	–	0.5	41.8	–	0.2	0.7	–
Radio Oberösterreich	5.7	–	1.3	–	0.3	–	31.9	1.4	–	–
Radio Salzburg	2.8	–	–	–	0.2	0.1	3.7	34.4	0.2	–
Radio Tirol	3.2	–	–	–	–	0.3	–	0.6	38.1	0.2
Radio Vorarlberg	1.7	–	–	–	–	–	–	–	0.1	39.5
Daily reach of private radio stations										
Krone Hitr@dio	4.9	4.8	9.6	10.9	2.1	1.9	5.8	3.7	1.5	–
88.6 Supermix	2.0	6.5	3.5	1.1	–	–	–	–	–	–
Antenne Wien 102.5	0.8	2.8	1.1	0.6	–	–	–	–	–	–
Radio Arabella 92,9	2.3	9.3	2.4	0.9	–	–	–	–	–	–
Radio Energy 104,2	2.2	8.6	2.2	0.7	–	–	–	–	–	–
Radio Stephansdom	0.4	1.8	0.2	0.1	–	–	–	–	–	–
106,7 Party FM	0.3	0.1	1.0	2.0	–	–	–	–	–	–
Hit FM	0.7	–	3.4	–	–	–	0.0	–	–	–
Antenne Steiermark	2.9	–	0.1	3.6	17.6	0.5	0.2	0.3	–	–
Antenne Kärnten	0.7	–	–	–	0.2	10.0	–	0.1	0.0	–
Life Radio	2.6	–	0.7	–	0.0	–	14.8	0.2	–	–
Antenne Salzburg	1.1	–	–	–	0.1	0.1	1.5	13.4	0.1	–
Welle 1 Salzburg	0.5	–	–	–	–	–	0.8	5.4	–	–
Antenne Tirol	0.7	–	–	–	–	–	–	0.1	8.9	0.1
Radio Arabella Tirol/U1	0.7	–	–	–	–	–	–	–	8.6	–
Welle 1 Tirol	0.2	–	–	–	–	–	–	–	2.2	–
Antenne Vorarlberg	0.6	–	–	–	–	–	–	–	0.1	13.2

Source: Radiotest 2002 (persons over 10 years)

Figure 24: Radio market shares 2002



2.5 Print media

The print media are not directly affected by the regulatory activities of KommAustria. However, an isolated assessment of the electronic media markets would disregard or ignore the interaction and the interconnection of the individual media types. Especially the print media sector is, traditionally, of great importance in Austria. Therefore, the key data of the print market 2002 will be described here to take account of the fact that media owners from the daily paper sector often act as owners or partners of private broadcasting companies (*inter alia*, the owners of the “Kronen Zeitung”, “Kurier”, “Kleine Zeitung”, “Tiroler Tageszeitung” and “Vorarlberger Nachrichten” and, against the background of the diversity of opinion, they are subject to special regulations on shareholdings pursuant to the PrR-G and the PrTV-G).

As mentioned before, Austria has an extremely high market concentration in the print media sector, which has to do with the unique leading position of the “Kronen Zeitung”. In 2002, the daily reach of the “Kronen Zeitung” among all Austrians over 14 years of age was 43.4%. There is hardly any other daily paper that reaches such a great number of the total population of a country. In the fields of

marketing, administration, printing and distribution, the “Kronen Zeitung” is linked via Mediaprint to the “Kurier”⁸ which, in 2002, for the first time was third among the daily papers with the country’s largest reach figures with 11.1%, after it had to give up the second place to the “Kleine Zeitung” which had a reach of 12.4%.

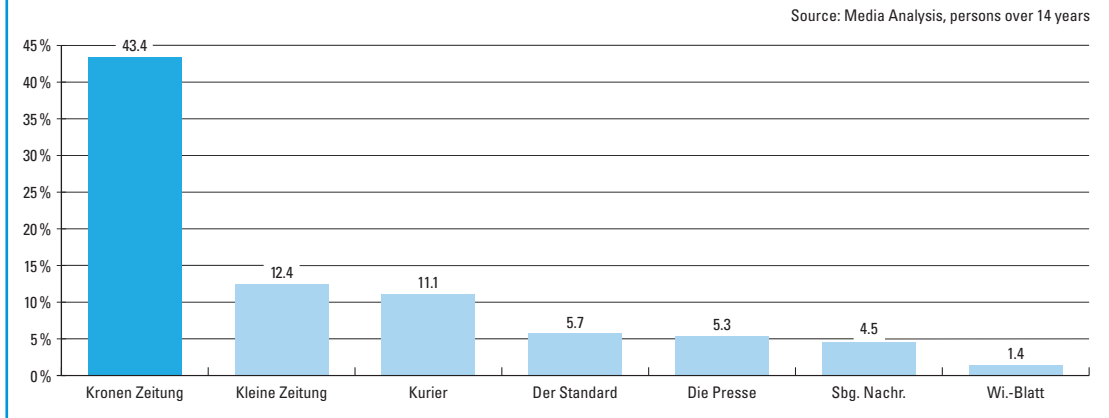
Apart from the SMP position of the daily papers of the Mediaprint Group, Verlagsgruppe NEWS holds a similar position in the magazine sector. In 2001, the merger between the two largest magazine groups of the country, the News publishing group (“News”, “Format”, “tv media”, “e-media”) and ZVB, a subsidiary of Kurier (“trend”, “profil”, “Autorevue” and others), was carried out⁹.

After the year 2001, which had been difficult already, reach and circulations of almost all publications of the magazine sector continued to decline also in 2002, even though not dramatically. For the first time, “NEWS” with a reach of 17.8% was the leader in this segment, followed by “Die Ganze Woche” which lost the leading position it had held for years and was the second most frequently read magazine with 17.1% (i.e. a loss of 2.4%).

8 The “Westdeutsche Allgemeine Zeitung” (WAZ) holds interests both in the “Kronen Zeitung” (50%) and in the “Kurier” (49.4%) and thus, indirectly, in the Mediaprint distribution company.

9 Since the merger, Verlagsgruppe NEWS has been indirectly owned by the German publishing house Gruner + Jahr/Bertelsmann (56.03%), Kurier Magazine Verlags GmbH (25.3%), which, in turn, is indirectly owned by the WAZ (49.4%) and the founders of the Verlagsgruppe NEWS, Wolfgang and Helmuth Fellner (18.67%).

Figure 25: Selected daily papers – daily reach 2002



As a conclusion, looking again at the total reach of the Austrian daily papers and their development over the past six years, it shall be noted that it decreased slightly but steadily from 76.5 % (1997) to 73.8 % (2002).

The causes of this development are discussed extensively among experts. In any case, it is a fact that the decrease in the daily reach of daily papers is mainly due to reduced usage by those aged 14 to 29. In this age segment, the reach of daily papers went down from 72 % in 2001 to 66.7 % in 2002, which is a disproportionate decline of 5.3 % (Media Analysis 2002). At the same time, the group aged 14 to 29 stated in opinion polls that they would increasingly use the Internet especially for newspaper and magazine contents, probably also because they are (still) available free of charge, compared to the print products.

Profound analyses of the changed usage patterns of younger people with regard to print and electronic media in connection with real-time web content or new media services which are offered via telecommunications platforms are available so far only to a small extent. To present and assess in scientific studies the relationships between media usage and new offers remains an interesting challenge for the future. The current situation of the media market is characterised by ever faster changes and, possibly, also forthcoming upheavals in media usage (mainly by younger people).

Figure 26: Austrian daily papers – circulations and reach

Daily papers	Weekly average	Copies distributed	Copies sold	Reach in %	Readers in 1,000	Readers per copy
Der Standard	Mon – Sat	91,094	68,268	5.7	383	4.2
Die Presse	Mon – Sat	103,938	75,326	5.3	361	3.5
Kleine Zeitung	Mon – Sat	279,099	252,370	12.4	835	3.0
Kleine Zeitung (Graz)	Mon – Sat	185,814	166,611	8.1	548	2.9
Kleine Zeitung (Klagenfurt)	Mon – Sat	93,285	85,759	4.2	286	3.1
Kronen Zeitung	Mon – Sat	909,051	853,005	43.4	2,930	3.2
Kurier	Mon – Sat	196,021	174,490	11.1	748	3.8
NEUE Vorarlberger TZ	Tue – Sat	10,845	6,742	0.9	58	5.3
OÖ Nachrichten	Mon – Sat	121,064	103,927	5.3	355	2.9
SN-Salzburger Nachrichten	Mon – Sat	85,132	74,512	4.5	301	3.5
TT-Tiroler Tageszeitung	Mon – Sat	110,293	90,986	5.1	345	3.1
VN-Vorarlberger Nachrichten	Mon – Sat	69,153	65,574	3.1	211	3.1
WirtschaftsBlatt	Tue – Sat	40,732	33,198	1.4	97	2.4

Source: daily papers surveyed in the framework of ÖAK – Austrian Circulation Control – and Media Analysis 2002 (persons over 14 years)

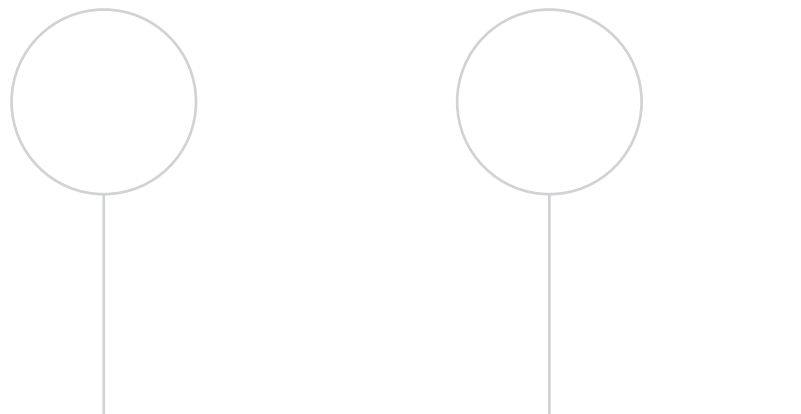
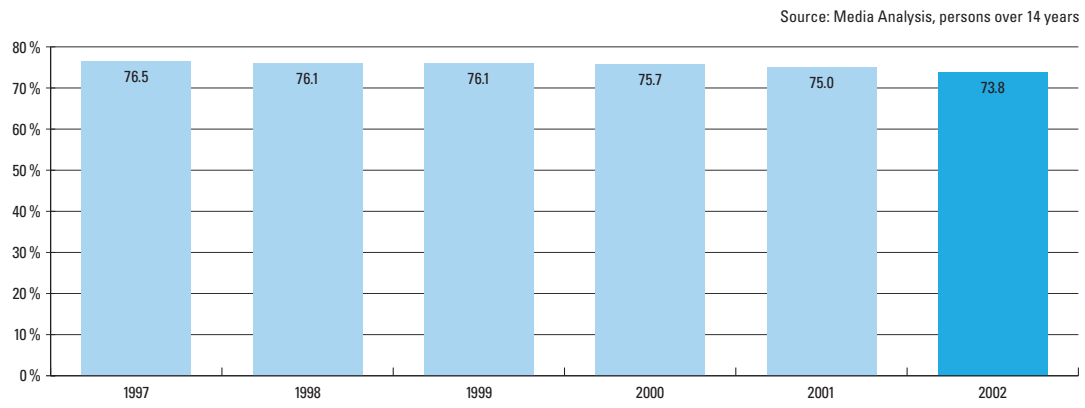
Figure 27: Austrian magazines – circulations and reach

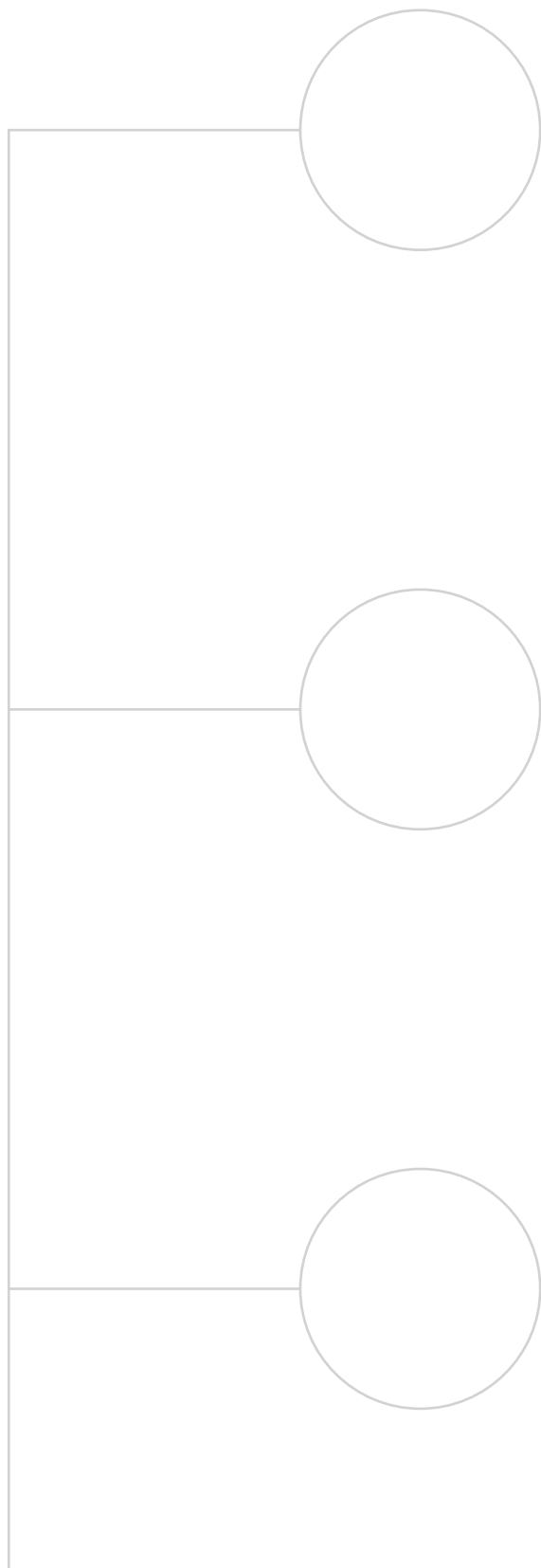
Magazines/journals	Weekly average	Copies distributed	Copies sold	Reach in %	Readers in 1,000	Readers per copy
Die Ganze Woche	Weekly	343,088	342,717	17.1	1,152	3.4
e-media	Every 2 weeks	186,442	182,258	8.6	580	3.1
Format	Weekly	86,655	83,384	5.5	373	4.3
NEWS	Weekly	279,541	275,474	17.8	1,201	4.3
profil	Weekly	85,258	83,359	8.1	546	6.4
Sportwoche	Weekly	71,268	47,338	2.9	199	2.8
tv media	Weekly	293,670	291,410	14.7	989	3.4
WOMAN	Every 2 weeks	216,932	215,131	8.2	555	2.6
Alles Auto	10 times a year	58,058	54,511	4.8	322	5.5
Autorevue	Monthly	54,670	53,112	7.4	498	9.1
Gewinn	Monthly	72,685	60,671	8.0	539	7.4
trend	Monthly	68,353	65,122	7.2	484	7.1
Wiener	10 times a year	66,603	35,734	4.8	323	4.8
Wienerin	Monthly	74,686	54,748	6.2	420	5.6
Auto Touring	Monthly	1.246,460		30.9	2,083	1.7
Freie Fahrt	10 times a year	392,556		10.5	706	1.8
Visa Magazin	6 times a year	580,517		9.9	669	1.2

Source: ÖAK – Austrian Circulation Control 2002 – and Media Analysis 2002 (persons over 14 years)



Figure 28: Development of daily papers – daily reach





3. The Activities of the Telecommunications Department

3.1 Introduction

The set-up of RTR-GmbH and the establishment of the Telecommunications Department within RTR-GmbH created a new organisational frame for the implementation of telecommunications policy in Austria. Telekom-Control GmbH (TKC), which had been established under the TKG, BGBl No. 100/1997, was merged by act of law subject to § 5 (2) KOG by absorption (§ 96 (1) item 1 Act Concerning Companies with Limited Liability) into RTR-GmbH as absorbing company. The year 2002 was the first full business year of RTR-GmbH.

TKC, now the Telecommunications Department of RTR-GmbH, had started operation as regulatory authority, pursuant to the TKG 1997, on 01.11.1997. The TKK, which remained unaffected by the organisational changes, had been constituted almost at the same time, i.e. on 2.11.1997. Since 01.04.2001, it has been based with RTR-GmbH and is now assisted in its work by the Telecommunications Department as supporting body.

It is the objective of this section of the Communications Report, Part 1, to report about the comprehensive activities of the regulatory authorities in the business year 2002. A detailed description of the telecommunications markets will be possible only in Part 2 of the Communications Report because, at present, no current market data is available. This is due to transposing the requirements under European law into the Austrian national framework, which should be completed by 25.07.2003. It will be possible to collect market data only by means of this new legal basis and the respective results shall then be published in Part 2 of the Communications Report. The regulatory activities of the Telecommunications Department of RTR-GmbH comprise (as previously) three different areas.

First, under § 109 TKG, the Telecommunications Department has the task of performing all functions defined by relevant legal provisions within the framework of its general competence for regulatory issues of telecommunications, unless they fall into the competence of the TKK. The Telecommunications Department is responsible for the administration of the national number range as well as the National Signalling Point Codes (NSPC) and takes action as dispute resolution body for (end-)users in disputes between operators and (end-)users.

Secondly, the Telecommunications Department acts as supporting body of the TKK in proceedings conducted before the commission. Pursuant to § 110 (2) TKG, the Department is in charge of managing the affairs of the TKK. In this capacity, the employees of RTR-GmbH are bound by instructions of the chairman of the TKK. Apart from dealing with administrative matters, this function mainly comprises the support of TKK in substantive matters. Thirdly, since the Signature Act (SigG) took effect, the TKK as decision-making body has been entrusted with performing supervisory activities as defined in the SigG. In this field, too, the Telecommunications Department acts as supporting body of the TKK.

The responsibilities of the TKK are listed in § 111 TKG. Since the amendment of the TKG in 2001 (adaptations to the KOG), the TKK has also been responsible for proceedings to be carried out within the scope of sector-specific competition law.

In line with the significance of its competences, the TKK is designed as collegial body with quasi-judicial functions, as defined by Article 133 item 4 B-VG (Federal Constitutional Act), takes unanimous decisions and, in that, is not bound by any instructions. Since the TKG was amended in June 2000 (01.06.2000, BGBl I No. 26/2000), extraordinary appeals to the Administrative Court (VwGH) have been possible against decisions by the TKK.

Info Box 1: TKK and RTR-GmbH, Telecommunications Department (formerly TKC)

In the implementation of the TKG 1997 (BGBl I No. 100/1997) in Austria two regulatory authorities were established: the TKK and TKC. As per 01.04.2001, TKC was incorporated into RTR-GmbH, the new convergence regulator, as Telecommunications Department. The competences of the Department and of the TKK are clearly separated. § 109 TKG confers general competence for all tasks assigned to the regulatory authorities upon the Telecommunications Department, unless they are reserved for the TKK. Pursuant to § 111 TKG, the following functions are reserved for the TKK:

- to grant, withdraw and revoke licences as well as approve the transfer and modifications of licences pursuant to §§ 15, 16 and 20 to 23,
- to approve the general terms and conditions and tariffs and execution of the right to object pursuant to § 18,
- to determine the financial compensation to be paid from the Universal Service Fund pursuant to § 29,
- to determine the contribution to be paid into the Universal Service Fund pursuant to § 30
- to determine which provider is to be classified as having SMP pursuant to § 33,
- to determine the conditions for interconnection in case of dispute pursuant to §§ 37 to 41,
- to determine the failure to observe the ban on cross-subsidising pursuant to § 44,
- to determine of conditions for shared use in case of dispute pursuant to § 7 (2) to (8),
- to assign the frequencies that are earmarked for the provision of public mobile communications services pursuant to § 49 (4) in connection with § 49a,
- to prohibit or impose a specific conduct as well as declare agreements null and void in total or in part pursuant to §§ 34 (3) and 35 (2).

3.2 Regulatory framework and central issues

The role of the regulatory authorities in the process of liberalisation of the telecommunications markets in Austria can be best understood by considering the basic issues involved in opening the market. In many member states of the European Union the provision of telecommunications services and the operation of the telecommunications networks were reserved for state-owned telecommunications organisations (PTTs). With the 1987 Green Paper (Green Paper on the Development of the Common Market for Telecommunications Services and Equipment COM(87)290 30.06.1987), the EU embarked upon a very ambitious programme which stated that the express goal would be full liberalisation of the telecommunications sector in all member states and the creation of a common European telecommunications market. The predominantly state-owned monopolies of the telecommunications markets were given an expiry date as per 01.01.1998. Individual sectors, like the terminal equipment market (end of the eighties) and the mobile telecommunications market (middle of the nineties), had already been transformed into competitive markets earlier. The last step was the liberalisation of the fixed telecommunications networks and of fixed network voice telephony, which were "reserved services" that the state-owned PTTs of many countries, including Austria, dominated as monopolists to the end. The decision of the EU in favour of full liberalisation, and thus to give up previously prevailing monopolised control, was and is radical, and required complete rethinking by the institutions which were to be entrusted with opening up the telecommunications markets. This change in approach manifested itself in the total renunciation of traditional monopoly supervision authorities, usually based at "postal ministries", in favour of regulatory authorities for the telecommunications sector, which had to be newly established and were meant to be independent of any influencing control by operators and providers. Independence was to be guaranteed to both, the (former) monopolist and the owner. These regulatory authorities were originally not conceived as competition

authorities in the classical sense, but rather as institutions which were to actively pursue the opening of the market. Only later, after having achieved a sufficient degree of intensity of competition, was there to be more focus on their character as sectoral competition authorities.

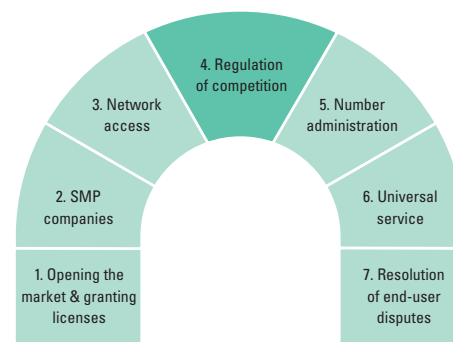
For many EU member states it was an absolute novelty, and a great legislative challenge, to establish an independent regulatory authority, having the clear mandate to open up the markets and to contribute, by way of intensified competition, to an improved range of services, higher quality and, last but not least, significantly lower prices for the benefit of the people and the economy.

This new quality of the regulatory authorities, to be newly established, is also reflected in the European regulatory framework which is designed to support these regulatory authorities in pursuing and promoting the opening of the market. In a number of EU Directives, i.e. the Interconnection Directive, the Voice Telephony Directive as well as the Licensing Directive, member states were requested to transpose this regulatory framework into national law. In addition, there are a number of Recommendations of the European Commission and some important documents of the ONP Committee which explain the contents of the Directives in closer detail without being directly part of the existing legislation. In Austria, this European regulatory framework was implemented in the TKG 1997. The TKG 1997 will be replaced by a new law in mid-2003, which will contain the requirements under European law transposed into Austrian national law.

The elements of the market opening process can be described schematically as regulatory arc.

The work performed in the individual areas in 2002 will be described according to this schematic representation. A comprehensive documentation of the proceedings can be found on the web site of RTR-GmbH at <http://www.rtr.at/Regulierung/Entscheidungen>. The reference numbers of the proceedings shall make it easier to look up the individual decisions.

Figure 29: Regulatory arc



Source: RTR-GmbH

3.3 Opening the market and granting licences

3.3.1 Fixed network licences

As already in 2001, a clear decline in applications for fixed network licences was noticeable also in 2002. This was due to market consolidation that had started already in 2001 and continued in 2002. Increasingly, licences were returned. Evidently, the companies concerned had decided to discontinue their activities in Austria or not even to start the planned service. In many cases, however, return of the licences was the result of insolvency proceedings that had affected individual companies or their parent companies.

Generally, it can be stated that pursuant to § 14 TKG a licence is required only for providing public voice telephony service and for publicly offering leased lines – in both cases by means of self-operated fixed telecommunications networks. A licence is also required to provide mobile voice telephony service and other public mobile radio communications services by means of self-operated mobile radio communications networks.

The number of fixed network licences is unlimited and they are not subject to public tendering but only to an inspection procedure provided for the award of all licences granted according to § 15 (2) TKG.

Info Box 2: Licences issued on the Austrian telecommunications markets: fixed network licences

In 2002, nine applications for licences were filed; to seven, licences were granted until 31.12.2002. From the time the market was opened in the fixed network sector up to 31.12.2002, a total of 94 voice telephony licences and 88 leased line licences were granted. However, by the end of 2002, 44 of these licences expired (by return or revocation) so that the number of licence holders went down to 96 companies. Of these, 58 were actively operating in the fixed network segment at the end of 2002.

The remunerations for fixed network and leased line licences each amount to € 5,087.10. With these licensing fees, which are very low by international comparison, the barrier to entering the market was deliberately kept low, in order to send another signal to new providers that access to the market is easy. With the transposition of the new European legal framework in Austria in July 2003, the licences will be generally abolished; the companies will then be entitled to provide their services on the basis of general authorisations.

3.3.2 Mobile radio communications licences

Due to the limited availability of frequencies required for providing mobile radio communications services, and as a minimum amount of spectrum is required for operation, only a limited number of mobile operators can operate in Austria.

As a result, the regulatory authority must put out the frequencies allocated by the BMVIT to tender and assign them to the applicant(s) who can assure their most efficient usage. According to § 21 TKG, the most efficient user and future holder of the mobile communications licence will be determined by the amount of remuneration offered for the frequency usage (see also § 49a TKG).

Info Box 3: Licences issued on the Austrian telecommunications markets (continued): mobile radio communications licences, TETRA

During the period under review, two frequency award proceedings were conducted by the TKK: GSM-900 and GSM-1800.

In July 2002, six frequency packages from the GSM-900 and GSM-1800 frequency ranges were put out to tender. By the end of the tender period on 19.09.2002 two applications were received, i.e. by Mobilkom and by T-Mobile. The auction took place on 14.10.2002 in the form of an open upward simultaneous multiple-round auction.

The auction produced the following result:

T-Mobile acquired two frequency packages of 2 x 2.6 MHz as well as 2 x 2.2 MHz, Mobilkom acquired one frequency package amounting to 2 x 2.6 MHz.

The frequencies were awarded by the notice of 21.10.2002; the frequency usage fee paid by T-Mobile was € 9.6 million; Mobilkom had to pay a frequency usage fee of € 5.2 million. The remaining frequency spectrum was returned to the BMVIT.

TETRA:

By decision of the TKK of 26.07.2002, frequencies of the TETRA frequency range were put out to tender, i.e. the frequencies for the area of "rest of Austria" that had already been assigned to the company master-talk for Vienna and its surroundings. The minimum bid for the frequencies to be awarded was € 3.5 million. Until the end of the tender period one application was filed, i.e. by master-talk. Enclosed with the application was a bid for only € 350,000. Thus, there was only one application that did not comply with the bidding conditions. Therefore, the TKK decided by the notice of 07.10.2002 that this application was to be dismissed. The frequencies not awarded were returned to the BMVIT.

3.4 Operators with significant market power (SMP)

The European regulatory framework is essentially based on the idea that enterprises with significant market power (SMP operators, i.e. companies having significant market power within the meaning of the TKG) are subject to certain restrictions and obligations *ex ante* and, contrary to general competition law, it is not necessary that this market power be abused for these restrictions and obligations to apply.

Pursuant to § 33 (1) item 1 TKG, a company is considered to have significant market power within the TKG if it is not exposed to any or only irrelevant competition on the market of product/service and geographical relevance or if the criteria listed under § 33 (1) item 2 TKG are met. In accordance with Article 4 (3) of EU Directive 97/33/EC, § 33 (2) TKG defines potentially significant market power in cases where an enterprise commands a market share of more than 25 % on the market of product/service and geographical relevance. In cases where a company's market share is far below or far above the 25 % limit, a review of the criteria listed under § 33 (1) TKG is not performed, unless the regulatory authority has reason to doubt this presumption. If a company's market share approaches 25 %, the company's market power will be reviewed using also the criteria listed in § 33 (1) item 2.

The identification of enterprises with significant market power is especially important in the initial phase of liberalisation, in which the position of the former monopolist remains largely unchallenged. In many cases, it is only through this process of

identifying significant market power and the related legal consequences that new service providers are able to commence business activities. Accordingly, the regulatory consequences linked to identifying significant market power are asymmetric and designed to support the process of liberalisation and the orientation to competition.

The goal of the provisions under § 33 TKG is to identify those enterprises which have a considerable degree of power on the market (cf. Article 4 (3) of EU Directive 97/33/EC). As specified in § 33 (2) TKG, control of the market in the general sense used in competition legislation is not required in this context.

Of particular relevance to the end-users is cost-oriented pricing of the end-user tariffs of leased line and fixed network operators with SMP. Operators with significant market power are subject to the fundamental principles of cost-orientation of interconnection charges, non-discrimination and transparency on the following four markets: fixed network telephony, mobile telephony, leased lines and interconnection.

Numerous regulatory measures are related to the status of having significant market power within the meaning of the TKG. Therefore, it is necessary to perform a legally binding assessment to identify the enterprises to which these regulations currently apply on the sub-markets of product/service and geographical relevance.

After comprehensive fact-finding studies as well as several hearings, the proceedings M1/2002 were completed on 20.09.2002 with a notice. The decision of the TKG for 2002, listed in Figure 30, is as follows:

Figure 30: SMP companies in 2002

<i>Market type</i>	<i>SMP company 2002 (SMP operator)</i>
Fixed network telephony	Telekom Austria
Leased lines	Telekom Austria
Mobile telephony ⁹	—
Interconnection	Telekom Austria

9 sufficient degree of competition

3.5 Network access: interconnection and unbundling

The third major range of activities within the context of liberalisation is to create the conditions that are necessary so that new market entrants can actually provide their services on the market. Starting out from a *de facto* monopoly of one telecommunications company before the opening of the telecommunications markets, this can only be achieved by asymmetric regulation which is linked to the identification of significant market power.

In this respect, Open Network Provision (ONP) is of central importance. To facilitate competition between the new providers and the former monopolist, i.e. a company previously wholly or predominantly owned by the member state, access to the telecommunications network of the former monopolist must be ensured basically by interconnecting the networks. Interconnection of networks is a highly complex issue that comprises the following three dimensions:

- physical interconnection,
- interoperability of the services (logical interconnection),
- charges for the interconnection services.

The European regulatory framework imposes a comprehensive obligation for interconnection upon SMP operators, while the specific definition of this obligation is left to each member state's legislature. Of particular importance is the provision that the interconnection services offered are to be cost-oriented, the FL-LRAIC (Forward Looking-Long Run Average Incremental Costs) approach being the cost concept to be applied by law. According to this approach, a new provider need not pay the fully distributed costs of the SMP operator, based on the historic purchase prices of the SMP operator, but only for the services directly attributable to interconnection included in the costs of an efficient network operator for this interconnection service.

Info Box 4: Interconnection decisions of the regulatory authority

A total of 30 proceedings (after 18 proceedings in 2001) regarding interconnection issues were filed. In 2002, 38 proceedings in all were concluded (comparison: short business year 2001 17, calendar year 22). Five proceedings were still pending at the end of 2002, the majority of them having been filed in the last few days and weeks of 2002. For an overview of the substance of regulation, please refer to the interconnection decisions of the TKK on the web site of RTR-GmbH (<http://www.rtr.at>).

Specifically, the following issues were to be dealt with in interconnection proceedings in 2002:

- fundamental conditions of interconnection "Interconnection 2002",
- direct settlement of accounts of indirect traffic,
- interconnection charges in the fixed network sector,
- interconnection charges in the mobile network sector,
- Mobile Virtual Network Operators (MVNO),
- local loop unbundling.

3.5.1 Decisions in the field of fixed network interconnection

Fundamental conditions of interconnection – "Interconnection 2002" (Z 20/01, Z 21/01, Z 22/01, Z 24/01, Z 26/01, Z 27/01, Z 28/01, Z 29/01, Z 2/02)
In 2002, the approach that had already been initiated with the proceedings Z 30/99ff (notices of the TKK of 27.03.2000) was continued in order to create a comprehensive interconnection decision within the meaning of a "reference document" which combines all essential issues of interconnection in the fixed network area.

In the proceedings Z 20/01, Z 21/01, Z 22/01, Z 24/01, Z 26/01, Z 27/01, Z 28/01, Z 29/01, Z 2/02, which were initiated basically at the same time and in which Telekom Austria and (in the case of Z 2/02) Hutchison were the applicants, requests relating to the conditions of interconnection between the fixed network of Telekom Austria and the fixed and mobile networks of alternative network operators (ANB) were filed.

In the decisions of the TTK of 18.03.2002 and 16.05.2002 regarding Z 20/01 ff – referred to as “IC 2002” throughout the industry – the essential aspects of interconnection between two public telecommunications networks were covered and, in the framework of an overall structure, comprehensive regulations governing the conditions of interconnection of the telecommunications networks were issued. These decisions did not involve a (new) determination of the traffic-dependent fixed network interconnection charges; these had already been ruled by means of four notices of the TTK of 22.06.2001 in the proceedings Z 6/01 ff to apply until 30.06.2002. A list of the new traffic-dependent interconnection charges is contained in Figure 31.

When choosing the system to be followed in the ruling, the TTK pursued the goal of determining clear, flexible and easy-to-survey interconnection conditions; maintaining the “modular system”, already chosen for the existing interconnection rulings, meets this objective.

The general part of the ruling now governs:

- the object of the ruling,
- the technical implementation,
- the planning and provision of network transition points,
- the planning and provision of link capacities,
- general comments on interconnection charges,
- quality assurance,
- noise suppression,
- liability as well as the term and termination of interconnection relations,
- regulations regarding the option of requesting a security from the interconnection partner.

The 20 annexes form an integral part of the ruling and essentially relate to the following areas:

- the technical specifications for interconnection,
- regulations regarding carrier network operators,
- interconnection on a lower network level,
- access to freephone services and emergency numbers,
- services with regulated fee limits and premium rate services,
- provisions regarding private networks and personal services,
- provisions relating to mutual access to online services, and
- provisions relating to the portability of geographical numbers and services numbers.

The proceedings Z 23/02:

In the letter of 27.09.2002, Interline requested a ruling on interconnection with Telekom Austria, demanding the same conditions as the TTK had ruled in the notices regarding Z 20/01 ff (“IC 2002”), Z 17/01 (“Direct settlement of accounts of indirect traffic”), Z 11/02 (“IC 2002 charges”) and Z 17/02 (eTel vs. Telekom Austria). In its reasoning, Interline mainly referred to the non-discrimination obligation imposed on Telekom Austria pursuant to § 34 TKG. The notice issued on 28.10.2002 is based, in the same way as Z 17/02, on the fact that Telekom Austria violated the non-discrimination obligation of § 34 TKG by offering to Interline less favourable conditions in respect of the provision of the security (item 5.12 of the general part), the installation costs of premium rate services (Annex 17), the provisions regarding access to online services in the range (0)804 00 (Annex 22) and the charges for Interline than Telekom Austria had offered to the parties in the proceedings related to “IC 2002” (or had to offer on the basis of the interconnection rulings).

Contrary to the proceedings Z 17/02 and Z 25/02, Interline requested, in addition to the issues discussed in Z 17/02 (eTel vs. Telekom Austria) and Z 25/02 (IT Austria), new fixing of the traffic type tariff for the number range (0)804 00 (V19 via (0)7189, i.e. the online number of Telekom Austria) at an amount that were to be lower in any case than 0.87 euro cents “peak” and 0.29 euro cents “off-peak” and a change in Annex 22 (freephone access to online services) to the effect that traffic to the number range (0)804 00 shall be mandatorily conducted via primary exchanges.


The rulings correspond to the notices Z 20/01 ff and are substantiated by the non-discrimination obligation of Telekom Austria pursuant to § 34 TKG.

The proceedings Z 25/02:

In the letter of 24.10.2002, IT Austria submitted a request for a ruling on interconnection with the network of Telekom Austria, demanding the same conditions as the TKG had ruled in the notices regarding Z 20/01 ff (“IC 2002”), Z 17/01 (“Direct settlement of accounts of indirect traffic”) and Z 11/02 (“IC 2002 charges”). In its reasoning, IT Austria referred to the non-discrimination obligation imposed on Telekom Austria pursuant to § 34 TKG. The notice issued on 02.12.2002 is based, in the same way as Z 17/02 and Z 23/02, on the fact that Telekom Austria violated the non-discrimination obligation of § 34 TKG by offering to IT Austria less favourable conditions in respect of the provision of the security (item 5.12 of the general part), the installation costs of premium rate services (Annex 17), the provisions regarding access to online services in the range (0)804 00 (Annex 22) and the charges for IT Austria than Telekom Austria had offered to the parties in the proceedings related to “IC 2002” (or had to offer on the basis of the interconnection rulings). Therefore, the rulings correspond to the notices Z 20/01 ff also on these counts and are substantiated by the non-discrimination obligation of Telekom Austria pursuant to § 34 TKG.

The proceedings Z 26/02:

In the letter of 30.10.2002, eTel submitted a request for a ruling on interconnection with Telekom Austria, demanding the same charges in relation to Telekom Austria, as had been ruled by the TKG in the notices Z 11/02 ff (issue of “IC 2002 charges”). In its reasoning, eTel also referred to the non-discrimination obligation imposed on Telekom Austria pursuant to § 34 TKG. The proceedings are “follow-up proceedings” to Z 17/02 in which the rulings of the notices Z 20/01 (“IC 2002”) and Z 17/01 (“Direct settlement of accounts of indirect traffic”) were imposed on eTel on the basis of the non-discrimination obligation of Telekom Austria (§ 34 TKG). The charges at issue in the proceedings Z 26/02 could not be ruled in the proceedings Z 17/02, because the procedural requirement of observing a negotiation period of at least six weeks had not been fulfilled. After the corresponding negotiations, the request in question was therefore aimed at supplementing the notice Z 17/02 in terms of the charges. Telekom Austria offered eTel the current charges of the notice Z 11/02 only if a preamble were to be included stating that the charges would become ineffective retroactively if a notice (Z 11/02 ff) of the TKG forming the basis for the charges were quashed by the VwGH or the VfGH. The notice decided on 02.12.2002 has to be seen in connection with the proceedings Z 25/02 (IT Austria – Telekom Austria), in as far as it was established in the proceedings that Telekom Austria does not discriminate within the meaning of § 34 TKG if it offers conditions identical in substance (e.g. charges) as in the corresponding notices (specifically Z 11/02), even if it requests a different preamble. The notice Z 26/02 does not give the non-discrimination obligation of Telekom Austria pursuant to § 34 TKG as reason for ruling the charges in the same amount as in Z 11/02 (as did the different rulings in the notices Z 17/02, Z 23/02, Z 25/02) but the fact that the cost-oriented charges from the proceedings related to Z 11/02 ff had been common knowledge



at the time of decision and therefore could be ruled in this amount for lack of agreement of the parties, pursuant to § 41 (3) TKG (competence of the TTK as arbitration body). For the same reason, the request by Telekom Austria for re-calculation of the charges was to be also dismissed.

Direct settlement of accounts of indirect traffic (Z 5/02, Z 8/02, Z 14/02, Z 16/02)

The proceedings Z 5/02 and Z 8/02:

In spring 2001, Telekom Austria announced to its interconnection partners that it planned to give up the method of cascaded accounting of the traffic services used at the time in indirect interconnection. This changeover was eventually carried out on the basis of the notices Z 17/01 and Z 19/01 as per 01.01.2002. For the operators interconnected indirectly via the Telekom Austria network, i.e. also for the parties in the proceedings, it became necessary to regulate the conditions of direct settlement of accounts of (mutual) interconnection traffic, in addition to the existing agreements (not applicable to this issue) and rulings on indirect interconnection.

Between 06.02.2002 and 20.02.2002, T-Mobile, Mobilkom and European Telecom International (ETI) filed a total of six requests for interconnection rulings pursuant to § 41 (3) TKG. The requested provisions had largely been agreed on throughout the industry; on some central issues (e.g. provision of a security, extrapolation, default interest) the parties, however, could not reach an agreement. Since, after receiving the requests but prior to completing the proceedings in question, the TTK issued decisions on 18.03.02 in the proceedings related to "IC 2002" (Z 20/01 ff) on the essential points of dissent that reflected the current legal opinion of the TTK on these issues, the parties were requested in the proceedings Z 4/02 ff to consider if, after all, agreements in the proceedings Z 4/02 ff would be possible on the basis of these decisions. All parties

involved in the proceedings, except for ETI, agreed and withdrew the respective requests. Therefore, notices were issued only in the proceedings instituted by ETI, i.e. Z 5/02 (against Mobilkom) and Z 8/02 (against tele.ring).

The proceedings Z 14/02 and Z 16/02:

These two proceedings, too, have to be considered in connection with the changeover to direct settlement of accounts by Telekom Austria. In both proceedings, Mobilkom was the applicant. Both proceedings are supplements of notices issued by the TTK, governing the interconnection relationship of the parties but not containing any regulations with regard to direct settlement of accounts of indirect traffic (Z 5/01 and Z 7/01 with regard to UTA and Z 8/01 with regard to MCI WorldCom).

The proceedings Z 14/02 were characterised, in particular, by the fact that in the preceding proceedings Z 5, Z 7/01 a request by Mobilkom for a ruling on security provisions had been dismissed and, consequently, the new (though adapted) request by Mobilkom faced the procedural impediment of an adjudicated case ("res judicata"). Therefore, the request for a ruling on security provisions was to be dismissed.

The remarkable fact about the proceedings Z 16/02 was that Mobilkom requested a special type of notice, i.e. a notice that is issued without conducting previous preliminary investigations pursuant to § 57 (1) AVG (General Administrative Procedures Act). This request was made on the grounds that there was imminent danger due to non-payment of interconnection charges and the reports about economic problems of the MCI WorldCom parent company. Although this request had to be dismissed for lack of a legal title of the applicant, the TTK, however, pointed out in its reasoning that, legally, it was not possible to issue this kind of notice within the meaning of § 57 (1) AVG also in the absence of imminent danger.

New traffic-dependent fixed network interconnection charges: Z 11/02, Z 12/02, Z 13/02 and Z 15/02

In the rulings by the TKK of 22.06.2001 regarding Z 6/01 ff, a provision (which corresponds to the contents of § 41 TKG) was included in item C, which requires the recipients of the notice to communicate to each other until 31.03.2002 any possible substantiated requests for changes regarding the traffic-dependent fixed network interconnection charges for the time following 01.07.2002, as well as to embark upon negotiations on this issue instantly. In this process, every party is free to invoke the regulatory authority regarding the ruling for follow-up provisions in this respect, if no agreement is reached within (at least) six weeks of receipt of a substantiated request for change by the respective other party. If the regulatory authority, i.e. the TKK, is invoked prior to 31.03.2002, the parties will continue to apply, on a temporary basis,

the interconnection charges of the ruling, until the regulatory authority has issued a legally binding decision. Such new arrangements will then take effect on 01.07.2002

In line with § 41 TKG and this arrangement, negotiations between different ANBs (Tele2, UTA, tele.ring, Priority) and Telekom Austria on new traffic-dependent (fixed network) interconnection charges for the time after 01.07.2002 were conducted, which, however, did not lead to agreements under private law. Subsequently, the TKK was invoked to rule on the amount of the new traffic-dependent (fixed network) interconnection charges. In the proceedings Z 11/02, Z 12/02, Z 13/02 and Z 15/02 the TKK relied on business economics experts to prepare an economic expert opinion for the determination of the costs of Telekom Austria for interconnection services, using a Top-Down approach.

Figure 31: Fixed network interconnection charges

<i>Values in euro cents (excl. VAT)</i>	<i>Previous values (until 30.06.2002)</i>		<i>Current decisions by the TKK</i>		<i>Change in %</i>	
	<i>Peak</i>	<i>Off-peak</i>	<i>Peak</i>	<i>Off-peak</i>	<i>Peak</i>	<i>Off-peak</i>
Termination						
local	0.91	0.51	0.85	0.50	-6.59 %	-1.96 %
regional	1.39	0.73	1.30	0.72	-6.47 %	-1.37 %
national	2.25	0.87	2.25	0.87	0.00 %	0.00 %
Transit						
regional	0.29	0.15	0.29	0.15	0.00 %	0.00 %
national	0.62	0.32	0.62	0.32	0.00 %	0.00 %
Origination						
local	0.91	0.51	0.85	0.50	-6.59 %	-1.96 %
regional	1.39	0.73	1.30	0.72	-6.47 %	-1.37 %
national	2.90	1.10	2.90	1.10	0.00 %	0.00 %

In the same way as in the aforementioned rulings on Z 6/01 ff and Z 30/99 ff, the two already known costing models were used for the calculation of cost-oriented interconnection charges of Telekom Austria. In a first step, the official experts identified the costs of Telekom Austria for interconnection services by using a Top-Down approach. In a second step, the costs of Telekom Austria were calculated using a Bottom-Up model. In a third step, the mean value from the results of the Bottom-Up and the Top-Down models was used as a basis for the new traffic-dependent interconnection charges. This calculation method used by the TTK was expressly found admissible by the VwGH in its ruling of 06.09.2001 on ZI. 2001/03/0195. The VwGH argued that the method of first making the calculation by using the Top-Down approach and then, to check the operational efficiency, applying the Bottom-Up approach is absolutely compatible with the principles resulting from Article 7 (2) of the Directive 97/33/EC as amended by Directive 98/61/EC.

In the rulings by the TTK of 09.09.2002 regarding Z 11/02, Z 12/02, Z 13/02 and Z 15/02, the charges for interconnection between Tele2, UTA, tele.ring and Priority, on the one hand, and Telekom Austria, on the other hand, were determined for the period 01.07.2002 to 30.09.2003, as shown in Figure 31.

The stated values are the charges per minute (in euro cents exclusive of VAT) to be mutually paid for the respective interconnection service (termination, transit, origination, differentiated according to local, regional and national interconnection); the charges distinguish between peak and off-peak times and are independent of the traffic volume. For connection set-up services and unsuccessful connections no additional charges fall due. The charge is calculated on a per-second-basis of the established connection.

Additional proceedings: interconnection in the fixed network sector (Z 23/01)

In December 2001, Tele2 filed a request for a ruling on interconnection between its telecommunications network and that of Priority. The request was aimed at the ruling on an overall structure of regulations for indirect interconnection of the networks. No contractual agreement mainly on the traffic-dependent termination charges to be paid by Tele2 and the effective date of the arrangement was reached between the parties. Priority insisted on a significantly higher termination charge than that for fixed network calls ruled to apply to Telekom Austria in "IC 2001". The main question to be decided by the TTK in the proceedings was the amount of termination charges between two alternative fixed network operators and the issue of the reciprocal determination of the charges between two interconnection partners. Due to the non-discrimination obligation imposed on Telekom Austria as SMP operator, it is obliged to offer termination charges in the same amount to all alternative operators. With this decision, the TTK ruled reciprocal termination charges in the amount of "IC 2001" also in the relationship of two ANBs, thus upholding the principle of reciprocity of termination charges in the fixed network previously applied.

3.5.2 Decisions in the field of mobile interconnection (Z 6/02, Z 18/02, Z 19/02, Z 21/02, Z 22/02)

3G Mobile as MVNO: Z 6/02

In the letter of 13.02.2002, 3G Mobile filed a request for a ruling on interconnection between its telecommunications network and that of Mobilkom. The request was aimed at the ruling on an overall structure of regulations for indirect interconnection of the networks by way of transit via the network of Telekom Austria or any other transit network operator.

The partners did not succeed in reaching a private-law agreement, mainly with regard to the following issues:

- right to provide interconnection,
- traffic-dependent interconnection charges to be paid,
- adaptation clause (§ 34 TKG),
- scenario if a notice by the TTK is quashed by the VwGH/VfGH,
- periods for notice,
- transit network operators.

In the proceedings, Mobilkom stressed the operator status of 3G Mobile and the right to provide interconnection, pursuant to § 37 ff TKG, mainly on the basis that 3G Mobile lacked the necessary network components that need to exist for an interconnection applicant to qualify as operator of a public telecommunications network, pursuant to § 41 TKG. To verify this issue, the TTK arranged for an on-site inspection where it was determined that 3G Mobile was equipped with all network components required to operate a public telecommunications network (core network). Thus, the operator status of 3G Mobile and the right of 3G Mobile to make the request existed without doubt.

Another major issue in these proceedings was the question of reciprocity of the termination charges. 3G Mobile requested a termination charge of 19.6 euro cents for termination in its network and a termination charge of 11.25 euro cents for termination of traffic in the Mobilkom network, both without regard to peak or off-peak times.

The charges were determined analogously to the two preceding MVNO notices, for 3G Mobile in the same amount as defined for the national roaming partner of 3G Mobile, and for Mobilkom in the amount of 11.25 euro cents.

Other issues in dispute in the proceedings referred, *inter alia*, to regulations on a security provision, to a ruling on a scenario if a ruling is quashed by the VwGH/VfGH and to the question if other transit network operators than Telekom Austria shall be permitted.

Tele2 as MVNO:

Z 18/02, Z 19/02, Z 21/02 and Z 22/02

In September 2002, Tele2 requested rulings on interconnection between its telecommunications network and the networks of T-Mobile, Telekom Austria, Mobilkom as well as tele.ring.

Tele2 wanted to provide mobile voice telephony services in Austria, having neither its own radio communications network nor frequencies. On the basis of a cooperation agreement according to which access to the air interface of a licensed mobile communications operator can be gained, Tele2 wanted to provide mobile voice services as a so-called MVNO.

The Independent Regulators Group (IRG) considered a practicable definition of an MVNO and formulated the following definition which was adopted by the majority of the European regulatory authorities, as did the TTK:

“A Mobile Virtual Network Operator (MVNO) has the ability to offer the same range of mobile services as a Mobile Network Operator (MNO) without an allocation of frequency spectrum for mobile services”.

To delimit an MVNO from other service providers, the IRG specified an indicative list of elements characterising an MVNO, which include the administration and issuing of separate SIM cards, a separate Mobile Network Code (MNC) and the independent operation of parts of a mobile telecommunications infrastructure, in particular of the following elements: Home Location Register (HLR), Authentication Register (AuC), Mobile Switching Centre (MSC), Short Message Service Centre (SMSC), Customer Care and Billing Equipment.

In the notices of 30.10.2002, the TTK dismissed the requests by Tele2, since Tele2 would need a license pursuant to § 14 (1) in connection with § 20 TKG for the provision of the planned mobile service. To obtain a licence for the provision of mobile voice services by means of a self-operated network, frequencies are required, according to the provisions under telecommunications law. Since Tele2 does not have such frequencies, a licence cannot be

Figure 32: Determined charges – mobile networks

<i>Type of traffic/traffic direction</i>	<i>Valid (from – till)</i>	<i>Flat (euro cents)</i>
Termination in the mobile network of Mobilkom		
■ Mobile network T-Mobile → Mobilkom (GSM; TACS)	28.12.2001 – 31.03.2002	12.40
■ Termination from mobile network of T-Mobile to the mobile network of Mobilkom (GSM; TACS)	01.04.2002 – 31.12.2002	11.25
Termination in the mobile network of T-Mobile		
■ Mobile network of Mobilkom → T-Mobile		
■ Termination from mobile network of Mobilkom to the mobile network of T-Mobile		13.80
Access to services (T-Mobile)		
■ Mobile network of Mobilkom → service of T-Mobile	18.01.2002 – 31.03.2002	11.90
■ Access from the mobile network of Mobilkom (GSM; TACS) to services numbers in the network of T-Mobile	01.04.2002 – 31.12.2002	10.75
Access to services (Mobilkom)		
■ Mobile network of T-Mobile → service of Mobilkom		
■ Access from the mobile network of T-Mobile to services numbers in the network of Mobilkom		13.20

granted. Tele2 is not permitted to provide the licensed service as MVNO without a licence; therefore no positive decision was to be made on inter-connection which is a prerequisite for the provision of services as MVNO.

Termination and origination charges in mobile networks (Z 31/01, Z 3/02)

By the notice of 06.05.2002, corrected on 16.05.2002, the TTK was to rule on termination and origination charges in mobile networks, after having been invoked by max.mobil (now T-Mobile). T-Mobile requested the same termination and origination charges that had been ruled in the proceedings Z 5/01, Z 7/01 and Z 8/01 for Mobilkom. These charges were upheld in the ruling in the proceedings Z 31/01, Z 3/02 of 06.05.2002. For T-Mobile the

charges, which had already been ruled in the proceedings Z 14/01, Z 15/01, were also upheld.

3.5.3 Unbundling of the local loop (Z 24/02)

In the letter of 30.09.2002 (ON 1), UTA requested a sub-ruling on unbundling. The legal relationship of the parties with regard to unbundling of the local loop of Telekom Austria was at that time based on the ruling by the TTK in the proceedings Z 15/00. This request therefore referred only to sub-areas of this legal relationship, i.e.:

- new determination of the charges for unbundling that expired on 30.09.2002 (item 8 of the main part and Annex 8) as well as
- ruling on provisions regarding “unbundling of a local loop with automated teller machine function” (Annex 10).

Charges:

With regard to the monthly charges for the local loop (and for sub-sections of the local loop), UTA requested a reduction of the charges by 10% from € 10.90 to € 9.81 (and for sub-section C2 from € 8.43 to € 7.59). With regard to the charges for other services, UTA requested a reduction by 6%. These requests were substantiated essentially by efficiency increases in the processes at Telekom Austria. In the session of 02.12.2002, the TKK commissioned a supplementary expert opinion on the changes of the costs of Telekom Austria, on which the monthly charge for transfer of use is based.

Local loop with automated teller machine function:

In addition, UTA requested a ruling on provisions for unbundling of a local loop at the customer-end of which an X.25 terminal (automated teller machine) is connected (or will be connected after unbundling). Such provisions do not exist at present. In this respect, UTA pointed out that unbundling of such local loops was currently not permitted by Telekom Austria, as it wanted to secure the market segment "unbundled customers with automated teller machines (business customers/commercial customers)" for itself. Telekom Austria opposed this request.

3.6 Regulation of competition

The emerging competition whose regulatory bases were created by the aforementioned decisions shall provide all competitors, in particular the new market entrants, with equality of opportunities and, in this connection, safeguards against abuse of market power. Therefore, regulation of competition is a necessity. Here, too, the concept of companies with significant market power is used as a basis. Fixed network operators with significant market power, in particular, are affected by a number of stipulations. Especially the obligation to offer cost-oriented end-user tariffs should be mentioned. On the

one hand, the end-users shall be protected against SMP operators exercising their monopoly powers, on the other hand, competitors have to be protected against practices limiting competition, in particular, predatory pricing (price dumping). Moreover, the SMP operators have the obligation to have their general terms and conditions approved by the TKK, to observe the ban on cross-subsidising and to comply with special obligations in the field of cost accounting.

3.6.1 General terms and conditions as well as tariffs

SMP operators of voice telephony service via a fixed network as well as providers of leased lines need to have their general terms and conditions and their tariffs approved by the TKK, while SMP operators of voice telephony service via a mobile network need to have only their general terms and conditions approved by the TKK, pursuant to § 18 in connection with § 111 TKG.

Providers without SMP only need to notify their general terms and conditions as well as their tariffs to the regulatory authority. These providers therefore need not wait for approval but can start service immediately upon notification. However, the TKK can object to the general terms and conditions within a period of eight weeks if they infringe the TKG, secondary legislation enacted on the basis of the TKG or the relevant regulations of the European Communities. The right to object only applies to the general terms and conditions for voice telephony service via fixed or mobile networks, but not to the general terms and conditions for offering leased lines.

Info Box 5: General terms and conditions, tariffs – subject to approval

During the period under review, the TKK completed five approval proceedings:

Tariff request of Telekom Austria (G 01/02)

Telekom Austria requested an increase in the tariff for directory enquiry services to € 1.00 net or € 1.20 gross. The number for directory inquiry services was to provide directory inquiry services only for Austria, EU countries and other neighbouring states of Austria. In the future, all other international directory inquiry services were to be provided by means of a value-added services number. As the requested tariffs did not correspond to the principle of cost-orientation pursuant to § 18 TKG (according to the expert opinions, the costs were not fully covered), the request for approval of the service description and the tariff provisions for directory inquiry services was dismissed by the notice G 01/02 of 03.06.2002.

Tariff request of Telekom Austria (G 05/02)

As per 24.05.2002, Telekom Austria filed a request for approval of the general terms and conditions, service descriptions and tariff provisions for the tariff option "PTSG". This tariff option was to be offered mainly to employees under the Post Structure Act (PTSG). The tariff provided for exclusion of carrier network operation and privileged tariffs. Due to the exclusion of carrier network operation and the fact that the costs were obviously not fully covered, the request was to be dismissed.

Tariff request of Telekom Austria (G 07/02)

On 19.06.2002, Telekom Austria again requested approval of the tariffs for directory inquiry services. The tariff for the provision of directory inquiry services was to be increased to € 1.34 gross. In addition, the number for directory inquiry services was to provide directory inquiry services only for Austria, EU countries and other neighbouring states of Austria. In the future, all other international directory inquiry services were to be provided by means of a value-added services number. Since the requested tariffs now corresponded to the principle of cost-orientation, contrary to the proceedings G 01/02, the request of Telekom Austria was to be granted.

Tariff request of Telekom Austria (G 08/02)

On 19.07.2002, Telekom Austria filed a request for approv-

al of the general terms and conditions for the use of the telephony services and associated services. Apart from a few minor other changes, Telekom Austria requested in the proceedings the approval of an additional charge for the failure to authorise direct debiting, as well as the exclusion of resale. With regard to the charge for non-authorisation of direct debiting, a definitive ruling by the Supreme Court (OGH) already existed. The OGH had ruled that the introduction of such a charge was permissible (4 Ob 50/00g). This decision by the Supreme Court was taken into account in the notice issued by the TKK. The request of Telekom Austria was granted on that count. The exclusion of resale of telecommunications services, however, was considered inadmissible, as it was regarded as a violation of § 34 (1) TKG (notice of 09.09.2002).

Tariff request of Telekom Austria (G 09/02)

The proceedings G 09/02 – initiated as per 01.08.2002 – requested approval of the general terms and conditions, the service description and the tariff provisions for the telecommunications service "public telephone stations" of Telekom Austria. The validity of the tariffs had been limited until 31.12.2002. The newly approved tariffs remained basically unchanged.

General terms and conditions, tariffs – subject to notification

A total of eight proceedings were initiated by the regulatory authority, related to notifiable general terms and conditions for voice telephony, seven of which were concluded in 2002. No formal objection was raised in any of the cases. The regulatory authority has always followed the practice that – upon receipt of such notifications – it informed the respective provider of the concerns that the regulatory authority had with regard to the general terms and conditions and asked for improvement.

As previously, providers took account of these concerns and modified their general terms and conditions so that they were in line with the legal opinion expressed by the regulatory authority, before a formal objection was raised.

3.6.2 Non-discrimination

Non-discrimination belongs to the same range of tasks in the regulation of competition. SMP operators are obliged to act in a non-discriminatory way, which means that they must treat all market players as equals. This obligation also extends to services that they provide for themselves or for affiliated companies under their control. If an SMP operator provides an intra-company service at a specific transfer price, which should be cost-oriented, it is also obliged to provide the same service to all competitors at the same conditions. SMP operators have regular reporting obligations, which serve to implement this regulation. In addition, the regulatory authorities have the right to inspect the books of these operators.

The most important regulatory instrument given to the regulatory authority in pursuing this objective is § 34 TKG. This provision confers a special supervision of abuse upon the regulatory authority: accordingly, services an SMP company provides on the market or for itself or for affiliated companies must be offered in a non-discriminatory manner. If an SMP operator violates this principle by abusing its significant market power, the regulatory authority can impose a specific conduct on this company, or forbid such conduct, and declare agreements null and void in total or in part.

3.6.3 Non-discrimination, network access, abuse of SMP


During the period under review, nine proceedings were conducted by the TTK:

Proceedings W 1/02

In the proceedings W 1/02, the TTK had aimed at reviewing if the rebate granted by Telekom Austria to one of its end-users (federal offices) had as a result that the ruled interconnection charges for its competitors were partly higher than the end-user tariffs. Such a fact would have been discrimination, since Telekom Austria would have had to pass on these end-user charges also to its competitors, taking into account the different services offered. In the letter of 20.06.2002, Telekom Austria notified the TTK that the framework agreement between the Republic of Austria and Telekom Austria was no longer in use. Since potential discrimination of competitors of Telekom Austria did no longer exist, the proceedings were dropped by the TTK on 01.07.2002.

Proceedings W 2/02 and W 3/02

The proceedings W 2/02 and W 3/02 dealt with the request of Tele2 to stop abuse of SMP, which consisted in the fact that Telekom Austria, despite being requested, refused to make an offer to Tele2 regarding "access to the connection service". This is a package of services in connection with the provision of POTS and ISDN lines and associated sub-services, which can be described in keywords as follows: line set-up, line transfer and line blocking; changeover from POTS to ISDN and vice versa; maintenance and fault clearance of lines; provision of data relevant for billing, i.e. so-called call data records (CDR), if calls e.g. to services numbers are handled via the Telekom Austria network on the basis of the availability table defined for pre-selection. These services provided by Telekom Austria



were to be supplemented by Tele2's own services to be able to offer to the end-user an individually designed complete solution that comprised also services in the area of the local loop and, in particular, enabled pre-select customers to be invoiced only once (by their carrier network operator). A corresponding request of Tele2 was dismissed by the notice of 03.06.2002 for lack of the required position as party. At the same time, however, the TKK, by virtue of office, instituted proceedings referring to the same fact and, after hearing representatives of Tele2 and Telekom Austria, asked Telekom Austria in the letter of 30.07.2002, with reference to the non-discrimination obligation of § 34 TKG, to make a corresponding offer to Tele2. Telekom Austria complied with this request on 21.10.2002, after which the proceedings were dropped. Negotiations about the conditions of the Telekom Austria offer, which was also in demand by other network operators, were held at the end of 2002.

Proceedings W 4/02


In July 2002, the TKK, by virtue of office, instituted the proceedings W 4/02, pursuant to § 34 TKG, against Telekom Austria, which dealt with the disconnection of CyberTron as well as CyberTron with 1066 ("CyberTron") from the network of Telekom Austria for suspected discrimination pursuant to § 34 TKG. Abuse pursuant to § 34 TKG exists if the SMP operator offers services to itself at more favourable conditions than to its competitors. There were concerns regarding

- the lawfulness of the network disconnection of CyberTron by Telekom Austria,
- the marketing measures applied by Telekom Austria to attract the CyberTron customers as well as
- the porting of geographical and services numbers. In this connection, it was suspected that Telekom Austria treated itself preferentially compared to other ANBs.

After thorough examination of the facts, the TKK could not confirm these suspicious factors; accordingly, no violation of § 34 TKG existed. Therefore, the proceedings were dropped in September 2002. However, to be able to prevent problems connected with the porting of numbers if a network fails or is blocked, the TKK requested Telekom Austria to make an offer for direct routing of services numbers to ported numbers in third networks, as is possible for Telekom Austria in the case of numbers ported to Telekom Austria. This shall ensure that previously ported numbers are available and unlimited porting is possible without involvement of the original services network if a network fails or is blocked.

Proceedings W 5/02

Since July 2002, Telekom Austria had been advertising a cordless phone (Siemens Flexitel 400), creating the impression that in using this terminal operation via carrier networks was not possible. This would have as a consequence that all ANBs acting as carrier network operators would have to accept a serious restriction of competition if telephones disabled for carrier network operation were to come onto the market in larger quantities. The adverse effect on the carrier network operator was created by using the form of implementing the sequence of digits "1001" (code triggering the network function "pre-selection override") that was chosen by Telekom Austria, i.e. automatic dialling of "1001" by the terminal prior to every connection set-up. In the course of the proceedings, it was established that automatic dialling of "1001" can be suppressed. As a result, the proceedings were dropped on 30.10.2002. Originally, the major question under telecommunications law in the proceedings was the extent of the non-discrimination obligation for SMP operators pursuant to § 34 TKG. It was to be examined, in particular, whether an SMP company may bypass the non-discrimination



obligations imposed pursuant to § 34 TKG by distributing terminals that, as such, comply with the legal requirements. Since the enable option was identified, these proceedings could be dropped.

In the proceedings, the TTK for the first time used the power to make requests, granted to regulators established by federal law, which had been introduced under the restrictive trade practices reform 2002. Since 01.07.2002, the TTK has been entitled to make examination requests under the Restrictive Trade Practices Act to the Restrictive Trade Practices Court. On 15.10.2002, the TTK therefore filed a request, pursuant to § 37 item 7 Restrictive Trade Practices Act, for remedy of the abuse of Telekom Austria's SMP by offering cordless terminals which gave the impression that they were disabled for carrier network operation, while at the same time the customers were misinformed about the enable option which, in fact, existed.

The extent of the measures to be taken by Telekom Austria to inform the end-users of the enable option of the terminal was the subject of proceedings before the Restrictive Trade Practices Court, which by the end of 2002 had not yet been decided with legal effect.

Proceedings W 6/02



In the proceedings W 6/02, CyberTron claimed that the termination by Telekom Austria of the collocation agreements concluded by the two companies on the basis of the unbundling agreement also terminated by Telekom Austria constituted an abuse of SMP, whereupon the TTK, by virtue of office, decided on 09.09.2002 to institute proceedings to investigate if such abuse existed. After both companies had submitted additional documents, the TTK came to the conclusion that, in connection with the relevant provisions governing the termination of the unbundling agreement, no abusive conduct of Telekom Austria could be found. Therefore, the proceedings were dropped by the decision of 07.10.2002.

Proceedings W 7/02

The proceedings W 7/02 were instituted by virtue of office at the suggestion of Internet Service Provider Austria (ISPA) by the decision of 20.09.2002, because it was suspected that Telekom Austria abused its SMP by offering also narrowband Internet access, called "Business Access Packages", at a monthly flat rate via ISDN in areas where ADSL supply was not possible, without making a corresponding wholesale offer for Internet Service Providers (ISP) at the same time. On the one hand, this violated the non-discrimination obligation laid down in § 34 TKG and, on the other hand, a settlement reached between ISPA and Telekom Austria before the Restrictive Trade Practices Court on 13.07.2001. As Telekom Austria announced to take the product from the market by 31.10.2002 in the letter of 25.09.2002, the TTK decided to drop the proceedings on 14.10.2002.

Proceedings W 8/02

The proceedings W8/02, instituted by the TTK on 11.11.2002 by virtue of office, were also based on a criticism of ISPA and dealt with the question if it was abuse of SMP by Telekom Austria that Telekom Austria offered ADSL for a limited time to end-users with a data volume of 500 MB (contrary to the regularly offered data volume of 1 GB), called "AonSpeed Weihnachts-Special". The existing wholesale offer for ISPs, however, provided only for a data volume of 1 GB, without the option for ISPs of obtaining the services of Telekom Austria on the basis of a smaller maximum transfer volume of 500 MB per individual user at a correspondingly reduced price. The price discrimination performed by Telekom Austria resulted from the fact that the monthly amount charged for the connection of the ADSL line to the ISP via the ATM backbone (Asynchronous Transfer Mode) of Telekom Austria on the basis of the provisions of the existing ADSL wholesale agreement (staggered prices, average purchase volume of 1 GB per customer and month)



was higher than the transfer price granted to the business segment of Telekom Austria responsible for ADSL end-users in the scope of "AonSpeed Weihnachts-Special". Also, the economies of scale from which Telekom Austria benefits because of its large number of customers and its widespread infrastructure as well as the lower monthly costs per customer associated with a lower transfer volume of 500 MB did not explain how Telekom Austria, with a difference in the monthly transfer price of approx. € 3,- per subscriber, was able to cover both the costs for connection to the worldwide Internet by means of international connectivity and all (indirect) costs for its own services (e.g. expenses for set-up and administration of e-mail addresses and web space, costs for customer care e.g. by a call centre, as well as for operation and maintenance of the systems required for the services, e.g. mail servers), while a different ISP had to bear these costs itself, in addition to the costs for the connection of the ADSL customer via the ATM backbone of Telekom Austria. In view of the average purchase volume specified in the ADSL wholesale agreement, but for lack of the option of redistributing the total volume onto customer groups with a higher monthly transfer volume than 1 GB per customer, smaller ISPs that do not have customers with transfer volumes of more than 1 GB were not in the position to make a comparably favourable offer to ADSL end-users and, thus, suffered a considerable disadvantage in the acquisition of new customers. The combination of an average transfer volume of 1 GB per ADSL customer within the framework of the ADSL wholesale agreement, unexplained differences between the wholesale charge for the connection of the ADSL customer to its ISP via the ATM backbone of Telekom Austria, on the one hand, and the transfer price of Telekom Austria charged to its business segment responsible for ADSL customers for ATM connection plus international connectivity in the "AonSpeed Weihnachts-Special", on the other

hand, was regarded as discriminatory conduct by the TTK. In this situation, it was possible that an ISP in the framework of the ADSL wholesale agreement was not able to purchase the offered services at the same non-discriminatory conditions, as was possible for the business segment of Telekom Austria responsible for ADSL end-users. Therefore, the TTK requested Telekom Austria, in the letter of 02.12.2002, to submit a wholesale offer corresponding to "AonSpeed Weihnachts-Special", i.e. also limited until 15.01.2003. Telekom Austria complied with this request in the letter of 10.12.2002, whereupon the TTK dropped the proceedings by the decision of 16.12.2002.

Proceedings W 9/02

In 2002, Telekom Austria advertised and distributed also two cordless phones with fixed network SMS functionality, in the wake of the Siemens Flexitel 400 (see W 5/02). The terminals subject to these proceedings are "Siemens Silver Edition" and "Sagem SLT 10 SMS".

The initial position in these proceedings was quite similar to that on which the proceedings W 5/02 were based: Telekom Austria distributed the mentioned terminals, creating the impression that in using this terminal operation via carrier networks was not possible. As in the proceedings W 5/02, the TTK held the view that the prevention of carrier network operation at the expense of the ANBs was to be stopped. Carrier network operation was hindered by Telekom Austria, in the same way as by the terminal subject to the proceedings W 5/02, by making use of the chosen form of implementation of the sequence of digits "1001" in the network and, prior to every connection set-up, by automatic dialling of "1001" (code triggering the network function "pre-selection override") that was implemented in the terminal. The proceedings were still pending at the end of 2002.

3.6.4 Transfer of the use of infrastructure (§ 44 TKG)

A special issue within the framework of the regulation of competition is to review cross-subsidising in the course of the transfer of infrastructure. Reviews regarding the transfer of the use of infrastructure are based on the provisions for structural separation and separate accounting, as provided by the TKG (§ 43 (1) TKG in connection with the provisions on the transfer of use of infrastructure, § 44 TKG). A company must have a special or exclusive right or significant market power to be subject to the prohibition of cross-subsidising. As in the previous year, only one case was reviewed for possible cross-subsidising in the transfer of use of telecom infrastructure in 2002. No cross-subsidising was identified.

Since many companies agreed to transfer the use of infrastructure to operators already at the beginning of liberalisation, this was to be expected.

3.7 Number administration

Pursuant to § 57 TKG, RTR-GmbH is responsible for the efficient administration of the Austrian number range, on the basis of the Numbering Ordinance

(NVO), BGBl II No. 416/1997, as amended, issued by the Federal Minister of Transport, Innovation and Technology. Based on these provisions, numbers shall be allocated in an objective, non-discriminatory and reproducible manner, observing, in particular, the principles of equal opportunities.

With the NVO, which entered into force on 01.01.1998, a new Austrian numbering scheme became effective. It provides mainly for a clear separation between the ranges for geographical numbers and the ranges for non-geographical numbers (numbers of public interest, numbers for private networks, for mobile networks, for personal services, for freephone services, for services with regulated fee limits and premium rate services).

For the non-geographical numbers the conversion has already been completed, with the exception of a few segments (such as (0)711..., 17..., (0)71891..., 194..., 120, 123, etc.).

For the geographical numbers, however, implementation of the NVO has not started yet. Therefore, the current local network numbers are retained until further notice. For the administrative practice of RTR-GmbH this means that, with regard to geographical numbers, numbers in the "old"

Figure 33: Number range according to the NVO and current use for geographical numbers

<i>Number range</i>	<i>Usage according to numbering scheme</i>	<i>Individual series of numbers from the number range that are also used by geographical numbers</i>
1	Numbers of public interest	No
(0)2 (0)3 (0)4	Geographical numbers	—
(0)5	Private networks	Yes
(0)65-(0)69	Mobile networks	Yes
(0)71-(0)74	Personal services	Yes
(0)800-(0)804	Freephone services	No
(0)810-(0)830	Services with regulated fee limits	No
(0)90-(0)93	Premium rate services	No

Figure 34: Number ranges for SMS and voice services subject to time and event tariffing, including tariff information

Number	Voice services subject to time tariffs Costs/min	Voice services subject to event tariffs Costs/call	SMS Costs/SMS
0800 xxx xxx	Free of charge	Free of charge	Free of charge
0810 xxx xxx	€ 0.0727 (maximum)	—	€ 0,0727 (maximum)
0820 xxx xxx	€ 0.1453 (maximum)	—	€ 0,1453 (maximum)
0828 2 xx xx	—	—	“Normal” SMS tariff
0900 xxx xxx 0930 xxx xxx	Tariff announcement	—	Offer/acknowledgement SMS
0901 T.....	—	Tariff in the number + tariff announcement	Tariff in the number + tariff information acc. to EVO (e.g. offer/acknowledgement SMS)

local networks have to be assigned for the time being. Contrary to that, services numbers have been assigned according to the structure of the currently applicable numbering scheme already since 01.01.1998.


Figure 33 shows the overlapping of the ranges which, at present, are still used by geographical numbers, with the number ranges which are provided for various services according to the NVO. The demand for objectivity, transparency and non-discrimination in the allocation of numbers is taken into account, apart from compliance with the appropriate general allocation rules, by the publications on the web site of RTR-GmbH (<http://www.rtr.at/web.nsf/deutsch/Telekommunikation~Nummerierung>). Detailed information sheets as well as application forms are available for the individual number ranges. The information sheets describe in detail the respective allocation procedure and the conditions for usage.

In mid-2002, CyberTron and CyberTron with 1066 were disconnected from the Telekom Austria network. Subsequently, this fact caused massive problems with regard to the availability of geographical subscriber numbers and services numbers

allocated to CyberTron. To restore availability in the fastest possible way, for lack of other mechanisms (see also proceedings W 4/02), all numbers (approx. 9,500 services numbers and over 225 geographical number blocks) had to be allocated to other network operators after being returned by CyberTron. This showed the loopholes in the NVO for some problem areas (no provision for “return of numbers in use”).

Subsequent to these events, RTR-GmbH, in cooperation with the Working Group Technical Coordination (AK-TK), developed a procedure for similar cases, which then was subjected to a public consultation. According to the current legal situation (NVO), this procedure can be applied only if the numbers allocated, by means of notice, to the network operator concerned are immediately returned. Even then, quite considerable problem areas continue to exist, which shall be resolved *inter alia* within the framework of the AK-TK.

The sharp rise in SMS services required a fast response to take account of the new demands. Here, in particular, the framework of the Charges Ordinance (EVO) with regard to tariff transparency has to be assessed, against the background of the



technical conditions for SMS services. Following intensive preliminary discussions, a public consultation of the planned SMS-specific regulations was carried out. On the basis of the responses received a plan was drawn up in cooperation with the BMVIT, which comprises the use of the existing number ranges and the creation of new number ranges for SMS services. Thus, as from the second quarter 2002, it was possible to offer SMS services conforming to the NVO. At the same time, it became possible to offer voice services at event tariffs. In this process, it was difficult to implement the provisions of the EVO. Mainly, the provision stipulating that after connection set-up the subscriber is to be appropriately advised free of charge of the applicable tariff caused problems. In creating number ranges for voice services subject to event tariffing, special attention was paid to preventing the mix-up of voice services subject to time tariffing and event tariffing, in order not to mislead consumers, e.g. when, for the same number, an event tariff is first advertised and then changed to a time tariff. Further information is available on the web site of RTR at <http://www.rtr.at/num/sms>. ENUM (Telephone Number to Universal Resource Identifier Mapping), which had been widely discussed on an international basis already in 2001, was considered an important link for the convergence of the classical telecom world and the Internet also in 2002. After an information event of RTR-GmbH early in 2002, a dialogue of interested market players developed in Austria, which resulted in the establishment of the Austrian ENUM Trial Platform in September 2002. RTR-GmbH is an active member of the Austrian ENUM Trial Platform and supports the activities of the market players by creating the required administrative and regulatory conditions. The objective of the participating organisations is to perform a national ENUM field trial early in 2003 to assess the possibilities of a future commercial application of ENUM. On the web site

of RTR-GmbH a great deal of information can be found on the current developments in this sector (<http://www.rtr.at/enum>).

With regard to the infrastructure of number administration at RTR-GmbH, a new number database was put into operation in spring 2002. This software solution, based on an Oracle database and linked to the existing central RTR document management, does not only allow to handle applications for numbers fast and efficiently but also represents a step further towards application for numbers via the web site of RTR-GmbH, which shall be possible in the future and is planned in the medium term.

Info Box 6: Allocation of numbers, decisions of RTR-GmbH

During the period under review, about 530 notices on number allocation were issued, 5 % of them negative. The average time required for allocating a number was reduced to five days in 2002, compared to six days in 2001. In 2002, 50 % of all notices were completed within four days, 90 % of all notices within seven days.

3.8 Universal service

The European regulatory framework describes the universal service in telecommunications as a defined list of services that are available to all users independent of their place of residence or work in the federal territory at an affordable price, subject to specific quality standards. At present, universal service is to be provided by the former monopolist. The regulatory authorities have to ensure that universal service is provided, but must also see to it that the company, required to provide universal service, is compensated for any possible additional financial burden.

The central event within the scope of universal service as regulatory activity was the request made by Telekom Austria in December 2001 for reimbursement of the cost incurred for providing universal service in 1999. Pursuant to § 29 TKG, first the regulatory authority must calculate the financial compensation to be paid from the Universal Service Fund and – if cost for universal service has accrued – determine the amount, pursuant to § 30, which the contributory licensees have to contribute to the Universal Service Fund.

When calculating the cost of the universal service obligation pursuant to § 29 TKG, the net cost of this obligation shall be determined. Accordingly, the cost, the loss in revenues and the benefits from providing universal service shall be determined. The calculation of the cost of the universal service obligation is based on the guiding principle what cost the operator bound by the obligation would be able to avoid if it did no longer have to provide specific services (inefficient customer groups, telephones etc.), which it has to provide under a statutory provision. However, at the same time, the company loses revenues because of the non-provision. The difference between avoidable costs minus lost revenues, thus established, yields the direct net cost. In addition, the figure for the indirect effects resulting from the status of being universal service provider has to be taken into account and deducted; the remaining value shows the total net cost of universal service

The proceedings were terminated after Telekom Austria withdrew its request on 04.10.2002. Therefore, the TKG did not take a decision on the justification and the amount of compensation, if any, for universal service costs incurred in 1999.

In addition to these proceedings, the following specific priorities were addressed in 2002 within the scope of universal service as regulatory task: the activities of the previous years regarding subscriber directories and directory inquiry services, which are

to be considered essential elements of universal service, were continued during the period under review. The central question was to accomplish and design a uniform inter-operator subscriber directory for 2003/2004 and to ensure inter-operator directory inquiry services.

In the scope of the tasks regarding the quality of universal service, Telekom Austria communicated to RTR-GmbH, in spring 2002, the quality benchmarks for 2001 for the provision of universal service, as is required once a year, pursuant to § 25 Universal Service Ordinance (UDV). The quality benchmarks, pursuant to § 25 (2) TKG, are published on the web site of the regulatory authority (<http://www.rtr.at>).

3.9 Resolution of end-user disputes

In 2002, 1,528 complaints were submitted to the arbitration body of the regulatory authority, i.e. an increase of 8% compared to 2001. Compared to this figure, 412 cases were handled in 1998 and 756 proceedings were initiated in 1999. In 2000, the number of cases submitted for arbitration went up to 894, reaching 1,418 complaints in 2001.

One reason for the steady increase in the number of complaints filed with the regulatory authority might be that the arbitration body has become more widely known, among other things, because of relevant media reports. The typical case concerns the amount of individual telephone bills, which is mostly due to the use of – cost-intensive – value-added services or downloading of data from the Internet via an ADSL line.

Almost 20 % of the complaints during the period under review referred to data connections to national value-added numbers established via a PC modem. The arbitration proceedings showed that these connections had been set up, as a rule, by means of so-called dialler programmes. These are differently designed software programmes that are offered on the Internet for download and, after



execution, establish a new connection to a value-added number. Since such arbitration proceedings mostly involve several network operators, the cooperation scheme jointly developed by the operators and the arbitration body was adapted during the period under review to reflect the experiences of 2001. A marked increase was also seen in complaints concerning settlement of accounts in respect of transfer volume. Customers either complained that they had not been advised of the costs for downloading and uploading of data or disputed that they had retrieved the data volumes from the Internet to this extent at all.

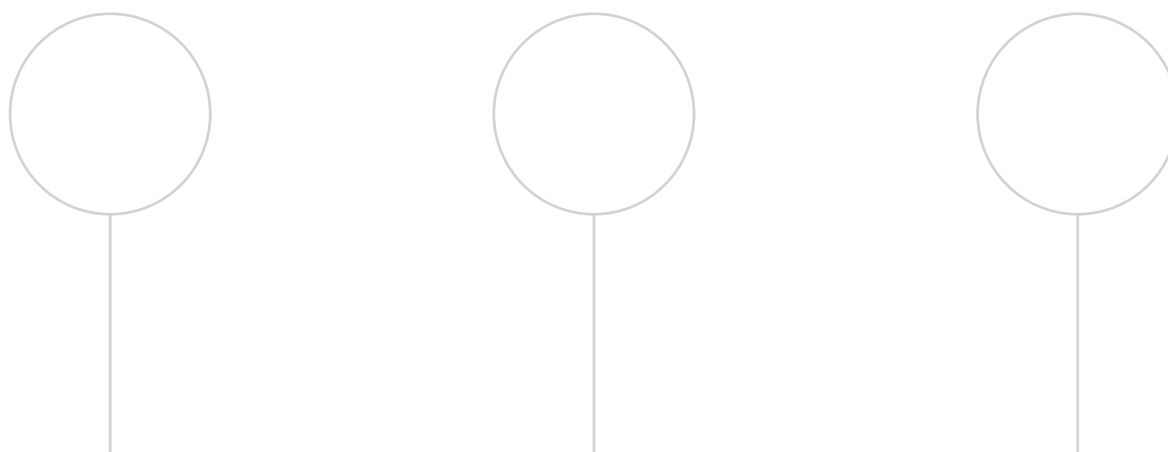
In summary, it can be stated that the trend away from the "classical" complaint about a phone bill, which had been noticeable in the past few years, towards proceedings related to modern means of communications – such as Internet and SMS services – continued also in 2001. More detailed information on the activities of the regulatory authority in the field of dispute resolution is available in the

report of the arbitration body for the year 2002, which will be published in the first half of 2003 and will be available also online (<http://www.rtr.at>). In addition to a variety of statistical aspects, this publication also comprises a description of issues and problems frequently occurring in the proceedings.

3.10 Proceedings before the Constitutional Court (VfGH) and the Administrative Court (VwGH)

3.10.1 Proceedings before the Constitutional Court (VfGH)

In 2002, six complaints against decisions by the TTK were filed with the VfGH. These complaints referred, *inter alia*, to interconnection proceedings with regard to MVNO and, in one case, to frequency allocation. In this connection, the activities of the regulatory authorities consisted in writing pleadings against requests filed for suspensive effect and counter-pleadings.



3.10.2 Proceedings before the Administrative Court (VwGH)

In 2002, 37 complaints against decisions by the TKK were filed with the VwGH. These complaints mainly referred to interconnection proceedings, in one case to the determination of SMP of operators as well in as one case to abuse of SMP. In this connection, the activities of the regulatory authorities consisted in writing pleadings against requests filed for suspensive effect and counter-pleadings. On 06.09.2001, the VwGH ruled on a complaint against a decision by the TKK (notice Z 26/99) in connection with number portability. The notice was quashed by the VwGH as unlawful, as a result of the violation of procedural provisions. This ruling, however, largely confirmed the substantive work of the regulatory authority. The approach used for determining costs, for example, was considered permissible, and number portability was confirmed to be an interconnection service. In the ruling of 03.09.2002, the VwGH eventually also quashed the notices Z 22/99 and Z 25/99, corresponding to the notice Z 26/99 in substance, as unlawful because of the violation of procedural provisions. With regard to these two notices, the regulatory authority instituted substitute proceedings. In the ruling of 11.12.2002, the VwGH, for the first time, decided on a complaint against a decision by the TKK in connection with the determination of interconnection charges (notice Z 02/00). Although this notice was quashed by the VwGH as unlawful because of the violation of procedural provisions, the substantive work of the regulatory authority was largely confirmed again.

In detail, the VwGH ruled that:

- using a Bottom-Up model, in addition to a Top-Down model, for calculating cost-oriented charges according to FL-LRAIC was legally and economically permissible,
- the assumed parameters (e.g. economical useful life, consideration of planned traffic volumes) on which the expert opinions were based, and the use of international comparative values in the Bottom-Up model for determining the FL-LRAIC costs for interconnection services were sufficiently explained,
- the efficiency reduction on the cost accounting results from the Top-Down cost accounting model used in the proceedings was permissible, in particular if the operator does not supply any relevant data itself,
- the method for computing the cost of capital rate was permissible and
- the determination of the amount of interconnection charges in the fixed network, considering the technical differences in the network topology of the operators, was permissible.

With regard to this notice, the regulatory authority instituted substitute proceedings.

3.11 National working groups and international activities in the Telecommunications Department

3.11.1 National working groups

In a liberalised voice telephony market with many network operators it is indispensable for numerous inter-network functionalities, such as value-added services or number portability, to have a coordinated approach by the individual networks, especially in the technical field. Determining the interconnection conditions in proceedings before the TKK should only be seen as a last resort. Therefore, early in 1999, RTR-GmbH launched – after preliminary discussions in 1998 – a discussion platform, the Working Group Technical Coordination (AK-TK), encompassing the network operators and their suppliers from industry.

The main objective of the AK-TK is to have a general exchange of information, in addition to drawing up recommendations on technical-administrative processes between the network operators. The principle of unanimity applies to the adoption of such recommendations. Even when adopted unanimously, such a recommendation has no legal effect, but is nevertheless an important fact which may be taken into consideration, provided the regulatory framework is complied with, in case of a dispute pending with the TKK which, as a matter of principle, aims at a resolution by discussions between the operators and considers the working group to be a means to reach this end.

In the plenary sessions of the AK-TK, sub-groups with a defined mandate are set up for specific subjects, the results obtained are discussed and submitted draft recommendations are voted upon. In this forum, RTR-GmbH, which has no voting right, acts primarily as a “catalyst” to overcome conflicting views between the operators, but also contributes topical issues for work and discussion. Since its inception, the working group has taken a very positive course and has produced major results on specific issues (e.g. the technical plan for number portability in the fixed network, consensus

on the size of collocation space etc.) but also regarding the general atmosphere and climate. RTR-GmbH will continue to promote the AK-TK as a major forum of the Austrian telecommunications market, and it invites all network operators to participate actively.

The following sub-groups met in the course of 2002, partly also in joint meetings of several sub-groups:

- Working Group Technical Coordination in Telecommunications (plenary),
- AK-TK sub-group on accounting scenarios,
- AK-TK sub-group regarding value-added services
- AK-TK sub-group on number portability,
- AK-TK sub-group on the quality of service,
- AK-TK sub-group on fraud.

Operator project on Mobile Number Portability

Against the background of the new EU guidelines, which, transposed into national law, will take effect on 25.07.2003 and will provide for mandatory number portability, an operator project to prepare an implementation variant for mobile number portability in Austria was initiated jointly by the National Telecommunications Authority (OFB) and RTR-GmbH in mid-2002. In several working groups the following core topics were dealt with:

- routing,
- tariff transparency,
- interconnection billing,
- administrative processes.

Because of the different interests of the individual mobile network operators, the issues were discussed partly controversially. In the course of the work it became evident that an agreement will be hardly reached. In 2002, the legal situation did not allow the TKK to be invoked regarding this matter.

Mobile Regulatory Dialogue

Within the scope of the so-called “Regulatory Dialogue for Mobile Communications” current regulatory issues and future questions relevant to regulation were discussed with all mobile operators. Upon invitation of RTR-GmbH, mainly questions of

future market analyses and other implications of the new European regulatory framework for the electronic media sector were discussed at eight events in 2002. At the request of the operators, this initiative, which had been launched in 2001, was continued in 2002.

3.11.2 International activities

As in previous years, RTR-GmbH was involved in international activities relevant to regulation also in 2002. The major focus was placed on further intensifying the exchange of experiences and participating in the international harmonisation of the regulatory measures in the field of telecommunications. Within the framework of this cooperation this harmonisation is achieved by common recommendations on implementation, the so-called Principles of Implementation and Best Practice (PIBs), common positions on proposals of the EU Commission and numerous studies. International cooperation gives rise to a broader basis of knowledge regarding developments and experiences in other countries. Information thus obtained is directly fed into regulatory activities and has a positive effect on the quality of the regulatory decisions. Regular comparison with other countries regarding the general market situation and numerous specific issues allows defining the position of the market and of regulation in Austria.

The major results of the international activities in 2002 were:

- common positions on the EU Commission paper "Guidelines on Market Analysis and the Calculation of SMP",
- common positions on the EU Commission paper "Recommendation on Relevant Product and Service Markets within the Electronic Communications Sector susceptible to *ex ante* Regulation",
- PIBs accounting separation,
- PIBs local loop unbundling,
- implementation plan according to Article 7 of the Framework Directive (consultation procedure),

- analyses of the mobile market, in particular on mobile termination, international roaming and SMS issues,
- study on the status regarding broadband access and margin squeeze,
- study on end-user aspects in telecommunications,
- study regarding UMTS roll-out ,
- report on cooperation between competition and regulatory authorities,
- preparations for the establishment of the "European Regulators Group" (ERG).

Specifically, RTR-GmbH was active in the following working groups and organisations:

- Independent Regulators Group (IRG),
- ONP Committee and Licensing Committee of the European Commission,
- High Level Regulators (or NARA) Meeting of the European Commission,
- assistance to the BMVIT in negotiations of the working groups of the Council of the European Union
- European Telecommunications Standards Institute (ETSI),
- Electronic Communications Committee (ECC),
- Organisation for Economic Co-operation and Development (OECD),
- International Telecommunication Union (ITU).

The range of activities was completed by bilateral working meetings with other regulatory authorities (mainly from EU candidate countries).

In mid-2002, the ERG was founded. This group is an advisory body of the European Commission and comprises all independent national regulatory authorities for the implementation of the new regulatory framework on (tele)communications. In 2003, the major work issues will be, in particular, consultations according to Article 7 of the Framework Directive, harmonised implementation of market analyses and the determination of companies with SMP. Integration and future participation of the new EU countries in IRG and ERG starting in 2003 will contribute to making the year 2003 a special challenge also in organisational terms.



4. Supervisory Authority for Electronic Signatures

The Signature Act (SigG) assigned to the TKK also the competence to act as supervisory authority for electronic signatures, in addition to the existing responsibilities as regulatory authority. In the same way as pursuant to TKG, RTR-GmbH acts as operative structure for the supervisory authority. In this process, RTR-GmbH is mainly responsible for keeping secure directories of providers of certification services. The tasks of RTR-GmbH under the SigG are handled separately within the company, both with regard to organisation and finances, in particular, in terms of cost accounting.

4.1 Proceedings during the period under review

In 2002, the TKK conducted 15 proceedings according to the SigG. 12 of them (plus one case from 2001 that had been still pending at the turn of the year 2001/2002) were completed in 2002.

The year 2002 was mainly characterised by the fact that in Austria secure electronic signature methods were offered for the first time and that RTR-GmbH put into operation the secure directory of providers of certification services.

On 17.12.2001, Datakom Austria GmbH was accredited for the certification service "a-sign Premium". On 05.02.2002, this service took up operation. Thus, secure electronic signature methods were offered in Austria for the first time. Shortly later, as from 25.02.2002, A-Trust Gesellschaft für Sicherheitssysteme im elektronischen Datenverkehr GmbH started issuing certificates for secure electronic signature by means of its certification service "trust|sign". On 11.03.2002, A-Trust was accredited by the TKK for this certification service.

Pursuant to § 18 (4) SigG, the TKK has to review providers of certification services at regular intervals of at least two years. Early in 2002, therefore three proceedings were instituted to review the providers of certification services already operating since the SigG had taken effect two years earlier, i.e. Generali Office-Service und Consulting AG, Arge Daten – Österreichische Gesellschaft für Datenschutz and Datakom. All three proceedings were dropped after the review (in the course of which RTR-GmbH had also made an on-site inspection on behalf of the TKK), with no necessity to take official supervisory measures.

Already half a year after the start of certification services for secure electronic signature, the market experienced a consolidation. On 27.09.2002, Datakom ceased issuing certificates. The certificates issued until then will remain valid. On 28.09.2002, the directory and revocation services of Datakom were taken over by A-Trust. Datakom was a 100% subsidiary of Telekom Austria and was merged with it on 01.10.2002. A-Trust took over from Datakom also the brand "a.sign" as well as its customers and, at the end of 2002, started to change all its own certification services to the new brand "a.sign".

In 2002, Datakom notified the supervisory authority of changes in its security and certification designs four times, and of the discontinuation of service in September 2002. A-Trust modified existing certification services five times in 2002, four notifications referred to the start-up of new services (including several follow-up services to the services discontinued by Datakom). Generali Office-Service und Consulting AG modified its services once; Arge Daten – Österreichische Gesellschaft für Datenschutz did not perform any changes.

4.2 Directory of the supervisory authority

On 24.09.2002, the supervisory authority took up operation of the secure directory of certification services providers and, since then, has issued qualified certificates to the providers of certification services for their certification services. Thus, the supervisory authority fulfils the statutory mandate of § 13 (3) SigG.

Access to the central directory of the supervisory authority allows users of electronic signatures to verify the authenticity of the certificates issued in Austria. Thus, this is an important contribution to the security of electronic services in Austria. All certification services, within the meaning of the SigG, offered in Austria, rather than only those where qualified certificates are issued, are included in the directory of the supervisory authority. Foreign providers can be included in the Austrian directory on a voluntary basis. The directory also shows the quality level of the respective certification service. The following services are distinguished:

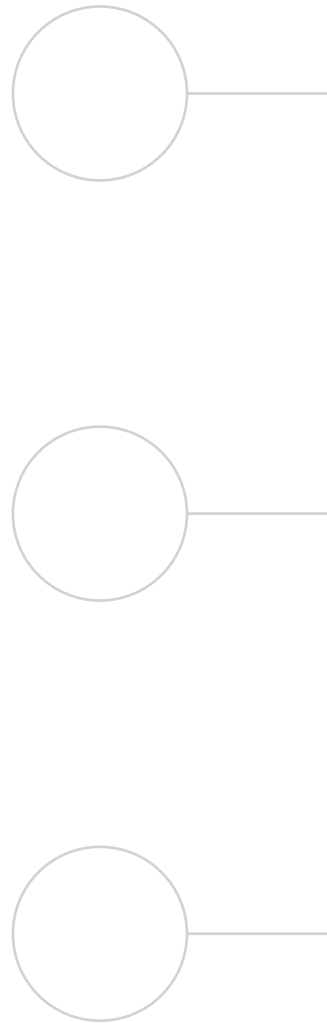
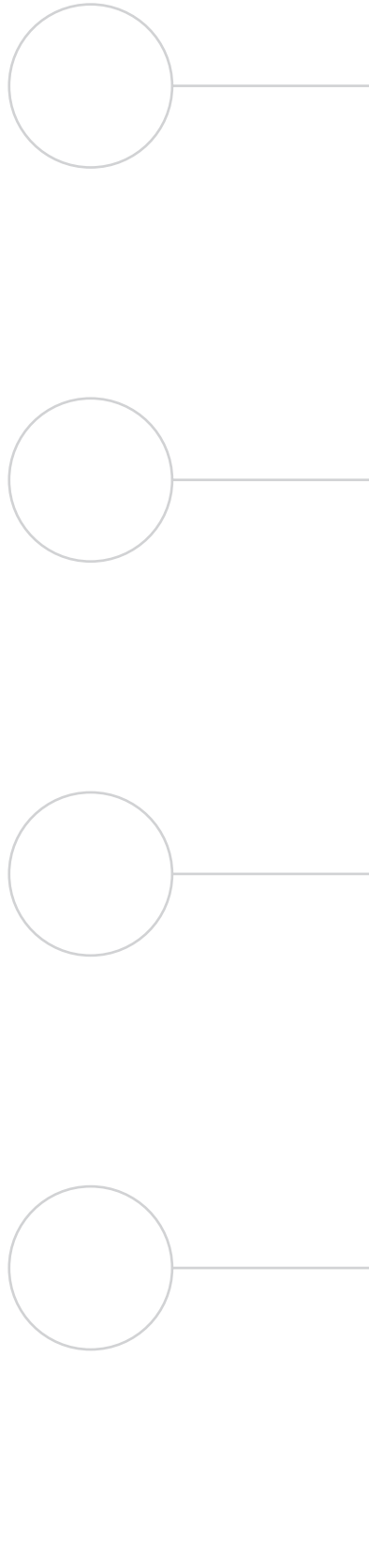
- a) services for which a provider was accredited,
- b) other services for which qualified certificates are issued and
- c) other certification services for electronic signatures.

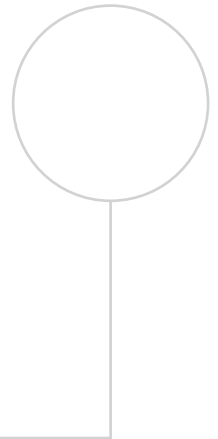
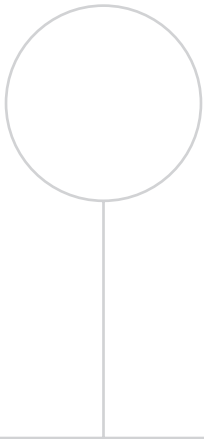
The directory is designed according to public key infrastructure. In the technical implementation RTR-GmbH paid attention to utmost technology neutrality and compliance with all major technical standards, also coordinating the directory with the certification authority A-SIT. For the crypto adapter IBM 4758-023 used by the supervisory authority for the generation of secure signatures, A-SIT issued a certificate under the SigG.

The certificates of the supervisory authority are issued in a separate room on the premises of the supervisory authority, which may be entered only by two persons together. In this room, the computer with the crypto adapter is located in a safe that can be only opened also by two persons jointly ("four-eyes" principle). Access to the crypto adapter is also subject to a "four-eyes" principle. The certificates issued by the supervisory authority and certificate revocation lists are provided by servers that are located in a computer centre and monitored around the clock in the Internet by means of Hyper Text Transport Protocol (HTTP) and Light Weight Directory Access Protocol (LDAP; each with and without Secure Socket Layer - SSL). For further information see the web site of the supervisory authority <http://www.signatur.rtr.at>.

4.3 International network interconnection

In 2002, RTR-GmbH played a decisive role in the network interconnection with other supervisory authorities and accreditation bodies according to the European Signature Directive. In June 2002, the Forum of European Supervisory Authorities for Electronic Signatures (FESA) was established at a meeting of the supervisory authorities, which addresses cooperation between the different European supervisory authorities and harmonisation of their respective activities.





5. Broadband Initiative Austria

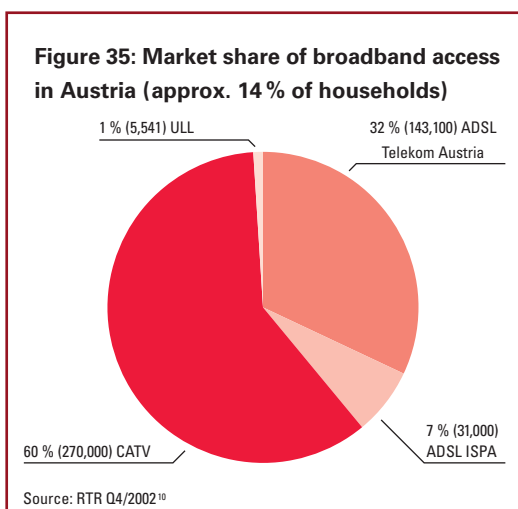
5.1 The term “broadband”

Generally, “broadband” refers to a great number of technologies that allow transferring large amounts of data in relatively short time. With regard to the bandwidth (transmission capacity), there exists no uniform definition as to where broadband begins. In everyday usage, a transmission speed beyond that of the Integrated Services Digital Network (ISDN) (> 144 kbit/s) is already called broadband. Meanwhile, 512 kbit/s via Asymmetric Digital Subscriber Line (ADSL) or comparable performance via cable modem have become established as state of the art. In future, the term “broadband” will be linked to the transport of moving images in good quality. According to the present state of compression technology, it is approx. 768 kbit/s, and higher, that may be regarded as “real” broadband access. Furthermore, “broadband” is at present (almost) exclusively used to refer to broadband Internet access via PC. Due to technological convergence, broadband services will be also retrievable on other platforms, e.g. digital TV sets, in the medium term. The transmission media as such, i.e. either (cable TV) coaxial cables, copper twin wires (telephone), optical fibre or satellite communications, as well as the transmission technologies, e.g. ADSL or cable modem, are unimportant for the customers *a priori*. What is important are services (e.g. www, e-mail), high (guaranteed) transmission speed, price, cost control (flat rate, fair use) and an “always on” functionality.

With regard to services/applications, at present only relatively few are offered that require such a high transmission speed almost in real time. In this context, reference shall be made, on the one hand, to the business customer segment, where e.g. the total amount of e-mails or Internet usage (or Server and Application Provisioning) requires broadband Internet access. In the private customer segment, however, it is the peer-to-peer services (file sharing) in the style of KaZaA, mainly for video and music clips, that require broadband Internet access.

5.2 Internet access and broadband Internet access in Austria

At the end of 2002, a total of approx. 450,000 broadband Internet lines (approx. 14 % penetration related to households, or 53 related to 1,000 inhabitants) were distributed as follows:



In 1996, UPC-Telekabel was the first to offer broadband Internet access, called “teleweb”, to private households in Vienna. This product was renamed “Chello” in 1999. Telekom Austria followed in November 1999 and has, since then, offered ADSL under the name “AonSpeed”, the end-user tariffs being modelled on those of UPC-Telekabel. From the total of 240 cable TV operators, which supply about one third of the 3.1 million Austrian households, about 90 also provide Internet access. Telekom Austria, at present, supplies approx. 80 % of the households with high bit-rate ADSL. Other operators or ISPs can rely on the network infrastructure of Telekom Austria in two ways: either via unbundled local loops by means of which about 1 % of all broadband connections are provided, or ISPs, in particular, make use of the second option, i.e. the ISPA offering (“ADSL Wholesale Offer”, “Bitstreaming”) of Telekom Austria.

¹⁰ Cable TV penetration extrapolated from the past.

Info Box 7: Unbundling

In the event of full unbundling, the copper pair at the main distribution frame is no longer conducted to the local switch of Telekom Austria but is directly – electrically coupled – transferred to the unbundling partner. If unbundling is put into practice by means of “shared use”, only one high bit-rate service (e.g. ADSL) is provided by the unbundling partner, voice telephony service remains with the incumbent network operator (Telekom Austria). Telephone and data traffic are separated by a frequency filter (“splitter”) upstream of the Telekom Austria switch. With sub-loop unbundling, access to parts of the local loop is made available at the relevant switching units. Local loop unbundling does not only allow for price differentiation (as in the operation of carrier networks) but also creates the conditions for the development of new markets for services and for a further differentiation of the product range from that of the SMP operator. This enables ANBs and service providers to flexibly design innovative offers that are custom-made for individual customer groups.

Info Box 8: Bitstream Wholesale Offer

Here, transport of the data is performed by Telekom Austria which also owns the modems at the user and exchange sites (DSLAM). This bit stream, hence the term “bitstreaming” for this access variant, is transferred to the network of the contract partner at a defined access point. This access variant has the advantage that it is not necessary to install cost-intensive equipment (DSLAM) at each unbundling point and to connect each unbundling point to the core network (backhaul).

Figure 36: Lines in the course of time for Chello (cable TV) and ADSL (Telekom Austria)

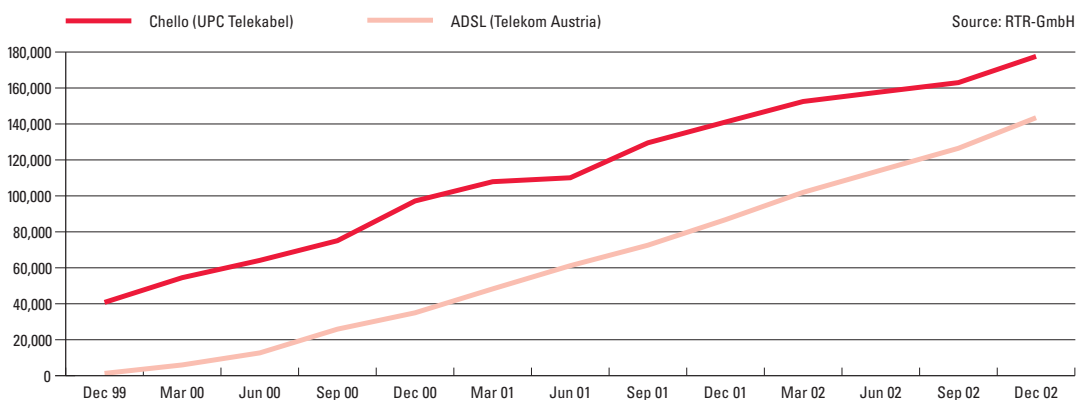


Figure 37: Internet penetration EU by households

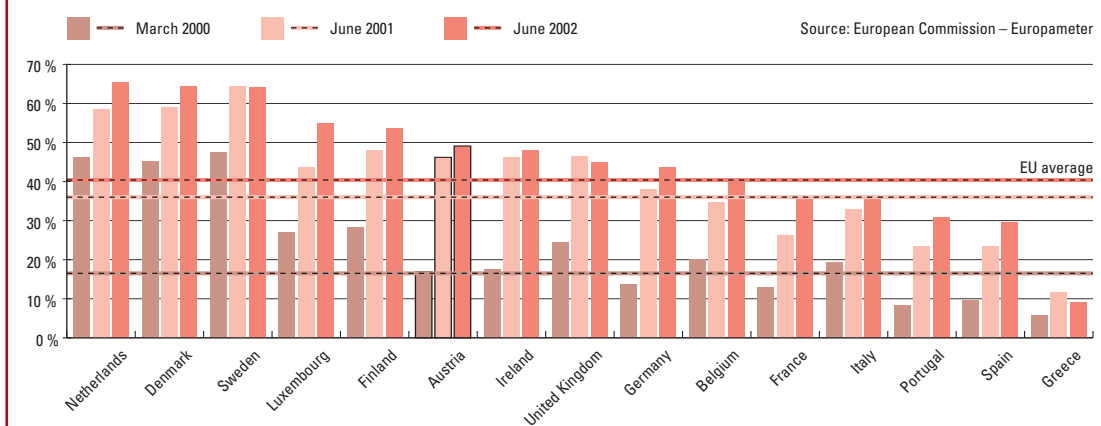


Figure 36 shows the development of broadband Internet lines in Austria on the basis of the line figures of Chello (UPC via cable TV) and AonSpeed (Telekom Austria); for the remaining 90 cable TV companies no time series is available.

No figures are available on the number of leased lines which are mainly used for broadband Internet access in the business customer segment.

High bit-rate connection is also possible by means of Wireless Local Loop systems (WLL; Point to Multipoint). These frequencies for WLL in the frequency range of 26 GHz were assigned to Star 21 and Broadnet in February 2001 for a total of € 1.353 million but have not been used so far.

In addition, "www.blizznet.at" (Wienstrom) 2002 with "Fibre to the Home" (FTTH) started test operation in Vienna, similar to the success model of Milan, "www.fastnet.it" (ebiscom).

Wireless LAN (WLAN, WiFi) is offered by a few operators, e.g. metronet and eWave, in the public frequency range of 2.4 GHz. Provisions for the use of the extended frequency range 5.15 GHz are being worked out.

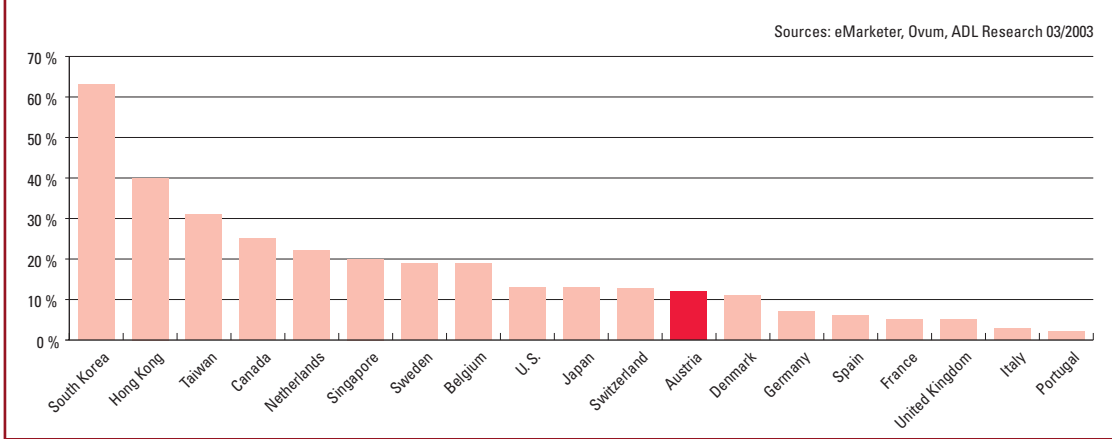
Additional transmission technologies to be mentioned are e.g. access via satellite or Powerline Communications (PLC), i.e. data transport via the low-voltage powerline network.

5.3 International comparison

In terms of general Internet usage (low and high bit-rate connections), Austria, related to households, with 50% is above the European average of almost 40% (see Figure 37).

The share of broadband usage, related to households, is also still above the European average of 9%, increasing from 13% in Q3/2002 to 14% in Q4/2002. However, by international comparison, the states are leading in which broadband Internet access had been strongly promoted (see Figure 38).

Figure 38: Broadband penetration in Europe by households



5.4 Regulatory situation

Unbundling of the local loop has, in fact, been possible in Austria since 1999. The legal bases for unbundling are contained in the TKG, the Interconnection Ordinance (ZVO) and the Regulation (EC) No 2887/2000 of the European Parliament and of the Council.

The “ADSL Wholesale Offer” was accomplished by private-law agreement between Telekom Austria and the Association of Internet Service Providers Austria (ISPA) in March 2000 and is continuously adapted to current circumstances.

Thus, competitors, potentially, have full access both in the fixed network and with regard to radio communications.

5.5 The Broadband Initiative 2003 of RTR-GmbH

Investments in broadband infrastructure do not create added value *per se* but lay the foundation for the information society, entailing positive growth and innovation effects at the preceding, succeeding and lateral stages of the value chain. This starts out with increased sales in the telecommunications industry, adds growth impulses to the supplier industry and ends in increased productivity in other economic areas, e.g. effects on employment in the content area.

The investments in broadband infrastructure and broadband applications are therefore not for the benefit of the industries that make them but

- the benefit is passed on via succeeding and lateral sectors of the economy
- which, by means of a strong nationwide broadband network including services and usable content,
- can increase their productivity and thus their competitiveness and, by this,
- increase the quality of the location.



The resulting total benefit to the national economy exceeds the investments many times over. These positive growth impulses mean that the resources used multiply along the whole value chain, thereby generating increased prosperity of the entire national economy.

A universally available broadband infrastructure, together with efficient services and broadly usable content, means an improvement in Austria's attractiveness as economic location and helps to distinguish Austria from countries with low labour costs.

The first goal of the Broadband Initiative 2003 of RTR-GmbH is to raise the awareness, i.e. to point out the positive social and economic effects associated with "broadband" to the decision makers, opinion formers and the public at large. Together with the symposium of RTR-GmbH of 02.04.2003, the Broadband Status Report, available early in May 2003, will present in detail the chances, but also the potential drawbacks of missing these chances.

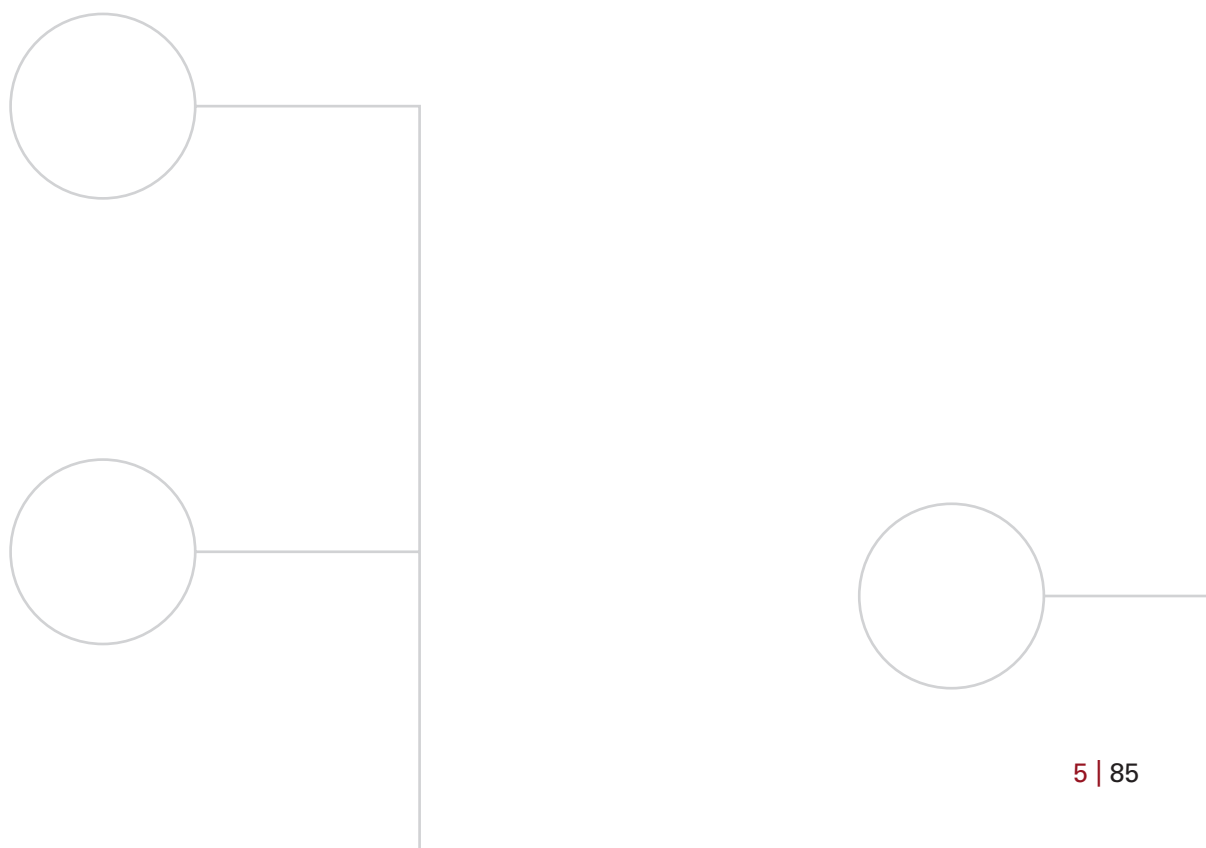
The goals defined cannot be reached by making a sprint, but this is a long-distance run, mainly because success in this field means to make broadband universally and sustainably available in Austria.

This requires

- that the introduction of broadband is raised to a national task,
- full geographical coverage,
- the integration of all relevant stakeholders, such as associations and regional initiatives, into a uniform framework,
- the increased orientation of the public sector to broadband applications by offering appropriate content and own use of broadband services and
- legal and regulatory measures to enable a thriving market.

The second goal of this initiative is therefore to start a comprehensive communication and discussion process and to encourage the creation of a task force at a high political level to coordinate and control all relevant activities in Austria on the basis of a master plan.

In the scope of its statutory function as competence centre, in the role of a think-tank, RTR-GmbH is in the best position to make a decisive contribution to this process. Subsequently, symposiums, accompanying benchmark reports and background information will be provided in the RTR-GmbH newsletter and at <http://www.rtr.at/breitband>.







6. “Alternative Dispute Resolutions” (ADR) at RTR-GmbH

In addition to the dispute resolution procedures provided for in the TKG, RTR-GmbH as a service-oriented authority has provided ADR in the event of conflicts between market players since April 2003.

This term originating in the USA covers all forms of out-of-court conflict resolution. Besides the resolution of a conflict by a third party or submission of the conflict parties to arbitration of a third party, ADR also comprise moderation or mediation of negotiations between conflict parties, which is the type of ADR RTR-GmbH gives preference to.

With the introduction of ADR, RTR-GmbH offers a platform to the market players, which is to allow and favour conflict resolution that is satisfactory to the conflict parties, future-oriented and fast, compared to formal court or administrative proceedings. The chief principle of ADR is that the conflict parties act along self-determined lines, arriving at a common solution that meets their interests in the best possible way. ADR shall create a win-win situation between the conflict parties, which has a positive effect on future business relations, saves resources and time of the conflict parties and provides legal certainty due to avoiding long appellate proceedings.

In December last year, RTR-GmbH conducted a survey among regulators regarding ADR. In this process, special interest was given to the questions whether ADR are used by the regulators for the resolution of conflicts and, if so, for which problem areas they are used, as well as the experiences already made with ADR.

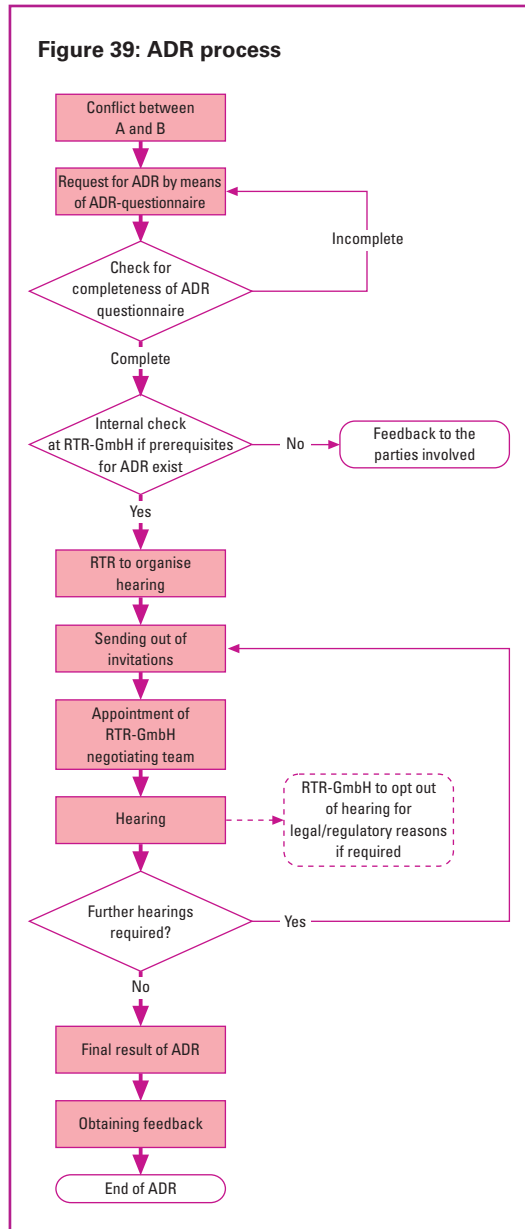
It emerged in the course of the survey that the different regulators welcome the use of ADR and that, if in use, they are basically appreciated by the market players. The use of ADR usually relies on a statutory basis in the respective national telecommunications law.

Also the technical association of telecommunications and broadcasting companies of the Austrian Economic Chamber submitted a statement of its members, in which potential conflict resolution procedures were considered.

The positive response to ADR confirmed RTR-GmbH's intention to institute ADR also for Austrian market players.

Subsequently, a team of RTR-GmbH worked out an ADR process that is used as a basis for performing ARD. In Figure 39, the ADR process is explained, taking two conflict parties (A and B) as an example; however, it applies to any number of conflict parties. The starting point for the ADR process is a conflict between at least two conflict parties.

The ADR process at RTR-GmbH is initiated by a corresponding request by means of an ADR questionnaire. This questionnaire is used to record the facts of the conflict briefly and to the point and to facilitate the conducting of ADR. It is available on the web site of RTR-GmbH for download, encryption per PGP being offered to guarantee data security. The ADR process may be initiated much faster if the conflict parties turn to RTR-GmbH jointly.



Subsequently, the regulatory authority checks if the prerequisites for conducting ADR exist. It has developed, *inter alia*, the following criteria that have to exist so that, according to RTR-GmbH, conflict resolution by means of ADR will produce the required result:

- before conducting an ADR process, the conflict parties must have first tried to solve the conflict by themselves;
- the subject matter of the conflict (the issue in conflict) must be obviously connected with the provision of telecommunications services;
- conflict parties or their interest groups that are not end-users are entitled to ADR. End-users are users that do not provide public telecommunications services. Exception: retailers of telecommunications services, publishers of subscriber directories;
- a conflict between the same parties, which has already been subject of ADR or has been decided with legal effect, cannot be submitted to ADR again.

In justified cases, RTR-GmbH reserves the right not to conduct ADR, of which the conflict parties will be advised.

If the review of criteria shows that the conflict submitted to RTR-GmbH is “capable of ADR”, RTR-GmbH arranges for the ADR hearing by sending invitations to the conflict parties and appointing the negotiating team of RTR-GmbH.

In preparing for the hearing, the regulatory authority will ask the conflict parties to consider different conceivable variants for conflict resolution. Written statements, replies etc. are not provided for in the ADR process in the interest of a fast procedure. Documents required to judge the facts of the conflict shall be presented directly at the hearing.



The representatives delegated by the conflict parties must have sufficient negotiating power to enable them to resolve the conflict finally and by agreement during the hearing.

It is the objective of the ADR hearing to achieve, by agreement, an acceptable resolution of the conflict. As a matter of principle, RTR-GmbH accompanies the hearing as moderator or mediator. It does not make any proposals for dispute resolution and does not “decide” on the conflict, in order to give the conflict parties the opportunity to work out a satisfactory solution for themselves.

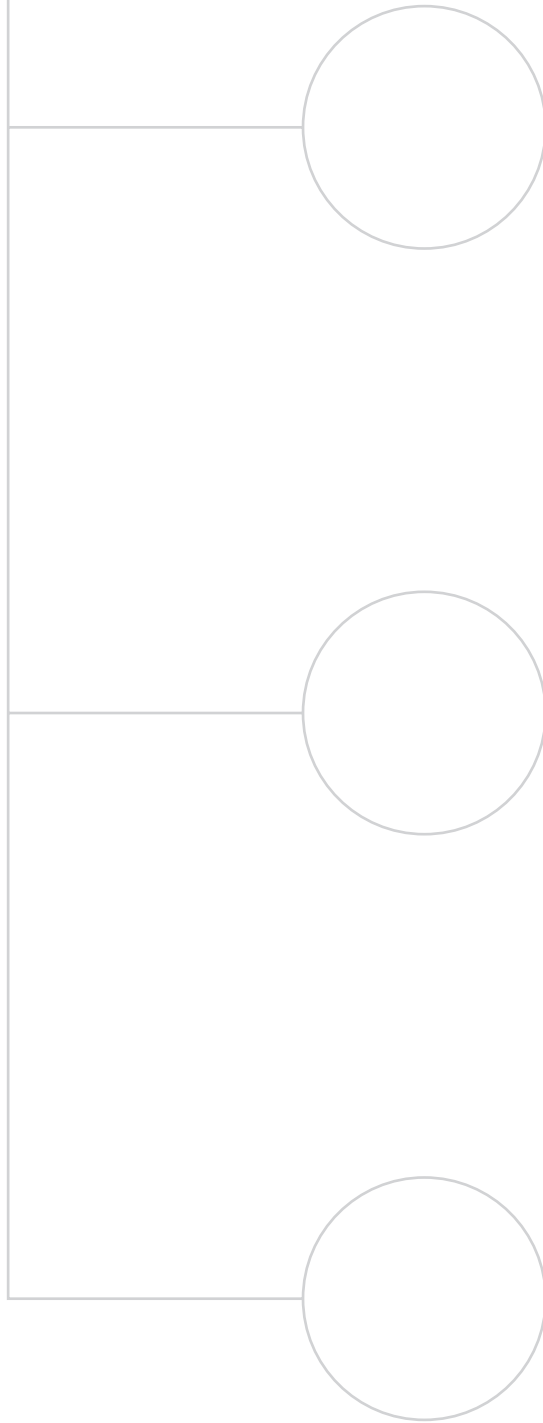
In individual cases, RTR-GmbH reserves the right to opt out of the hearing if the solution being negotiated should turn out to be extremely problematic for RTR-GmbH from a regulatory or legal point of view.

Conflict resolution that satisfies all conflict parties is the optimum result of an ADR hearing. However, any other arrangement may be also regarded a successful result of a hearing (e.g. scheduling another hearing, agreement on a part of the conflict etc.).

According to the motto “strengthening strengths and weakening weaknesses”, RTR-GmbH will ask for a feedback from the conflict parties on the course of events of the ADR process and the negotiating team after a negotiation result has been reached (What was helpful? What helped/hindered the conflict resolution?).

With ADR, RTR-GmbH is offering a service for the market, which contributes to fast, self-determined and future-oriented conflict resolution.





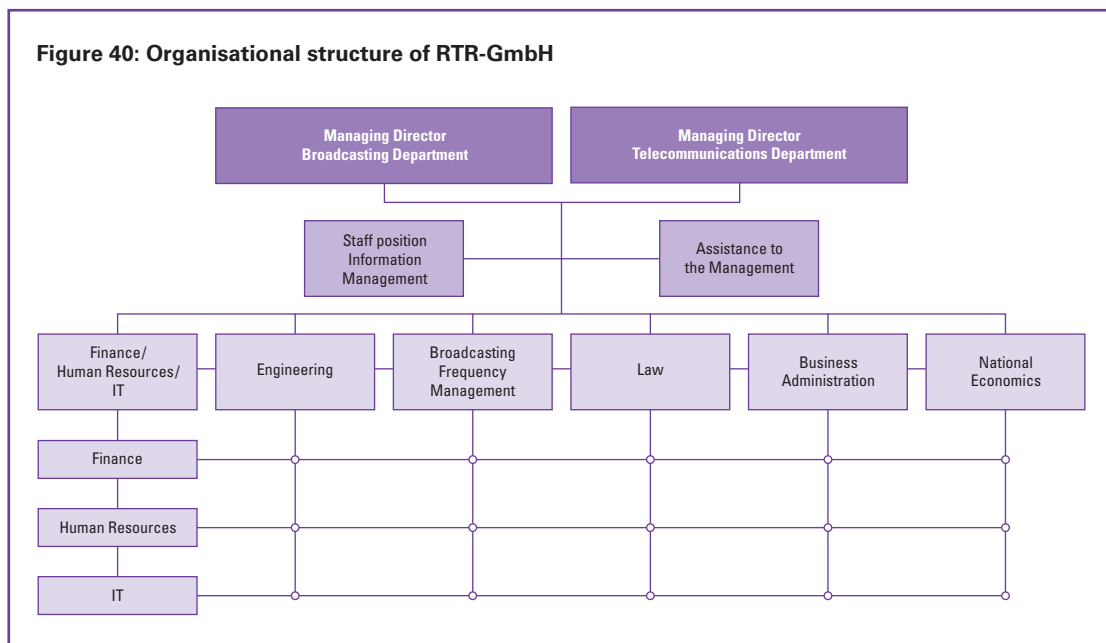
7. The Company and its Environment

7.1 RTR-GmbH

Rundfunk und Telekom Regulierungs-GmbH (RTR-GmbH) was established by the KOG, which took effect on 01.04.2001, and has the main task of providing administrative assistance to KommAustria and the TKK. The company is headed by two managing directors, one for the Broadcasting Department and one for the Telecommunications Department. The managing director of the Broadcasting Department is appointed by the Federal Chancellor and the managing director of the Telecommunications Department is appointed by the Federal Minister of Transport, Innovation and Technology. In technical matters of these departments the company is run by the respective managing director alone, in all other matters by both managing directors jointly. The shares of the company are wholly owned by the state. During the business year 2002, the following managing directors were responsible for RTR-GmbH:

- Broadcasting Department: Dr. Alfred Grinschgl (01.01.–31.12.2002)
 - Telecommunications Department: Univ.-Prof. Dr. Heinrich Otruba (01.01.–31.10.2002); Dr. Georg Serentschy (25.11.–31.12.2002)
- Pursuant to § 5 (3) KOG, RTR-GmbH has the following tasks:
- execution of the tasks assigned to RTR-GmbH under the TKG, BGBl I No. 100/1997,
 - execution of the tasks under the SigG, BGBl I No. 190/1999,
 - execution of the tasks of the supporting body of KommAustria,
 - conducting of proceedings for dispute resolution (§ 8 KOG), and
 - development and management of a competence centre, in particular with regard to issues of the convergence of media and telecommunications.

Figure 40: Organisational structure of RTR-GmbH



The organisation of RTR-GmbH is characterised by the following principles:

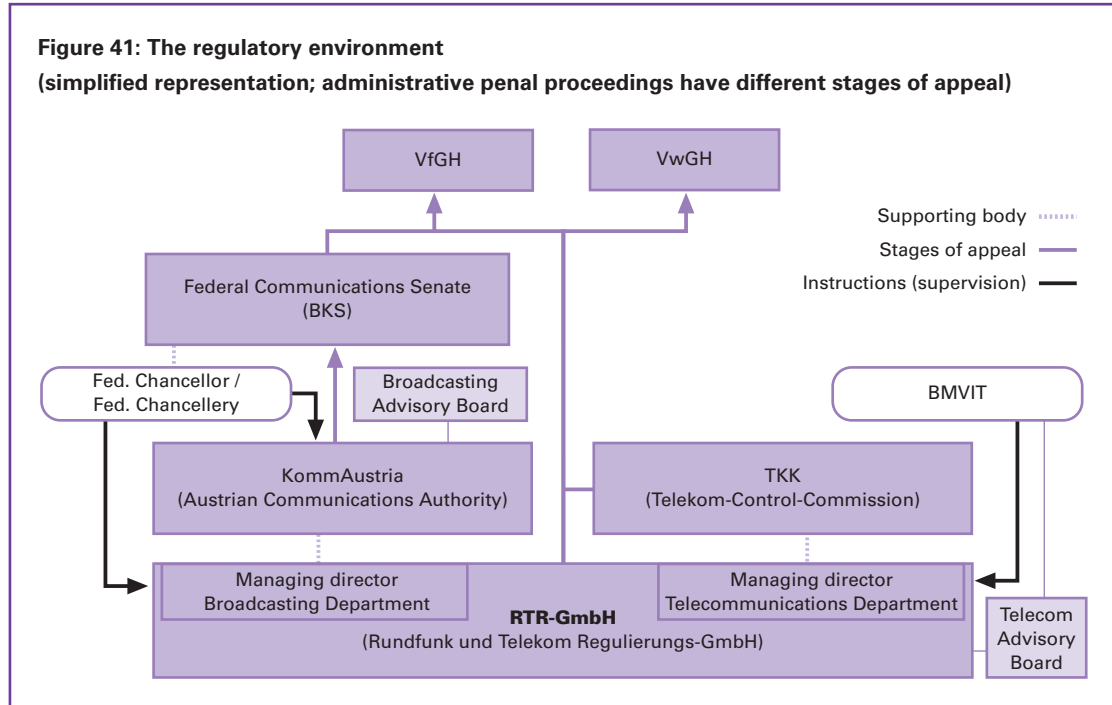
- interdisciplinary operation,
- flat hierarchy,
- flexibility of the staff,
- transparency within the company and in the outside relations,
- emphasis on basic and advanced training as well as convergent exchange of experiences between the two Departments and, finally,
- efficient knowledge management as essential success factor.

7.2 Integration of RTR-GmbH into the regulatory environment

As already described in the account of the statutory tasks, RTR-GmbH is integrated into a very differentiated regulatory environment. As supporting body of the authorities KommAustria and TKK, it carries out the basic work preparing the regulatory deci-

sions. This applies, in particular, to the decisions of the TKK and, to a somewhat limited extent, also to KommAustria, which is made up of three full-time members.

Decisions by the TKK can be appealed to the Constitutional Court or the Administrative Court. Decisions by KommAustria can be appealed by filing a complaint to the BKS, acting as second instance. After that, the parties may appeal to the Constitutional Court or the Administrative Court. The Federal Chancellor has the right to issue instructions to KommAustria. By the same token, the managing director of the Broadcasting Department is bound by instructions, which shall be in writing and shall be published. The TKK is a collegial body with quasi-judicial functions, not bound by any instructions (Article 133 item 4 B-VG). In the field of telecommunications, the Federal Minister of Transport, Innovation and Technology is entitled to issue instructions to the managing director of the Tele-



communications Department; these instructions, too, have to be in writing. Last but not least, the chairperson of the TKK (or the member referred to in the rules of procedure of the TKK) and the head of KommAustria are entitled to issue instructions to the staff of RTR-GmbH concerning technical issues.

Figure 41 illustrates the integration of RTR-GmbH into the Austrian regulatory environment, also taking into account instruction relations and possible legal remedies or stages of appeal.

7.3 The Austrian Communications Authority (KommAustria)

KommAustria is an authority directly subordinate to the Federal Chancellor, comprising the head of the authority and, at present, a staff of two. With regard to its outward business practices, it is an independent authority and relies on RTR-GmbH, as supporting body, in the execution of its functions. KommAustria takes first-instance decisions within the scope of its official efforts and performs tasks, in particular, within the framework of the following acts:

- Private Radio Act (PrR-G),
- Private Television Act (PrTV-G),
- Telecommunications Act (TKG),
- KommAustria Act (KOG),
- Access Control Act (ZuKG).

In 2002, the communications authority was composed as follows:

- HR Dr. Hans Peter Lehofer (head),
- HR Dipl.-Ing. Franz Prull (deputy),
- Mag. Michael Ogris.

Contrary to the members of the TKK, the head and the staff of KommAustria are civil servants, or non-civil servants, who work full-time and have their offices and workplaces on the premises of RTR-GmbH.

7.4 The Telekom-Control-Commission (TKK)

The Telecommunications Department of RTR-GmbH acts as supporting body for the TKK in matters pursuant to § 111 TKG, which gives an exhaustive list of the functions of the TKK. Within the scope of its tasks, the TKK enforces the TKG and the SigG as well as ordinances based on these acts.

Until the end of its official term at the end of October 2002, the TKK was composed as follows:

Dr. Eckhard Hermann (chairman)
Dr. Wolfgang Schramm (substitute)

Dkfm. Dr. Oskar Grünwald
Dkfm. Alfred Reiter (substitute)

Univ.-Prof. Dipl.-Ing. Dr. Gottfried Magerl
Dipl.-Ing. Peter Knezu (substitute)

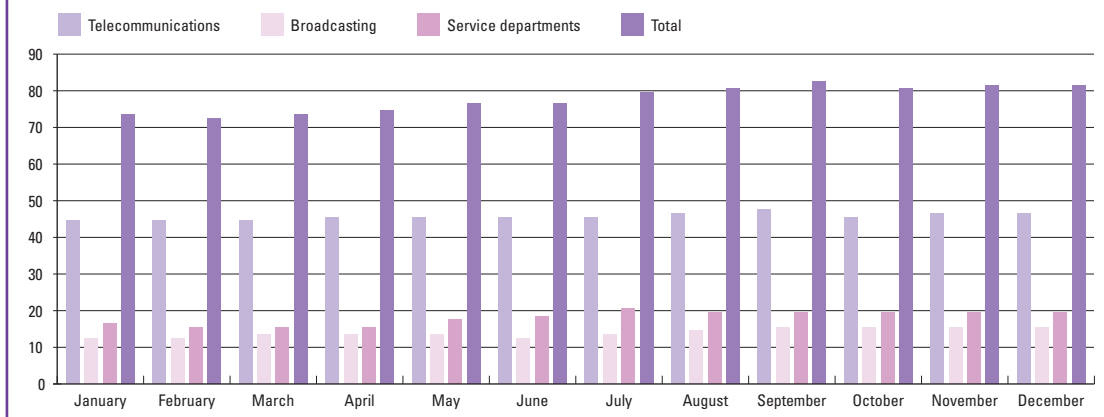
Following the corresponding nomination decisions by the federal government and the Federal Minister of Transport, Innovation and Technology, the TKK held its first session of the period under review on 11.11.2002, with the new members participating:

Dr. Eckhard Hermann (chairman)
Dr. Elfriede Solé (substitute)

Dr. Erhard Fürst
Dr. Martin Hagleitner (substitute)

Univ.-Prof. Dipl.-Ing. Dr. Gottfried Magerl
Dipl.-Ing. Peter Knezu (substitute)

Figure 42: Staff development January – December 2002



7.5 Staff development

To be able to fulfil the tasks pursuant to the KOG and the TKG, an average number of 82 full-time jobs were planned for the business year 2002.

In December, 82 persons were employed full-time. Per 31.12.02, 47 of them worked in the Telecommunications Department (including one full-time job in the sub-division responsible for electronic signatures), 16 worked in the Broadcasting Department and 19 persons worked in the service departments (including one full-time job in the sub-division responsible for electronic signatures) (see Figure 42).

7.6 The supervisory board of RTR-GmbH

In 2002, the supervisory board of RTR-GmbH consisted of the following persons:

- Dr. Wilfried Stadler (CEO, Investkredit AG), chairman of the supervisory board,
- Dr. Franz Semmernegg (board member, Kapsch Aktiengesellschaft), deputy chairman of the supervisory board,
- Dr. Matthias Traimer (head of Department V/4 – Media, Federal Chancellery), member of the supervisory board,
- Werner Weidlinger (telecommunications expert, cabinet of the Federal Minister, BMVIT), member of the supervisory board.

The staff was represented in the supervisory board by:

- Dr. Dieter Staudacher, LLM (member of the works council, RTR-GmbH),
- Mag. Sabine Joham (member of the works council, RTR-GmbH).

7.7 Annual accounts 2002 of RTR-GmbH

For the annual accounts of the business year from 01.01.2002 to 31.12.2002 an unqualified audit report of the auditing company Deloitte & Touche is available. From the annual accounts 2002, the income statement and the balance sheet are presented. Since 2001 was a short business year, a comparison of the results of 2002 with figures of the previous year are informative only to a limited extent. The major part of the sales revenues of RTR-GmbH in 2002 came from the financing contributions according to § 10 KOG (€ 8.47 million). The accumulated net loss of € 1.19 million resulted mainly from expenditures incurred in complying with the tasks according to the SigG. The operating result from the tasks according to the KOG is balanced, that from the tasks under the SigG is covered by the capital increase of € 2.11 million in 2000.

Figure 43: Income statement of the business year 2002

	01.01. – 31.12.2002 in €	01.04. – 31.12.2001 in thousand €
1. Sales revenues	8,498,444.11	5,726
2. Other operating income		
a) Income from the retransfer of provisions	150,297.93	44
b) Others	205,327.12	66
3. Personnel expenses		
a) Salaries	-4,240,458.08	-2,970
b) Cost of severance payments	-108,471.45	-50
c) Cost of statutory social insurance contributions, as well as remuneration-dependent charges and mandatory contributions	-834,256.79	-544
d) Voluntary social expenditure	-60,282.00	-19
4. Depreciation of intangible fixed assets and tangible assets	-647,669.34	-572
5. Other operating expenses		
a) Taxes, unless taxes on income	0.00	-2
b) Others	-3,448,181.36	-2,156
6. Sub-total of items 1 to 5, Operating income (EBIT)	-485,249.86	-477
7. Income from other investments held as financial assets	67,220.39	129
8. Other interest and similar income	63,900.81	97
9. Expenses from financial assets	-76,643.15	0
10. Interest and similar expenses	-15.38	-2
11. Sub-total of items 7 to 10, Financial result	54,462.67	223
12. Profit on ordinary activities = net loss	-430,787.19	-254
13. Retransfer of untaxed reserves	51,398.73	18
14. Loss carryforward from previous year	-808,269.79	-573
15. Net loss	-1,187,658.25	-808

Figure 44: Balance sheet of the business year 2002

	31.12.2002 in €	31.12.2001 in thousand €		31.12.2002 in €	31.12.2001 in thousand €
ASSETS			LIABILITIES		
A. Fixed assets			A. Capital stock		
I. Intangible assets			I. Nominal capital	5.741,153.90	5,741
1. Industrial property rights and similar rights	302,072.44	467	II. Net loss for the year (of which carryforward € 808,269.79	-1.187,658.25	-808
	302,072.44	467		4.553,495.65	4,933
II. Tangible assets			B. Untaxed reserves		
1. Leasehold improvements	488,350.35	535	I. Other untaxed reserves – Investment allowance acc. to § 10 Income Tax Act	33,994.31	85
2. Other fixtures and fittings, tools and equipment	262,713.34	219		33,994.31	85
	751,063.69	754	C. Provisions		
III. Financial assets			1. Provisions for severance payments	218,900.00	162
1. Investments held as fixed assets	2.844,728.31	2,855	2. Other provisions	998,880.00	1,136
	2.844,728.31	2,855		1.217,780.00	1,298
	3.897,864.44	4,076	D. Liabilities		
B. Current assets			1. Accounts payable	428,250.28	480
I. Accounts receivable			2. Other liabilities, of which for taxes € 345,768.69, for social security € 88,353.23	2.165,012.91	2,617
1. Accounts receivable (trade debtors)	3.251,820.02	1,037		2.593,263.19	3,097
2. Other receivables	28,366.88	19			
	3.280,186.90	1,055			
II. Cash on hand and cash in banking accounts	1.115,930.71	4,229			
	4.396,117.61	5,285			
C. Prepayment and accrued income	104,551.10	53			
	8.398,533.15	9,413		8.398,533.15	9,413

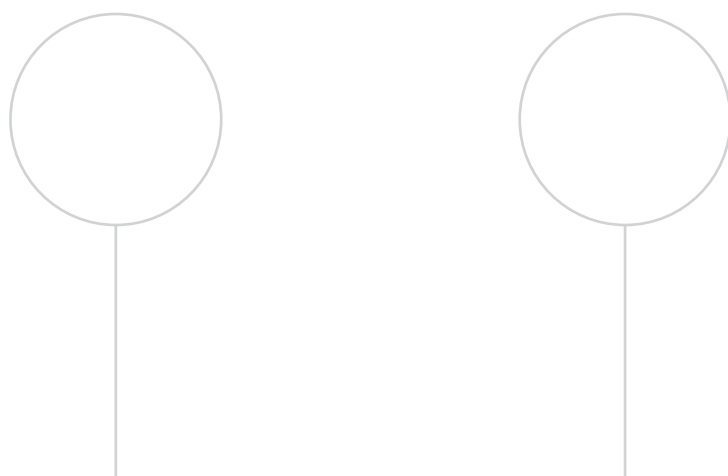
Expenses of the Broadcasting and Telecommunications Departments

The company RTR-GmbH draws up annual accounts that do not show a breakdown of the funds into sectors. Therefore, Figure 45 gives the main

items of the income statement broken down into the Telecommunications and Broadcasting Departments, to make the sector specific expenses transparent. For 2002, this breakdown of expenses was as follows:

Figure 45: Expenses of RTR-GmbH according to Departments

<i>in thousand €</i>	<i>Telecommunication</i>	<i>Broadcasting</i>	<i>Total</i>
Sales revenues	6,055	2,444	8,499
Other operating income	258	97	355
Personnel expenses	-4,007	-1,236	-5,243
Depreciation	-444	-204	-648
Other operating expenses	-2,354	-1,095	-3,449
Operating income (EBIT)	-492	6	-486
Financial result	61	-6	55
Profit on ordinary activities	-431	0	-431
Retransfer of untaxed provisions	36	15	51
Loss carryforward	-816	8	-808
Net loss	-1,211	23	-1,188







8. Annex

8.1 Relevant legal sources

8.1.1 EU law

Regulation (EC) No 2887/2000

of the European Parliament and of the Council of 18.12.2000 on unbundled access to the local loop (OJ L336, 30.12.2000, p. 4).

Framework Directive (2002/21/EC)

Directive of the European Parliament and of the Council of 07.03.2002 on a common regulatory framework for electronic communications networks and services (OJ L108, 24.04.2002, p. 33).

Access Directive (2002/19/EC)

Directive of the European Parliament and of the Council of 07.03.2002 on access to, and interconnection of, electronic communications networks and associated facilities (OJ L108, 24.04.2002, p. 7).

Authorisation Directive (2002/20/EC)

Directive of the European Parliament and of the Council of 07.03.2002 on the authorisation of electronic communications networks and services (OJ L108, 24.04.2002, p. 21).

Voice Telephony Directive (98/10/EC)

Directive of the European Parliament and of the Council of 26.02.1998 on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment (OJ L101, 01.04.1998, p. 24), replacing Directive 95/62/EC of the European Parliament and of the Council on the application of open network provision (ONP) to voice telephony (OJ L321, 30.12.1995, p. 6).

Universal Service Directive (2002/22/EC)

Directive of the European Parliament and of the Council of 07.03.2002 on universal service and users' rights relating to electronic communications networks and services (OJ L108, 24.04.2002, p. 51).

Directive on Privacy and Electronic Communications (2002/58/EC)

Directive of the European Parliament and of the Council of 12.07.2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (OJ L201, 31.07.2002, p. 37).

Interconnection Directive (97/33/EC as amended by 98/61/EC)

Directive of the European Parliament and of the Council of 30.06.1997 on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of open network provision (OJ L199, 26.07.1997, p. 32), as amended by Directive 98/61/EC of the European Parliament and of the Council of 24.09.1998 amending Directive 97/33/EC with regard to number portability and carrier pre-selection (OJ L268, 03.10.1998, p. 37).

8.1.2 Austrian law

8.1.2.1 Acts

Access Control Act (ZuKG)

(Zugangskontrollgesetz) Federal act on the protection of services subject to access control BGBl I No. 60/2000.

Austrian Broadcasting Corporation Act (ORF-G)

(ORF-Gesetz) Federal act on the Austrian Broadcasting Corporation, BGBl No. 379/1984, as amended by BGBl I No. 100/2002.

Cable and Satellite Broadcasting Act (KSRG)

(Kabel- und Satelliten-Rundfunkgesetz) Federal act enacting provisions on cable and satellite broadcasting, BGBl I No. 42/1997.

**Communications Authority Act (KOG)**

(KommAustria-Gesetz) Federal act on the creation of an "Austrian Communications Authority" ("KommAustria") and a Federal Communications Senate, BGBl I No. 32/2001.

Federal Constitutional Act (B-VG)

(Bundes-Verfassungsgesetz) BGBl No. 1930/1, as last amended by BGBl I No. 99/2002.

General Administrative Procedures Act (AVG)

(Allgemeines Verwaltungsverfahrensgesetz) BGBl No. 51/1991, as last amended by BGBl I No 117/2002.

Private Radio Act (PrR-G)

(Privatradiogesetz) Federal act enacting provisions on private radio broadcasting, BGBl I No. 20/2001, as amended by BGBl I No. 136/2001.

Private Television Act (PrTV-G)

(Privatfernsehgesetz) Federal act enacting provisions on private television, BGBl I No. 84/2001.

Signature Act (SigG)

(Signaturgesetz) Federal act on electronic signatures, BGBl I No. 190/1999, as amended by BGBl I No. 137/2000, BGBl I No. 32/2001 and BGBl I No. 152/2001.

Telecommunications Act (TKG)

(Telekommunikationsgesetz) Federal act enacting a federal law on telecommunications, as well as amending the Telegraph Routes Act, the Telephone Rates Act and the Cable and Satellite Broadcasting Act, as well as adding supplementary provisions to the Broadcasting Act and the Broadcasting Ordinance, BGBl I No. 100/1997, as amended by BGBl I No. 98/1998, BGBl I No. 27/1999, BGBl I No. 159/1999, BGBl I No. 188/1999, BGBl I No. 26/2000, BGBl I No. 32/2001, BGBl I No. 32/2002, BGBl I No.134/2002 and BGBl I No. 16/2003.

8.1.2.2 Ordinances**Charges Ordinance (EVO)**

(Entgeltverordnung) Ordinance of the Federal Minister of Science and Transport determining the maximum charges for telecommunications connections, BGBl II No. 158/1999, as amended by BGBl II No. 380/2001.

Interconnection Ordinance (ZVO)

(Zusammenschaltungsverordnung) Ordinance of the Federal Minister of Science and Transport on a more detailed determination of interconnection, BGBl II No. 14/1998.

Numbering Ordinance (NVO)

(Numerierungsverordnung) Ordinance of the Federal Minister of Science and Transport concerning numbering, BGBl II No. 416/1997, as amended by BGBl II No. 89/2001 and BGBl II No. 100/2001.

Universal Service Ordinance (UDV)

(Universaldienstverordnung) Ordinance of the Federal Minister of Science and Transport determining the quality criteria for universal service, BGBl II No. 192/1999, as amended by BGBl II No. 173/2000.



8.2 Abbreviations

A

ADSL	<i>Asymmetric Digital Subscriber Line</i>
AK-TK	<i>Working Group Technical Coordination</i>
ANB	<i>Alternative network operator(s)</i>
ATO	<i>Analogue Turn Off</i>
AuC	<i>Authentication Register</i>
AVG	<i>General Administrative Procedures Act</i>

B

BGBI	<i>Federal Legal Gazette</i>
BKS	<i>Federal Communications Senate</i>
BMVIT	<i>Federal Ministry of Transport, Innovation and Technology</i>
B-VG	<i>Federal Constitutional Act BGBI No. 1930/1, as last amended by BGBI I No. 99/2002</i>

C

CATV	<i>Cable TV</i>
CDR	<i>Call Data Records</i>
CEPT	<i>Conférence Européenne des Administrations des Postes et des Télécommunications, http://www.cept.org</i>

D

DAB	<i>Digital Audio Broadcasting</i>
DBEG	<i>Digital Broadcasting Expert Group</i>
DSLAM	<i>Digital Subscriber Line Access Multiplexer</i>
DVB	<i>Digital Video Broadcasting</i>
DVB-T	<i>Digital Video Broadcasting – Terrestrial</i>

E

ECC	<i>Electronic Communications Committee</i>
EG	<i>European Community/Communities</i>
ENUM	<i>Telephone Number to Universal Resource Identifier Mapping</i>
EPG	<i>Electronic Program Guide</i>
EPRA	<i>European Platform of Regulatory Authorities, http://www.epra.at</i>
ERG	<i>European Regulators Group</i>
ERO	<i>European Radiocommunication Office</i>
ETI	<i>European Telecom International</i>
ETSI	<i>European Telecommunications Standards Institute, http://www.etsi.org</i>
EVO	<i>Charges Ordinance</i>

**F**

FB	<i>Department</i>
FL-LRAIC	<i>Forward Looking Long Run Average Incremental Costs</i>
FESA	<i>Forum of European Supervisory Authorities</i>
FTTH	<i>Fibre to the Home</i>
FM PT 24	<i>Frequency Management Project Group 24</i>

G

GB	<i>Gigabyte</i>
GHz	<i>Gigahertz</i>
GSM	<i>Global System for Mobile Communication</i>

H

HF	<i>Radio broadcasting</i>
HFCC	<i>High Frequency Coordination Conference</i>
HLR	<i>Home Location Register</i>
HVSt	<i>Central switching exchange</i>
HTTP	<i>Hyper Text Transport Protocol</i>

I

IC	<i>Interconnection</i>
IRG	<i>Independent Regulators Group</i>
ISDN	<i>Integrated Services Digital Network</i>
ISP	<i>Internet Service Provider</i>
ISPA	<i>Internet Service Providers Austria, http://www.ispa.at</i>
ITU	<i>International Telecommunication Union, http://www.itu.int</i>

K

KartGNov	<i>Amendment of the Restrictive Trade Practices Act</i>
kbit/s	<i>Kilobit per second</i>
kHz	<i>Kilohertz</i>
KOG	<i>Communications Authority Act</i>
KommAustria	<i>Austrian Communications Authority</i>
KSRG	<i>Cable and Satellite Broadcasting Act</i>
KW	<i>Short wave</i>

L

L-Band	<i>Frequency range of 1452 GHz, serves for regional transmission</i>
LDAP	<i>Light Weight Directory Access Protocol</i>
LAN	<i>Local Area Network</i>

**M**

MB	<i>Megabyte</i>
MHz	<i>Megahertz</i>
MNO	<i>Mobile Network Operator</i>
MSC	<i>Mobile Switching Center</i>
MVNO	<i>Mobile Virtual Network Operator</i>
MW	<i>Medium wave</i>

N

NARA	<i>National Administrations and Regulatory Authorities</i>
NSPC	<i>National Signalling Point Code</i>
NVO	<i>Numbering Ordinance</i>

O

ÖAK	<i>Austrian Circulation Control</i>
OECD	<i>Organisation for Economic Cooperation and Development, http://www.oecd.org</i>
OFB	<i>National Telecommunications Authority</i>
OGH	<i>Supreme Court</i>
ONP	<i>Open Network Provision</i>
ORF	<i>Austrian Broadcasting Corporation</i>
ORF-G	<i>Federal act on the Austrian Broadcasting Corporation</i>

P

PDA	<i>Personal Digital Assistant</i>
PGP	<i>Pretty Good Privacy</i>
PIB	<i>Principles of Implementation and Best Practice</i>
PLC	<i>Powerline Communications</i>
POTS	<i>Plain Old Telephone Service</i>
PrR-G	<i>Private Radio Act</i>
PrTV-G	<i>Private Television Act</i>
PTT	<i>Postal, Telegraph and Telephone Administration</i>
PTSG	<i>Post Structure Act</i>

R

RDS PI	<i>Radio Data System Program Identification</i>
RRC	<i>Regional Radiocommunication Conference</i>
RRG	<i>Regional Radio Act</i>
RTR-GmbH	<i>Rundfunk und Telekom Regulierungs-GmbH, http://www.rtr.at</i>

S

SigG	<i>Signature Act</i>
SMP	<i>Significant Market Power</i>
SSL	<i>Secure Socket Layer</i>
SMSC	<i>Short Message Service Center</i>

**T**

TACS	<i>Technical Assistance for Community Services</i>
TASL	<i>Local Loop</i>
T-DAB	<i>Terrestrial Digital Audio Broadcasting</i>
TETRA	<i>Terrestrial Trunked Radio</i>
TK	<i>Telecommunications</i>
TKC	<i>Telekom-Control-GmbH, now RTR-GmbH</i>
TKG	<i>Telecommunications Act</i>
TKK	<i>Telekom-Control-Commission</i>

U

UDV	<i>Universal Service Ordinance</i>
UKW	<i>Very High Frequency (VHF)</i>
UMTS	<i>Universal Mobile Telecommunications System</i>

V

VfGH	<i>Constitutional Court, http://www.vfgh.gv.at</i>
VStG	<i>Administrative Offences Act</i>
VNB	<i>Carrier Network Operator</i>
VwGH	<i>Administrative Court</i>

W






WARC	<i>World Administrative Radio Conference</i>
WettbG	<i>Competition Act</i>
WiFi	<i>Wireless Fidelity</i>
WLAN	<i>Wireless Local Area Network</i>
WLL	<i>Wireless Local Loop</i>
WWW	<i>World Wide Web</i>

Z

ZuKG	<i>Access Control Act</i>
ZVO	<i>Interconnection Ordinance</i>



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8.5 Abbreviated company names

3G Mobile	<i>3G Mobile Telecommunications GmbH</i>
ASFINAG	<i>Autobahnen- und Schnellstraßen-Finanzierungs-AG</i>
A-SIT	<i>A-SIT Zentrum für sichere Informationstechnologie Austria</i>
ATV	<i>ATV Privatfernseh-GmbH</i>
CyberTron	<i>CyberTron Telekom AG</i>
Datakom	<i>Datakom Austria GmbH</i>
eTel	<i>eTel Austria AG</i>
eWave	<i>eWave Telekommunikation GmbH</i>
Hutchison	<i>Hutchison 3G Austria GmbH</i>
Interline	<i>Interline Telekommunikation GmbH</i>
IT Austria	<i>Informations-Technologie Austria GmbH</i>
Kabel 1	<i>SevenOne Intermedia GmbH</i>
master-talk	<i>master-talk Austria Telekom Service GmbH & Co KG</i>
MCI WorldCom	<i>MCI WorldCom Telecommunication Services Austria Gesellschaft m.b.H.</i>
metronet	<i>metronet copper optics GmbH</i>
Mobilkom	<i>Mobilkom Austria Aktiengesellschaft und Co KG</i>
ORF	<i>Österreichischer Rundfunk</i>
Priority	<i>Priority Telecom GmbH</i>
ProSieben	<i>SevenOne Intermedia GmbH</i>
RTL	<i>RTL NEWMEDIA GmbH</i>
RTL II	<i>RTL NEWMEDIA GmbH</i>
SAT.1	<i>SevenOne Intermedia GmbH</i>
Super RTL	<i>RTL NEWMEDIA GmbH</i>
tele.ring	<i>tele.ring Telekom Service GmbH</i>
Tele2	<i>Tele2 Telecommunication Services GmbH</i>
Telekom Austria	<i>Telekom Austria AG</i>
T-Mobile	<i>T-Mobile Austria GmbH</i> <i>(until 08.03.2002: max.mobil. Telekommunikation Service GmbH)</i>
UPC Telekabel	<i>Telekabel Wien Gesellschaft m.b.H.</i>
UTA	<i>UTA Telekom AG</i>
Wienstrom	<i>Wienstrom GmbH</i>



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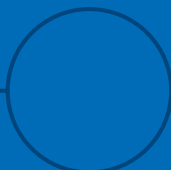
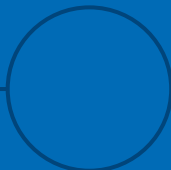
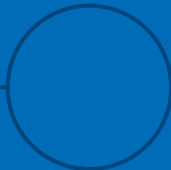
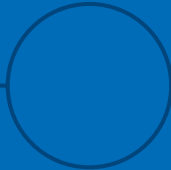
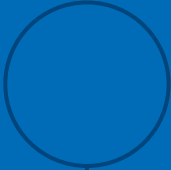
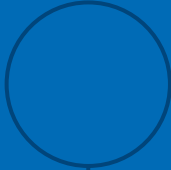
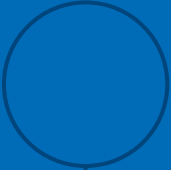
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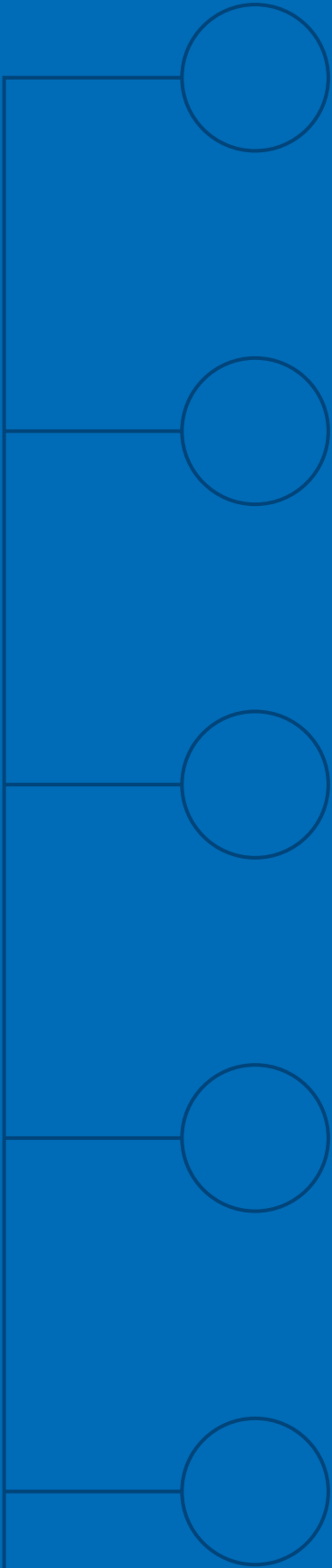
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