



## Simpson Thacher Tokyo General Corporate and Litigation Newsletter

April 18, 2012

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Welcome to the April issue of the Simpson Thacher & Bartlett Tokyo General Corporate and Litigation Newsletter. In this newsletter, we will summarize recent legal developments in the general corporate and litigation areas that we believe may be of interest to our clients in Japan and will deliver to you approximately once every three months. After the table of contents below and the Japanese version of the newsletter, there are links in the English summaries to the related PDF articles on the Simpson Thacher website. Please feel free to contact Alan Cannon ([acannon@stblaw.com](mailto:acannon@stblaw.com)), Taki Saito ([tsaito@stblaw.com](mailto:tsaito@stblaw.com)) or David Sneider ([dsneider@stblaw.com](mailto:dsneider@stblaw.com)) if you have any questions or would like more information regarding any of the information in this newsletter.

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### 1. 欧州委員会がドイツ証券取引所と NYSE ユーロネクストの合併案非承認を決定

2012年2月1日、欧州委員会はそのプレスリリースの中で、欧州連合競争法の下、ドイツ証券取引所と NYSE ユーロネクストとの間の合併案は承認しないと決定したことを発表しました。欧州委員会は、合併が実現すれば「欧州市場の金融デリヴァティブ分野のシェアが世界中の取引の中で準独占」する結果となることが予測され、また両当事者が提案した対応策が欧州委員会の反競争的懸念を払拭するのに十分でないとの見解を示しました。 ([原記事へのリンク](#))

### 2. 司法省が FCPA 訴訟で苦戦し、米国政府の海外腐敗行為防止法訴追プログラムにプレッシャー増大

一連の FCPA (Foreign Corrupt Practices Act、米国連邦海外腐敗行為防止法) 刑事事件で連続敗訴したことで、全体的な FCPA 訴追プログラムについて米国政府にその優先事項と今後の見通しのガイダンスを提示を要求するプレッシャーが増大しています。昨年11月に司法省はガイダンスを発表する予定であると発表しましたが、その内容とタイミングについては未定のままです。大きな FCPA 訴訟で司法省が敗訴した影響は今後出てくる可能性はあるものの、ここ数ヶ月で発表された大企業との FCPA 事件の和解を見る限りにおいては、政府による FCPA 訴追の勢いは特に衰えていないと言えるでしょう。 ([原記事へのリンク](#))

### 3. ブラジル新競争法

数年に渡る議論を経て、2011年の終わりにブラジルは新しい競争法を可決し、2012年5月29日に発効となるその法律はブラジルの合併案件管理制度を本質的に変えるものです。現在まだ有効な競争法の下では、管理当局による合併案件の承認前に合併を実行することが可能でしたが、新競争法では強制待機期間が課され、当事者は案件実行前に当局の承認を取得しなければなりません。 ([原記事へのリンク](#))

### **1. European Commission Adopts a Prohibition Decision Against Proposed Combination of Deutsche Börse AG and NYSE Euronext Inc.**

On February 1, 2012, the European Commission announced in a press release that it has decided to prohibit the proposed combination of Deutsche Börse AG (“DB”) and NYSE Euronext Inc. (“NYX”) under the European Union Merger Regulation. The European Commission asserted that the proposed transaction would have resulted in a “quasi-monopoly in the area of European financial derivatives traded globally on exchanges” and that the commitments proposed by the parties were insufficient to alleviate the European Commission’s competition concerns. ([click here to see memo](#))

### **2. As DOJ Confronts Setbacks in Litigated FCPA Cases, The Government’s Overall FCPA Enforcement Program Faces Increasing Scrutiny**

Just as the Department of Justice (“DOJ”) is confronting a series of defeats in criminal FCPA cases against defendants who have put DOJ to its burden of proof at trial, the government’s overall FCPA enforcement program is facing growing pressure to provide guidance about its priorities and expectations. DOJ announced last November that it would be releasing such guidance, but the nature and timing of the guidance remain uncertain. While the impact of DOJ’s recent setbacks in some of its most prominent FCPA cases also remains to be seen, if the sizeable corporate FCPA settlements that have been announced in recent months are any indication, the government’s FCPA enforcement efforts remain as active as ever. ([click here to see memo](#))

### **3. New Brazil Competition Law**

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. ([click here to see memo](#))

\* \* \*

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