Organisation for Economic Co-operation and Development

DAF/COMP/GF/WD(2026)59

Unclassified English - Or. English

5 November 2026

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

Global Forum on Competition

Exploitative Abuses – Contribution from Brazil

- Session III -

11 December 2026

This contribution is submitted by Brazil under Session III of the Global Forum on Competition to be held to be held on 10-11 December 2026.

More documentation related to this discussion can be found at: oe.cd/gfc26.

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JT03597448

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Brazil

1. Introduction

1. In antitrust policy, the discussion of exploitative abuses, although not always under that name, has historically developed around excessive pricing, where the appropriation of value can be identified in a monetary charge. The underlying concern extends to relationships in which firms depend on infrastructure, a distribution network or a trading partner that they cannot realistically replace, in digital and non-digital markets alike. Within digital ecosystems, services offered at zero price coexist with revenue-generating activities across several layers, making the terms of exchange less visible. Access rules, the prominence of links and the permitted uses of third-party inputs influence user behaviour and determine what participants give and receive, allowing those terms to change without any adjustment to an explicit bilateral price (OECD, 2018; Botta, 2023).

2. The economics of two-sided markets helps explain why the charge on one side may reveal little about the value generated across the system (Rochet & Tirole, 2003). Content can attract users whose presence increases the value of participation for producers, while their returns remain dependent on the platform's distribution and monetisation rules (Parker & Van Alstyne, 2005). Where alternatives are constrained, the operator's interest in retaining these suppliers may coexist with the ability to impose substantively unfair conditions. Exploitative analysis therefore acquires a distributive dimension through the link between the production and appropriation of value, as dependence is reinforced by contributions that sustain the platform's own attractiveness (Bougette, Budzinski & Marty, 2019).

3. Brazil combines a broad prohibition of abuse of economic power with cautious enforcement and limited experience of explicitly exploitative theories. The review opinion in the recent Google News case develops an approach to this tension by examining publishers' dependence on the services through which their content reaches audiences and generates revenue. Following that case, this contribution considers how unfair trading conditions can be investigated under existing law, how the investigation itself helped reveal the relationship and how a structured test can give the exploitative theory an evidentiary basis of its own.

2. Exploitative abuses in Brazilian law

4. Article 173(4) of the Constitution expressly addresses abuse of economic power directed at market domination, the elimination of competition and arbitrary increases in profits. Article 36 of Law No. 12,529/2011 develops this prohibition through an open provision covering acts in any form that have as their object, or may have as their effect, harm to free competition or free enterprise, domination of a relevant market, arbitrary increases in profits or abuse of a dominant position, regardless of fault or whether the effects materialise. Its illustrative list includes disrupting commercial relationships of indefinite duration because a party refuses unjustifiable or anticompetitive conditions, expressly bringing trading terms within the statute's scope (Brazil, 1988; 2011, Article 36(3)(XII)).

5. This breadth has coexisted with resistance to treating excessive pricing as a standalone infringement. Law No. 12,529/2011 removed the express reference to excessive

prices found in the previous legislation while retaining arbitrary increases in profits among the prohibited effects. The pharmaceutical cases and subsequent decisions reflect concern over benchmarks, investment incentives and the prospect of turning Cade into a price regulator (Barbosa & Kastrup, 2021). Brazil reiterated this caution before the OECD in 2022. Extending the inquiry to non-monetary conditions also requires reliable benchmarks and an account of how access and service design alter the terms of exchange (Cade, 2022a).

6. The interaction between dependence, value extraction and exclusion already appears in non-digital enforcement. In Tecon Suape, the Tribunal found in 2021 that the terminal charged independent bonded facilities for services already covered by the basic tariff while waiving the charge when storing cargo itself. The practice raised the costs of dependent competitors, and its permissibility in principle under sectoral regulation did not prevent scrutiny of its competitive effects (Cade, 2021). This experience shows how the same conditions may extract value from trading partners and restrict their competitive opportunities.

7. Brazilian protection is distributed across competition, civil and consumer law. Good faith and abuse of rights inform scrutiny of business relationships, while the Consumer Defence Code addresses excessive advantages and abusive obligations within its own scope (Brazil, 1990; 2002). The Superior Court of Justice has recognised that dependence can inform the vulnerability required for the Code to apply between businesses, subject to concrete evidence, and that indirect remuneration can support a consumer relationship in services offered free of charge (STJ, 2012a; 2012b). These avenues help assess what is exchanged across a business model while retaining distinct requirements for protection.

8. The 2021 investigation into WhatsApp's privacy policy illustrates this institutional coexistence. Cade, the National Data Protection Authority, the Federal Public Prosecutor's Office and the National Consumer Secretariat assessed the changes within their respective remits, with Cade finding no indications of competitive harm at that stage (Cade, 2023, paras. 13–17). Their joint recommendation nevertheless identified risks associated with unilateral imposition by a firm with substantial structural power. Coordination allowed the relationship to be examined through different instruments, according to the harm each could address (Andrade, 2026, para. 557).

9. Brazil has no standalone competition-law prohibition on abuse of economic dependence, so the theory examined here requires dominance and effects falling within Article 36. Paragraph 2 links the presumption of dominance to the ability to alter market conditions unilaterally or through coordination, alongside a market-share criterion, allowing the constraints faced by dependent firms to inform the assessment of power (Brazil, 2011). Fragmented protection against unfair trading practices helps explain why such demands reach competition policy, but their treatment requires showing how economic power sustains the condition and produces legally relevant harm. Standards developed elsewhere can inform unfairness without automatically determining a competition infringement.

3. Google News and the distribution of value in the ecosystem

10. Administrative Inquiry No. 08700.003498/2019-03 initially examined Google's use of news content through foreclosure and leveraging theories, for which the evidence was considered insufficient. After the General Superintendence closed the inquiry, Cade's Tribunal called it up for review. In April 2026, then Commissioner Diogo Thomson de Andrade proposed an exploitative theory and a five-stage test. The Tribunal unanimously

approved further investigation on 23 April, incorporating empirical inquiries proposed by Commissioner Camila Cabral Pires-Alves (Andrade, 2026; Cade, 2026a). The case was converted into administrative proceedings and remains ongoing before SG/Cade, the authority's technical investigative arm.[1]

11. The reformulation drew on an open evidence-gathering process that received submissions from smaller and regional publishers and civil society organisations alongside information from Google and industry bodies. Their accounts helped distinguish exposure on social media from visits originating in search, the monetisation opportunities associated with each and the costs of refusing particular content uses. Differences between publishers' revenue models revealed constraints that aggregate traffic figures could obscure. Considered alongside Google's explanations of reciprocal benefits and available controls, these contributions helped define the conduct and the evidence needed to test it, subject to challenge and rebuttal (Andrade, 2026, paras. 101–116, 196–205).

12. Participation was thus part of identifying the economic relationship under investigation. A common access rule can affect publishers differently according to their size, subscription base and means of reaching readers, while civil society organisations can identify consequences extending beyond an individual firm's circumstances. Bringing these experiences into the investigation helps test whether apparently available alternatives provide a practical means of resisting the platform's conditions. The evidence remains to be assessed against documents, usage data and the parties' responses, through a process capable of revisiting the initial hypotheses.

13. Comparative experience also informed the opinion. The French proceedings concerning Google and press publishers contributed to the examination of dependence and meaningful negotiation, the European Commission's Apple decision informed the treatment of unfair trading conditions, and South Africa's Media and Digital Platforms Market Inquiry brought the allocation of value across the news ecosystem into the discussion. These experiences provide reference points for investigating the Brazilian relationship, subject to differences in legal bases and procedural stages (Andrade, 2026, paras. 390–397, 426–434, 529–538, 604–610; Competition Commission South Africa, 2025).

14. Journalism contributes timely and reliable information to search, but its economic value is realised through interactions that generate advertising opportunities, support other services and may feed AI applications. Publishers may receive no specific payment for these uses, obtaining a return through visits that sustain advertising, subscriptions and direct relationships with readers. Attributing revenue to an individual news item therefore captures only part of its monetisation within the ecosystem. The return to its producer also depends on interface choices, including link prominence, the extent of answers displayed and the routes available to reach the source, through which attention and the effort required to navigate influence user behaviour (Andrade, 2026, paras. 625–647; OECD, 2022).

15. The formal possibility of withdrawing content must be assessed against the consequences of losing search visibility within an activity also dependent on connected advertising and measurement services. As snippets and generative AI interfaces expand the uses of content, the investigation must determine whether publishers can refuse particular uses while preserving meaningful access to their audience. Indexing, the display of snippets, source retrieval, model training and answer generation involve distinct functions

[1] As of 16 October 2026, the case, which was converted into administrative proceedings, remains ongoing before SG/Cade. This note examines the theory of harm developed in the review opinion without anticipating the outcome of the proceedings. References to the opinion use its public English version (Andrade, 2026).

whose controls require separate examination. The concern is that dependence on distribution may enable additional uses to be imposed while the returns available to suppliers diminish, even though those uses could otherwise be negotiated separately (Andrade, 2026, paras. 648–659).

16. The opinion relates this concern to forced free-riding, which Shelanski (2013, p. 1699) associates with the appropriation of innovation produced by firms dependent on access to consumers. Bostoen (2023, p. 59) identifies control over the infrastructure providing that access as the feature distinguishing the mechanism from copying alone. Applied to the relationship under investigation, the concept directs attention to the economic cost of refusing additional uses and to the platform's ability to determine the conditions on which producers continue reaching their audience (Andrade, 2026, paras. 651–656).

17. Suppliers' continued participation is central to this account. Their content sustains the usefulness of search, while the concentration of distribution and monetisation opportunities may deepen their dependence. The platform can therefore retain producers on progressively less favourable terms, creating a mechanism of exploitation that foreclosure alone would leave partly unexplained. Restrictions on alternatives may reinforce it, while declining returns constrain publishers' ability to develop other channels. Similar analytical questions arise around access and payment conditions in WhatsApp AI and Apple's App Store, although the Brazilian proceedings approached those practices from an exclusionary perspective. Each interpretation must establish its own causal links and effects (Andrade, 2026, paras. 660–678; Cade, 2025; 2026b; 2026c).

4. Developing and substantiating the exploitative theory

18. The opinion draws together criteria for selecting platform exploitation cases, the analysis of unfair trading conditions and requirements of appreciable harm and proportionality developed in the literature (Botta, 2023; Padilla, 2024; Balasingham & D'Amico, 2025). Its five stages organise the progression from structural dependence to an abusive exercise of power, specifying the evidence needed at each step and the findings that could defeat the theory (Andrade, 2026, paras. 679–707).

19. These academic contributions address different parts of the assessment. High and durable entry barriers, a heightened degree of dominance and the prospect of substantial harm help explain why a case warrants attention, while the analysis of the condition requires benchmarks for unfairness and proof of the harm arising from dominance (Balasingham & D'Amico, 2025; Padilla, 2024). The proposed test connects those screening considerations to the circumstances of the relationship, with Article 36 continuing to supply the legal requirements for intervention.

20. The inquiry begins with the relationships organised by the ecosystem. Distribution, advertising, measurement and discovery can constrain publishers more deeply through their combined operation than an assessment of each service in isolation would reveal. Examining these interdependencies guides the analysis of dominance and the identification of competitive constraints, while market definition helps test the functions that alternative services could perform. The resulting perspective gives evidence of dependence a role in demonstrating power without treating the ecosystem as a single relevant market by assumption (Andrade, 2026, paras. 591–599, 625–628; Cade, 2022c).

4.1. Structural dependence and dominance

21. The first stage establishes whether dependence is persistent and gives the platform power over the terms of participation. It examines whether alternative services could perform the relevant functions at a viable cost and scale, within a timeframe that allows the affected firm to continue its activity. Network effects, switching costs and investments adapted to the platform explain the durability of the relationship, while evidence on audience quality and monetisation tests whether other channels offer a practical means of resisting its terms. Entry prospects and the effectiveness of existing regulation inform this assessment, with intervention by Cade continuing to require the elements of a competition infringement (Andrade, 2026, paras. 690, 695).

22. This analysis reverses the usual perspective by examining the platform's importance within dependent firms' activities. Google's share of a publisher's traffic becomes informative when considered alongside advertising and subscription revenues, the cost of acquiring comparable audiences elsewhere and the investments needed to reorganise distribution. The opinion examines evidence that intentional search can generate more qualified visits than incidental exposure on social media, a difference requiring demonstration for the publishers and uses concerned. An average referral share consequently offers a starting point for investigating commercially viable alternatives and the capacity to reject or renegotiate conditions (Andrade, 2026, paras. 601–624).

4.2. The condition imposed on the dependent firm

23. The second stage identifies how the unavoidable trading partner exercises its power through access rules, contractual terms or service configurations. The investigation must specify which content uses are linked, which choices can be made separately and what follows from refusal, including where the condition emerges through successive interface changes. In Google News, a control over AI uses is meaningful insofar as its exercise preserves economically viable access to search. Establishing imposition therefore requires connecting the technical and contractual choices available to publishers with the constraints already identified, distinguishing a formal option from an effective capacity to negotiate participation (Andrade, 2026, paras. 695–696, 708–788).

4.3. Substantive unfairness in the terms of exchange

24. The third stage assesses unfairness against the uses made of the input, the benefits provided by the platform and the obligations and risks borne by each participant. Publishers' contributions must be considered alongside the value of Google's intermediation and investment, providing a basis for explaining why the condition would be disproportionate or unjustifiable. Where the producer's return depends on distribution, this includes examining how presentation and access rules allow that return to be altered and what scope the producer has to challenge the change (Andrade, 2026, paras. 697, 702).

25. Good faith, transparency and balance in contractual obligations can inform this inquiry when connected to the economic characteristics of the conduct. Separately negotiated content uses, comparable contractual arrangements and feasible alternative configurations provide benchmarks, adjusted for differences in functionality and reciprocal benefits. Historical returns also require scrutiny of changes in demand and in the service itself, so that past traffic levels do not become an assumed entitlement. The assessment must establish unfairness in the terms governing the relationship, with unequal outcomes prompting investigation rather than determining its conclusion.

4.4. Appreciable harm arising from dominance

26. The fourth stage links the condition to appreciable harm, actual or potential, arising from the dominant position. The investigation must trace how changes in access or presentation affect user behaviour, qualified visits, conversions and producers' revenues. Connecting the condition to these effects allows its consequences to be assessed for the financing of original production and the quality of what is offered, while distinguishing a competitive concern from dissatisfaction with the distribution of returns (Andrade, 2026, paras. 698, 733–788).

27. A counterfactual should examine how the relationship might develop without the disputed condition while preserving the service's benefits and separating its effects from changes in reading habits or advertising and subscription strategies. Comparisons across features, query types and publisher profiles, including before and after changes, can reveal effects concealed in aggregate figures (Cade, 2026a). Continued content supply and some referral traffic are compatible with a deterioration in the terms of exchange. Establishing that deterioration and its connection to dominance gives the exploitative theory an independent basis, including where evidence of market foreclosure remains insufficient.

4.5. Objective justification and proportionality

28. The fifth stage examines the claimed benefits for quality, usefulness, technical integrity and innovation, asking whether the condition is necessary and proportionate to achieving them. A feature may improve the user experience while reducing suppliers' returns, making the assessment of feasible alternatives particularly important. Separate choices over content uses, source attribution and effective controls must be evaluated against the benefits they preserve and their implementation costs. Evidence of effective choice, proportionate conditions or justified changes in design may defeat the theory (Andrade, 2026, paras. 699–703).

29. Recording the benchmarks and findings at each stage makes these limits reviewable and supports more predictable enforcement. Where exploitation and exclusion are examined together, the decision must explain the mechanisms and harm accounted for by each, preserving their respective evidentiary requirements. Repeated application can then clarify the circumstances in which intervention is warranted, avoiding an open-ended assessment of fairness detached from the exercise of economic power.

5. Remedies and the conditions of participation

30. The mechanism of harm guides the response. Where access to unavoidable distribution is linked to additional uses of content, independent choices may address the condition if publishers receive sufficient information and can act without retaliation. These choices must operate in technical controls and actual access conditions. The opinion discusses such remedies prospectively, contingent on the investigation's findings and Cade's powers, with their effectiveness depending on whether the choices offered allow the producer to influence the terms of participation (Andrade, 2026, paras. 801–829).

31. Their limits follow from the ecosystem itself. A publisher refusing a particular use may still lose visits when answers draw on other sources, while smaller firms may have limited negotiating capacity. Direct remuneration introduces questions of valuation, continuing supervision and institutional competence, making proportionality, timeliness, enforceability and verifiability central to remedy design (Cade, 2022b). The evidence on how value is produced and monetised therefore matters both to identifying abuse and to

assessing whether a proposed response can address it without undermining the benefits of the service.

32. Commitments can provide a framework for implementing and monitoring these responses. Where exploitation and exclusion combine, remedies must address the conditions imposed on participation and the constraints on developing alternatives. Monitoring needs verifiable benchmarks and channels through which affected firms can report difficulties, including interface or access changes that recreate the mechanism identified. Comparative experience and international cooperation can help refine those benchmarks while preserving differences in legal bases and institutional powers (Andrade, 2026, paras. 808–829; Cade, 2022b).

6. Final remarks

33. The Google News opinion connects Brazil's longstanding concern with abuse of economic power to relationships whose economic terms are increasingly shaped by access, design and behaviour. Its contribution lies in linking an investigation open to smaller firms and civil society with a method for examining how platforms may appropriate value while retaining the producers who sustain their services. The five-stage test gives this distributive concern evidentiary requirements consistent with competition law and informs engagement with other forms of protection against unfair conditions. As digital ecosystems alter how value is produced and exchanged, this approach helps explain relationships that foreclosure alone captures only in part. Whether the requirements for intervention are met remains subject to the ongoing proceedings, through which the exploitative theory and its possible connections with exclusionary mechanisms will be tested.

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