New Brazil Competition Law

March 6, 2012

After several years of debate, in late 2011 Brazil passed a new competition law that will come into force on May 29, 2012, substantially changing Brazil’s merger control regime.

Under the previous law, which is currently in force, merger control review was non-suspensory, meaning that transactions triggering a merger control filing in Brazil could be implemented before receiving clearance from the regulator. The new competition law imposes a mandatory waiting period and parties must receive clearance before consummating their transaction.

The mandatory waiting period under the new law is a maximum of 240 days, which can be extended by 60 days at the request of the parties or by 90 days at the request of the regulator. Although it is expected that most clearances will be received much faster than the maximum time period for review, it is unknown how this will work in practice.

The new law also abolishes the 20% combined market share test and increases the revenue thresholds for filing. Under the new law, transactions will trigger a filing when the Brazilian revenues of one of the parties exceed BRL400 million and the Brazilian revenues of the other party exceed BRL30 million. In Brazil, the revenues of a “party” include the revenues of the entire economic group to which it belongs, including the total revenues of a seller spinning off a target entity.

The Brazil regulator recently announced that it will issue draft implementing regulations for the new law before the end of March and invite public comment.

* * *

For further information, please contact:

Joseph Tringali
212-455-3840
jtringali@stblaw.com

Ellen Frye
212-455-2352
efrye@stblaw.com

This memorandum is for general informational purposes and should not be regarded as legal advice. Furthermore, the information contained in this memorandum does not represent, and should not be regarded as, the view of any particular client of Simpson Thacher & Bartlett LLP. Please contact your relationship partner if we can be of assistance regarding these important developments. The names and office locations of all of our partners, as well as additional memoranda, can be obtained from our website, www.simpsonthacher.com.

The contents of this publication are for informational purposes only. Neither this publication nor the lawyers who authored it are rendering legal or other professional advice or opinions on specific facts or matters, nor does the distribution of this publication to any person constitute the establishment of an attorney-client relationship. Simpson Thacher & Bartlett LLP assumes no liability in connection with the use of this publication.