

**MADRID**

Castellana, 216  
28046 Madrid  
Tel.: (34) 91 582 91 00

**BARCELONA**

Diagonal, 640 bis  
08017 Barcelona  
Tel.: (34) 93 415 74 00

**BILBAO**

Alameda Recalde, 36  
48009 Bilbao  
Tel.: (34) 94 415 70 15

**MÁLAGA**

Marqués de Larios, 3  
29015 Málaga  
Tel.: (34) 952 12 00 51

**VALENCIA**

Gran Vía Marqués  
del Turia, 49  
46005 Valencia  
Tel.: (34) 96 351 38 35

**VIGO**

Colón, 36  
36201 Vigo  
Tel.: (34) 986 44 33 80

**BRUSELAS**

Avenue Louise, 267  
1050 Bruselas  
Tel.: (322) 231 12 20

**LONDRES**

Five Kings House  
1 Queen Street Place  
EC 4R 1QS Londres  
Tel.: +44 (0) 20 7329 5407

**LISBOA**

Avenida da Liberdade, 131  
1250-140 Lisboa  
Tel.: (351) 213 408 600

**NEW OPPORTUNITIES FOR THE USE OF THE SPECTRUM****Ana Isabel Mendoza Losana**

*Associate Professor of Civil Law. University of Castilla-La Mancha  
Knowledge Management Department of Gómez-Acebo & Pombo*

Few days after the amendment of the National Plan for Allocation of Frequencies by means of the Order ITC/658/2011, dated March 18<sup>th</sup>, the National Gazette (BOE) has also published, on April 2<sup>nd</sup>, the eagerly awaited *Royal Decree 485/2011, dated April 1<sup>st</sup>, on spectrum related actions for the promotion of the digital society*. This implements Directive 2009/114/CE into Spanish law and complies with the European Commission Decision 2009/766/CE, on the harmonisation of the 900 MHz and 1 800 MHz frequency bands for terrestrial systems capable of providing pan-European electronic communications services in the Community. This Royal decree develops the provisions contained in articles 47, 48 and 51 of Act 2/2011, dated March 4<sup>th</sup>, on Sustainable Economy. This new piece of legislation aims to make available for operators all the available spectrum in those frequency bands with a high economic and social interest in order to (i) boost new investments in wireless networks, (ii) increase coverage of mobile broadband services in rural areas and (iii) meet spectrum demand requirements led by the popularization of smart phones, tablets, electronic books and new mobile communication services.

Some of the most important novelties are stated below:

- **Refarming.** This is one of the main requirements of the sector. Following the principle of technological neutrality, wireless operators currently authorized to use spectrum in 900 MHz and 1800 MHz bands (Telefónica Móviles de España, Vodafone and France Telecom) are allowed to use any kind of technology (GSM, UMTS/3G) and to provide any kind of services (fixed, mobile, nomadic) under certain established conditions (i.e. temporary restrictions).

For the purpose of maintaining the economic balance of the concessions under which the rights to use the spectrum were granted to those operators, which value has now increased, some of the frequency blocks then allocated to said operators are returned to the State; also, certain investment obligations are imposed on Telefónica Móviles and Vodafone.

The return to the State of the frequency blocks are compensated with the extension of the duration of the concessions, which might be extended until December 31<sup>st</sup> 2030.

- **Legal framework for spectrum tenders.** The legal framework governing the tender of 310 MHz is established. It applies to spectrum tenders of frequencies within the following bands: 800 MHz (digital dividend), 900 MHz, 1,800 MHz and 2.6 GHz. A system combining beauty contest and auction procedures has been established by the Government, who has also fixed a calendar for the tenders ending in 2015.

In relation to **tenders for the 900 MHz band**, a block of 2 x 5 MHz will be available during 2011. Neither Telefónica Móviles nor Vodafone will be able to bid in this public tender; two other blocks will also be tendered: one of 2 x 5 MHz and other of 2 x 4.8 MHz, which correspond to the 2 x 4.8 MHz blocks currently held by Telefónica Móviles until 2015 and to the 2 x 1 MHz block recovered from Vodafone. These blocks will be available as from February 2015. Any operator will be able to participate in this tender.

The frequencies to be recovered by the Administration in the **1,800 MHz band** will also be tendered. Any operator will be able to participate in this tender.

In the **800 MHz band**, the 2 x 30 MHz blocks to be released because of the digital dividend will be tendered in 6 blocks of 2 x 5 MHz. These frequencies will be used for the provision of electronic communications services (mobile broadband) and will be available for the operators before the end of 2014.

The **2.6 GHz band** (2,500 to 2,690 MHz) is currently available for being used. 70 MHz FDD (Frequency Division Duplex) will be offered through tender procedures (some of them will have national scope while others will have a limited regional scope) and 50 MHz TDD (Time Division Duplex) will be offered exclusively for national scope concessions during the first semester of 2011. Thus, tenders with limited regional scope are now authorized.

The tender procedures will follow both the technological neutrality principle so that any technology can be used in said frequency bands and service neutrality principle so that any kind of electronic communications services can be provided.

- **Limits to avoid spectrum hoarding.**

For the 800 MHz and 900 MHz frequency bands, only 20 MHz might be used by the same operator; for the 1,800 MHz, 2,100 MHz (1,900-2,025 MHz and 2,110-2,200 MHz) and 2.6 GHz frequency bands, operators will not be able to hold more than 115 MHz in any territorial scope.

- **Measures to avoid the competition restrains.**

Further to the prohibition applying to some operators to attend the new frequency tenders, other measures are established to avoid competition restrains. Thus, UMTS operators holding 10 MHz or more in the 900 MHz band shall offer a wholesale service, so that the op-

erators without enough frequencies or without any frequency in the 900 MHz band can provide mobile communication services to their final users. The conditions under which this wholesale service is to be provided will be freely negotiated and the eventual conflicts that may arise will be resolved by the Telecommunications Market Commission ("CMT"). This obligation shall be maintained until May 1<sup>st</sup> 2015, when the CMT, after having assessed the market, will decide whether the obligation is extended or not.

In addition, Telefónica and Vodafone shall, before December 31<sup>st</sup> 2013, invest in mobile communications infrastructures to provide UMTS or other terrestrial systems listed in the Annex to the Decision 2009/766/CE in rural areas with less than 1,000 inhabitants.

- **Secondary market of the spectrum.**

Article 48 of the Sustainable Economy Act widens the list of frequency bands for which a secondary market is allowed. In the frequency bands with highest commercial interest for the operators and with the greatest social repercussion, such as frequency bands of 800 MHz, 900 MHz, 1,800 MHz, 2,100 MHz, 2.6 GHz and 3.5 GHz, a secondary market for the rights to use the spectrum will be allowed to enhance competition in mobile communication services and to reach a more effective and efficient use of the spectrum. For the purpose of avoiding speculation, spectrum rights may only be sold two years after their acquisition.

- **Amendment of the legislation in force.**

The 1<sup>st</sup> Additional Disposition of the Royal Decree 863/2008, dated May 23<sup>rd</sup> (the Regulation on the Use of Spectrum), which relates the list of frequency bands for which there is a limitation of the potential number of awardees, has been amended. In addition, a new 3<sup>rd</sup> Additional Disposition, stating the application of the technological neutrality principle, and a new 4<sup>th</sup> Additional Disposition, related to the secondary market of spectrum, have been added to this Royal Decree.