SIMPSON THACHER

MEMORANDUM

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.

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