Organisation for Economic Co-operation and Development

DAF/COMP/LACCF(2025)13

Unclassified

English - Or. English

11 August 2025

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

Latin American and Caribbean Competition Forum

LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM - Session III: Remedies in Digital Markets

- Contribution from Brazil -

7-8 October 2025

This attached document from Brazil is circulated to the Latin American and Caribbean Competition Forum (LACCF) FOR DISCUSSION under Session III at its forthcoming meeting to be held on 7-8 October 2025 in Asunción, Paraguay.

Sophie Corea, Competition Expert (Sophie.Corea@oecd.org).

JT03569970

Session III: Remedies in Digital Markets

– Contribution from Brazil[1] –

1. Abstract

1. This Note discusses how the Brazilian competition authority (CADE) has imposed antitrust remedies in digital markets, focusing both on merger control and unilateral conduct cases. It looks at recent cases in which remedies were imposed or negotiated by the authority: (1) in merger cases such as Bus/J3 and Catena-X; and (2) in antitrust investigations such as the cases of iFood, Gympass (Wellhub), and Apple. In the Bus/J3 merger, in the market of ticket sales via online travel agencies, CADE negotiated remedies prohibiting exclusivity clauses, non-discrimination obligations, and access to data. In the analysis of the Catena-X joint venture, the agency imposed remedies to ensure the monitoring of possible competitive risks associated with the exchange of sensitive information. In the iFood and Gympass cases, CADE entered into agreements to limit the percentage of contracts with exclusivity clauses in the respective markets (i.e., online food delivery and gym aggregator platforms). In Apple's ongoing investigation, the interim measure, which is based on a theory of harm that considers the particularities of Apple's iOS mobile ecosystem, seeks to address competitive concerns identified in mechanisms imposed on app developers. As a result, CADE imposed a ban on anti-steering provisions, prohibited Apple's exclusivity in payment methods in the App Store, and demanded Apple to allow alternative channels for app distribution on iOS devices. Furthermore, the Note discusses the current landscape of legislative initiatives for regulating digital markets in Brazil.

2. Introduction

2. As digital markets continue to reshape the global economy, competition authorities worldwide are grappling with how to effectively regulate these rapidly evolving sectors. Brazil's Administrative Council for Economic Defense (CADE) has emerged as a particularly active player in this space, developing a robust toolkit of antitrust remedies specifically tailored to address the unique challenges posed by digital platforms and ecosystems.

3. The authority's recent decisions provide valuable lessons for designing effective remedies in digital markets. This note takes a three-section approach. First, it presents two recent merger cases where CADE applied behavioural remedies to address digital market concerns. Second, it analyses three antitrust investigations involving digital platforms where similar behavioural remedies were used. For each case, we focus on how the proceedings unfolded, what makes these digital markets unique, and why CADE chose

[1] This paper was written by Victor Oliveira Fernandes, Fabiana Pereira Velloso, and Gabriel Veroneze Girardi, a Commissioner at the Tribunal of CADE, his Head of Office, and assistant, respectively. It was proofread and edited in English by Izabel Cristina Medina Brum and Nathália Oliveira Silva, in-house translators at the International Unit of CADE.

specific remedies over other options. Finally, we look at Brazil's current legislative efforts to create a broader regulatory framework for digital markets.

3. Merger remedies in digital markets in Brazil

3.1. Prohibition of exclusivity clauses, non-discrimination obligations, and access to data: merger Bus/J3 (ticket sales via OTAs) [2]

4. The merger between Bus Servicos de Agendamento S.A. and J3 Operadora Logística S.A. was approved by CADE in February 2022 subject to significant remedies. Prior to the merger, Bus Servicos de Agendamento S.A. operated exclusively as an online travel agency (OTA) specialized in selling bus tickets under the name ClickBus. As a complementary business, Bus Serviços offered bus companies and other OTAs the service of managing their digital platforms through white-label marketing. OTA platforms hire the white-label services of Bus Serviços, which mediates the sale of bus tickets through its Click Bus OTA. This was usually done by integrating the ClickBus OTA white-label solution into the domain of the partner company.

5. The acquiring company J3 Operadora Logística S.A. operates as an intermediation platform that connected bus companies and OTAs. The service of integration and electronic mediation provided by J3 Operadora Logística S.A. made it possible for OTAs to access the aggregated information of several bus companies and for bus companies to diversify their sales channels on the Internet. This service included both the sale of tickets through digital channels and the technological integration, strictly speaking, of the systems of bus stations with those of the OTAs through Application Programming Interface (APIs).

6. Therefore, the merger vertically integrated the three stages of the value chain of transportation ticket sales on OTA platforms, namely: (1) the passenger transportation service, (2) the intermediation and integration of bus stations' information with OTA platforms, and (3) the sale of transportation tickets over the Internet on OTA platforms.

7. The Office of the Superintendent General, CADE's investigative arm, concluded the merged entity would have the ability and the incentive to adopt measures to limit the access of competing OTA platforms to its service of electronic intermediation and integration of transportation information with bus stations. In particular, it argued that the merged entity would have incentives to impose downstream and upstream exclusivity policies, both on road transportation operators and OTA platforms.

8. This conclusion was largely upheld by the Tribunal of the authority. The majority opinion of Commissioner Ravagnani conditioned the approval of the transaction on behavioural remedies, prohibiting exclusivity and any form of discrimination in the commercial relationships between Bus Servicos de Agendamento S.A. and the road transportation operators and OTA platforms in the market of electronic integration and mediation of road information. In addition, CADE imposed behavioural remedies to prevent access to sensitive information about competitors. The remedies involved data protection and privacy policies, data engineering, and governance rules to prevent the staff responsible for promoting ticket sales at the ClickBus OTA from accessing rivals' information through the company Bus Servicos de Agendamento S.A, which holds data on

[2] See the following contribution by CADE to the OECD: Fernandes, V.O., & Cunha, M.B.F. (2023). *Theories of harm for digital* mergers – *Note by Brazil* (DAF/COMP/WD(2023)52). OECD Directorate for Financial and Enterprise Affairs, Competition Committee.

competing OTAs. The merged company also committed to implement an antitrust compliance program, with the purpose of strengthening a business environment that complies with the Brazilian Competition Law (Law 12529/2011) and its regulations.

3.2. Compliance officer, information safeguard rules, and tracking software to monitor sensitive data exchanges: joint venture Catena-X (data processing, application services, and web hosting)

9. In June 2022, CADE was notified of a transaction involving the creation of a joint venture by eleven German companies in the automotive sector: Volkswagen, BMW, Mercedes-Benz, BASF, Bosch, Henkel, SAP, Schaeffler, Siemens, T-Systems, and ZF. Headquartered in Germany, the organization was designed to foster technological cooperation and innovation in the automotive industry. Each member company would hold an equal stake of 9.1% in the joint venture's share capital.

10. The purpose of the transaction was to establish a cloud-managed network with broad access for all players in the automotive market and their respective partners operating throughout the supply chain. Access to services would be centralized through a single platform, the "Catena-X Portal". The benefits of this integration would be shared by all stakeholders in the production chain, through greater process efficiency, improved product quality, and enhanced performance in meeting sustainability targets.

11. Initially, the Office of the Superintendent General found no competition concerns. It concluded that there would be no increase in market share, as the notifying parties did not compete in the area covered by the joint venture, nor would there be any effective vertical integration. As for potential market foreclosure, the Office of the Superintendent General determined that the risk was low, given that the platform to be developed would offer broad and non-discriminatory access to all participating users.

12. The Tribunal, in turn, analysed the case from the perspective of potential exchanges of competitively sensitive information resulting from the coordination among the companies. It concluded that there were competition compliance safeguards in place. Nevertheless, according to the Rapporteur Commissioner, Gustavo Augusto, the project had a broad scope, which created uncertainty as to what information would actually be exchanged by the parties.

13. Therefore, CADE's Tribunal approved the transaction subject to remedies. In summary, the remedy imposed by CADE focused on monitoring the information exchanged among users of the platform. Some measures adopted were the appointment of a professional responsible for issuing safeguard rules and for receiving and investigating reports of antitrust violations, as well as the development of a tracking software designed to detect potential anticompetitive conduct.

4. Antitrust remedies in digital markets in Brazil

4.1. Restriction on exclusivity clauses: iFood antitrust case (delivery platform)

14. iFood is a major player in the Brazilian market of food delivery marketplaces. It is a Brazilian company that grew as a digital platform for restaurant food orders and currently holds a dominant position in this market. The antitrust investigation began in September 2020 following a complaint filed by Rappi Brasil, the main competitor of iFood in the food delivery platform market.

15. According to Rappi, iFood was abusing its dominant position by engaging in market foreclosure practices through the mass execution of exclusivity agreements with restaurants. These agreements allegedly involved strong incentives to adopt the restrictive business model, followed by the imposition of long-term clauses and penalties for early termination. Claiming that the dominant platform was harming its competitors, entrant restaurants, and consumers, Rappi requested the imposition of an interim measure to suspend the exclusivity contracts.

16. Two additional players participated in the proceedings by submitting formal complaints regarding iFood's conduct: the Brazilian Association of Bars and Restaurants (ABRASEL), a trade association, and Uber Eats, one of iFood's competitors in the relevant market. In summary, both argued that iFood's use of exclusivity agreements was increasing barriers to entry and expansion for rival platforms in the market.

17. The Office of the Superintendent General found that iFood combines a high market share with a first-mover advantage, holding a dominant position in the digital food delivery platform sector. This alone raises concerns about the execution of exclusivity agreements. Upon concluding that *periculum in mora* was present, the Office of the Superintendent General imposed an interim measure in March 2021. The order was based on the understanding that, if iFood continued indiscriminately entering into exclusivity agreements with more restaurants, the consequences of the anticompetitive conduct would be felt before the case could be adjudicated, potentially even forcing rivals to exit the market.

18. The interim measure established three scenarios for restaurants already participating in iFood's marketplace: (1) those without exclusivity clauses; (2) those with exclusivity clauses, with the intention to renew them; and (3) those with exclusivity clauses but choosing not to renew them.

19. For group (1), the Office of the Superintendent General ordered that iFood refrained from entering into new contracts containing exclusivity clauses until CADE issued a final decision on the legality of the conduct. For group (2), the Office of the Superintendent General determined that the renewal of exclusivity contracts would be limited to a duration of one year. There would be no restriction on subsequent renewals for equal periods, should the parties wished to do so, until CADE issued a final decision on the legality of the conduct. Finally, for group (3) – restaurants that would renew their contracts during the effectiveness of the interim measure, removing the exclusivity clause – the Office of the Superintendent General ordered that such exclusivity provisions could not be reinstated in future renewals.

20. In addition, the interim measure established that restaurants not yet participating in iFood's marketplace could only enter into non-exclusive agreements until CADE issued a final decision on the legality of the conduct.

21. Subsequently, in February 2023, CADE's Tribunal signed a Cease and Desist Agreement with iFood. In order to bring a definitive resolution to the case, that includes behavioural remedies, with provisions aimed at preventing or restricting exclusivity obligations in contracts signed between iFood and partner restaurants.

22. Firstly, the Agreement distinguishes two groups of restaurants: restaurant chains of over 30 units and chains with less than this number. Since brands of over 30 restaurants work with an enormous number of orders, the Tribunal held that they were strategic to the portfolios of online food delivery marketplaces. Accordingly, the Agreement forbids exclusivity clauses and even contractual measures which could result in exclusivity to chains with more than 30 restaurants.

23. Moreover, the document establishes thresholds at the local and national levels for chains with less than 30 restaurants. At the national level, iFood has to maintain the total business volume linked to exclusive restaurants at a maximum percentage of 25% of the gross merchandise value (GMV) recorded by the iFood platform in Brazil. At the local level, in municipalities with population exceeding 500,000 residents, the number of exclusive restaurants must remain below 8% of the platform's listed active establishments.

24. Additionally, the group consisting of smaller restaurant chains must also observe a maximum exclusivity period of two years with iFood, followed by an "exclusivity quarantine." During this quarantine period, the partner is prohibited from signing a new exclusivity agreement with iFood for one full year after the end of the previous exclusivity contract.

25. The only exception to these rules applies when the exclusivity commitments are tied to investments made by iFood in the operations of the exclusive restaurant, which must result in revenue growth of at least 40% above the growth rate of the food delivery market in the previous year. In such cases, the duration of the exclusivity agreement may exceed two years to allow iFood to recover its investment; however, renewal of the agreement remains prohibited once the term expires. Even so, these exceptions must be limited to a maximum of 50% of iFood's exclusivity agreements.

26. As a complement, the Agreement introduces supplementary measures to work as further safeguards to mitigate the risk of emergence of de facto exclusivity. In this regard, the Cease and Desist Agreement prohibits most favoured nation (MFN) clauses as to other marketplaces. Furthermore, it impedes iFood from demanding that its partners refrain from providing offers on rival platforms or referring to alternative food delivery services in marketing campaigns fully financed by those services and conducted beyond the scope of the iFood platform.

27. iFood is also prohibited from preventing restaurants from contracting with other food delivery platforms after the end of an exclusivity agreement; from conditioning incentives or discounts offered to non-exclusive restaurants on commitments to maintain the majority of their online food delivery business with iFood; and from offering volume-based discounts that are customized for a specific restaurant or brand on an individualized basis.

28. The Cease and Desist Agreement established a six-month transition period, resulting in a total duration of 54 months. Throughout its term, the Agreement is being monitored by a trustee.

4.2. Restriction on exclusivity clauses: Gympass/Wellhub antitrust case (health club aggregator platforms)

29. Wellhub, formerly known as Gympass, is a major health club aggregator platform in Brazil. It was founded in 2012 to offer employees of affiliated companies access to a variety of gyms through a single subscription. CADE's antitrust investigation concerns

Wellhub and involved antitrust violations in the Brazilian market for health club aggregator platforms.

30. In September 2020, Total Pass, a competitor in the same market, filed a complaint with CADE alleging that Wellhub was engaging in anticompetitive practices that constituted an abuse of its dominant position. The alleged conduct included: (1) the imposition of exclusivity clauses on partner gyms; (2) the imposition of Most Favoured Nation (MFN) clauses to control the minimum prices offered by affiliated platforms; (3) extensive monitoring of partner gyms; and (4) retaliation against those that failed to comply with the agreed terms. In this context, Total Pass requested the adoption of an interim measure to suspend the exclusivity clauses in effect.

31. In parallel, YNegócios, another Wellhub competitor known as YoooUp, also filed a complaint with CADE against Wellhub. The focus of YoooUp's complaint concerned the exclusivity clauses established by Wellhub with its partner gyms. The company also requested the imposition of an interim measure, under terms similar to those requested by Total Pass.

32. In December 2021, in response to the allegations, the Office of the Superintendent General of CADE found evidence suggesting a potential violation of antitrust law, identifying that Wellhub was leveraging its first-mover advantage to engage in market foreclosure. As a result, the Office of the Superintendent General determined the authority's immediate intervention to prevent either irreparable harm or harm difficult to reverse to free competition. Based on this assessment, it partially granted the interim measure requested by Total Pass.

33. The Office of the Superintendent General of CADE prohibited Wellhub from entering into new exclusivity agreements, as well as rendered ineffective the Most Favoured Nation clauses and "quarantine" clauses – those that prevented gyms from contracting with other companies after the termination of their contract with Wellhub – along with the associated penalties tied to such clauses.

34. Total Pass appealed to CADE's Tribunal due to dissatisfaction with the partial grant of the interim measure. In March 2022, Commissioner Paula Farani reviewed the Office of the Superintendent General's decision and issued a new interim measure which, in addition to upholding the Office of the Superintendent General's determinations, ordered the immediate suspension of all exclusivity agreements entered into by Wellhub.

35. The Tribunal adopted the stricter understanding of Commissioner Paula Farani, which held that, beyond the measures imposed by the Office of the Superintendent General, all exclusivity agreements already entered into needed to be reviewed. Such agreements would only be allowed to remain in force in exceptional cases where Wellhub, in exchange, invested in the partner gyms.

36. Later, in September 2022, the Tribunal signed a Cease and Desist Agreement with Wellhub. It followed terms similar to those of the interim measure granted by Commissioner Paula Farani. Regarding exclusivity, it established that: (1) exclusivity clauses between Wellhub and health clubs are limited to proof of achievement of the goal of increasing the number of Gympass users in associated health clubs and to a maximum of 20% of its health club base in cities or districts; and (2) exclusivity clauses in contracts with corporate partners are strictly prohibited.

37. The Agreement maintained prohibitions such as MFN clauses and prohibited provisions that prevent Wellhub's business partners from contracting with other aggregator platforms after the termination of their respective contracts.

38. Recently, in March 2025, CADE's Tribunal declared that Wellhub had breached the Agreement following complaints filed by gyms registered on its platform. The case was reopened and is currently under review by the Office of the Superintendent General.

4.3. Ban on anti-steering provisions, end of exclusivity in payment methods, and permission for alternative distribution channels: Apple antitrust case (mobile operating ecosystems)

39. The third case that merits additional examination is the recent investigation of Apple's conducts in the market for mobile operating systems. Although it is still pending a final decision by the CADE Tribunal, as will be detailed below, digital remedies have been imposed as an interim measure.

40. The antitrust investigation was initiated following a complaint made in December 2022 by Mercado Livre and Mercado Pago, two entities that operate an online marketplace, offers digital payment solutions, among other activities. According to the complainants, Apple imposes a series of restrictions to developers for the purchase of digital goods and services, to prevent or limit new entries into these markets.

41. Following the complaint, the Office of the Superintendent General of CADE decided to launch an investigation to analyse evidence of antitrust violations. During the evidentiary phase of the proceeding, the Office of the Superintendent General sent more than fifty requests for information to app developers and owners, as well as smartphone manufacturers, offering their products and/or services in Brazil.

42. In November 2024, the Office of the Superintendent General found evidence that Apple was abusing its dominant position by creating artificial barriers to the entry and development of competitors, as well as tying. Thus, the authority imposed an interim measure with the aim of allowing iOS developers and users the freedom to choose distribution channels and payment processing systems for in-app purchases.

43. The interim measure determined that Apple should cease applying certain clauses in its contract with app developers and the review clauses in its App Store, to allow app developers: (a) to inform consumers of other ways to purchase the products they sell; (b) to insert buttons, external links, or other means in their apps to inform interested users about the possibility of purchasing products through channels other than in-app; (c) contract and make use of other in-app purchasing systems, other than Apple's, to offer their consumers other options for processing transactions carried out in apps; (d) choose to distribute their native applications for the iOS system through other tools and mechanisms than exclusively the Apple App Store (sideloading or third party app stores); (e) could use the App Store distribution services without having to use Apple's in-app payment system.

44. The decision gave Apple twenty days to provide the Brazilian market with mechanisms and tools to deploy additional options for distributing apps and payment processing systems in the national territory.

45. Apple appealed the decision, and the case was referred to CADE's Tribunal. In May 2025, the Tribunal of CADE unanimously decided to follow the vote of the rapporteur of the case, Commissioner Victor Oliveira Fernandes, and uphold the interim measure imposed by the Office of the Superintendent General, establishing a ninety-day period for the implementation of the remedies.

46. According to the rapporteur's vote on the appeal, the investigation concerned the following practices: (1) preventing the distribution of third-party digital goods and services in native apps; and (2) imposing the mandatory use of Apple's in-app purchase mechanism

(IAP) for digital content and services consumed within the app, reinforced by the implementation of Anti-Steering Provisions that prohibit developers from informing iOS users about alternative purchasing mechanisms outside of the app.

47. Commissioner Fernandes concluded that Apple had a dominant position in the involved markets, with gatekeeper power in the iOS mobile ecosystem, due to its ability to unilaterally set the rules of operation and conditions of competition for app developers. The reporting Commissioner analysed different theories of harm for Apple's mobile digital ecosystem: (1) exclusionary incentives (offensive leverage and defensive leverage); (2) unlawful discrimination; and (3) tying.

48. The decision stated that the exclusionary incentives in smart mobile digital ecosystems manifest themselves in a particular manner, beyond the traditional framework of the single monopoly profit theory. Two fundamental categories of leverage have been identified: (1) offensive leverage, where Apple exploits its monopoly power in the market for the provision to developers of platforms for the distribution of apps to iOS users to extend dominance to adjacent markets, even if this temporarily sacrifices the maximization of ecosystem value; and (2) defensive leverage, where the restrictions imposed aim to prevent complementors (developers) from disintermediating the central platform or creating alternative distribution channels that could threaten Apple's monopolistic position.

49. With regard to discriminatory conduct, the Reporting Vote argued that: (1) Apple imposes differentiated conditions on developers in an arbitrary and non-transparent manner; (2) its dominant position allows for inconsistent application of the App Store Review Guidelines; and (3) there are risks of preferential treatment for Apple's proprietary apps, which are not subject to the same restrictions imposed on third-party developers.

50. Concerning the tying arrangements, the assessment determines: (1) the separability between the App Store and in-app payment system; (2) contractual coercion through the License Agreement and the App Store Review Guidelines; (3) potential foreclosure effects in the payment processing market; and (4) intra-product discrimination between categories of developers, with a disproportionate impact on those monetizing services via recurrent digital content transactions, resulting in consumer surplus extraction. The opinion argued that the tie-in sale practiced by Apple was illegal, since the company imposed a 30% fee for payments made in apps. According to the vote, this practice not only harms developers by imposing excessive costs but also hinders innovation and reduces the variety of apps available for consumers.

51. To address these competition concerns, the rapporteur understood that the remedy for the case should have three pillars: (1) removal of anti-steering provisions to permit developers to include buttons, external links, or other means of informing the user and directing them to purchasing mechanisms other than in-app purchase; (2) unbundling of the payment processing service for in-app transactions from Apple's IAP, allowing the use of alternative payment mechanisms; and (3) enabling the distribution of apps on the iOS operating system through alternative channels to Apple's App Store. These pillars would be present in the Office of the Superintendent General's interim measure, which was therefore upheld by CADE's Tribunal, with only an adjustment to the compliance deadline (which was changed to 90 days).

52. Therefore, in the ruling of Apple's appeal, CADE adopted an ecosystem-based theory of harm to examine how Apple's App Store practices could affect developers and users across interconnected markets. CADE recognized that Apple's conduct within its iOS ecosystem could generate cross-market effects, particularly by favouring its own services and imposing contractual restrictions on

rival app developers. Therefore, the remedies imposed in the interim decision addressed concerns that extended beyond a specific app market and sought to restore competitive conditions in the ecosystem as a whole.

53. At the time of writing, Apple is in negotiations with CADE for the possible signature of a Cease and Desist Agreement. As a result, the deadline for compliance with the preventive measure is suspended during the negotiation period. Apple has also agreed to suspend its legal action against the interim measure[3] while negotiations for a settlement are ongoing.

5. Brazilian legislative initiatives to regulate competition in digital markets

54. Bill No. 2768/2022[4], currently under discussion in the Brazilian National Congress, proposes the creation of an ex-ante regulatory framework for digital platforms in the country. Inspired by the European Union's DMA, the bill establishes an asymmetric regime applicable to companies with "crucial access control power" — equivalent to the European concept of "gatekeepers." The text assigns the role of regulatory and enforcement authority to the Brazilian National Telecommunications Agency (ANATEL). [5]

55. Some of the key features of the bill are the establishment of generic obligations for large platforms, the absence of prior impact assessments or public consultations, and an emphasis on a leaner model compared to the DMA, avoiding the detailed categorizations adopted in the European Union. However, it has been criticized for lacking clearly defined normative objectives, exhibiting both conceptual and institutional ambiguities, and disregarding international experiences that could contribute to the design of a more effective framework tailored to Brazil's specific context.[6]

56. On the other hand, the Brazilian Ministry of Finance has drafted a proposal for regulating digital platforms with a focus on competition, consolidated in the report Digital Platforms: Competition Aspects and Regulatory Recommendations for Brazil, published in 2024. The proposal provides for the creation of an asymmetric ex-ante regulatory regime, aimed at platforms with "systemic relevance" — those whose central position in digital ecosystems significantly impacts the contestability of markets. These platforms would be

[3] Apple brought the interim measure before the courts at the same time as it was being analyzed by CADE. Even before the administrative Appeal to the CADE Court was assigned to a Reporting Commissioner, Apple challenged the interim measure imposed by GS-CADE in court. Initially, the interim measure was suspended by a preliminary injunction issued by the trial judge in favor of Apple. Subsequently, the court of second instance suspended this preliminary injunction, ruling in favor of CADE. Next, the court of first instance confirmed, in its final ruling, its decision to suspend the interim measure. Finally, this decision was again reversed on appeal to the court of second instance, thanks to the work of the CADE Attorney General's Office, which enabled the administrative appeal to be ruled on by CADE's Tribunal, in May 2025.

[4] Brazilian Congress, PL 2768/2022 (10 November 2022). https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2337417.

[5] Fernandes, V. O. (2024). Lost in translation? Critically assessing the promises and perils of Brazil's Digital Markets Act proposal in the light of international experiments. *Computer Law & Security Review*, 52, 105937, pp. 1–3, 5–6, 9–10. https://doi.org/10.1016/j.clsr.2024.105937

[6] Ibidem.

subject to specific obligations, defined on a case-by-case basis, based on an administrative procedure conducted by the competent authority.[7]

57. The proposal grants the Administrative Council for Economic Defense (CADE) the role of sectoral regulatory authority for these platforms, drawing on the agency's technical expertise in competitive dynamics. The report recommends the creation of a unit specialized in digital markets within CADE, with powers to designate systemic platforms, conduct market studies, request information even outside of investigative proceedings, and coordinate with other regulatory agencies, such as the Brazilian National Data Protection Authority (ANPD) and the Brazilian National Telecommunications Agency (ANATEL). The proposed model seeks to promote greater contestability and transparency in digital markets, ensure freedom of choice for users, and mitigate the risks associated with the concentration of economic power in complex digital ecosystems.[8] The Executive Branch of the Brazilian government has not yet submitted a bill to the Congress with this proposal, but it is worth noting that it would bring another model of digital market regulation to Brazil, this time centred on the antitrust agency.

58. Therefore, as already highlighted in CADE's contribution to the Ministry of Finance's public consultation for the regulation of digital platforms, CADE has the capacity to adapt to the complexities and rapid innovations that characterize digital markets, avoiding fragmented oversight and ensuring timely and informed interventions. This stems from its robust track record in implementing remedies to restore market competitiveness – including in digital contexts – which, combined with its specialised competences, enables it to efficiently address the dynamic issues of this sector.[9] Therefore, CADE can be seen as well-positioned to perform the role of sectoral regulatory authority for digital platforms, precisely due to its high adaptive capacity combined with its experience in implementing remedies in digital markets in Brazil.

6. Final Remarks

59. This note aims to present how the Brazilian competition authority has applied antitrust remedies in digital markets, drawing on recent merger cases, conduct investigations, and regulatory developments.

60. The merger cases analysed in this note reveal that CADE has adopted a cautious but proactive stance in addressing potential competition concerns arising from digital transactions. In both the Bus/J3 and Catena-X cases, CADE identified risks of foreclosure and anti-competitive information exchange, respectively, and responded by imposing behavioural remedies designed to safeguard competition without blocking potentially beneficial integrations. The remedies prioritised access, transparency, and governance —

[7] Brazilian Ministry of Finance (2024), *Digital Platforms: Competition Aspects and Regulatory Recommendations for Brazil*, https://www.gov.br/fazenda/pt-br/central-de-conteudo/publicacoes/relatorios/sre/digital-platforms-competition-regulatory-recommendations-brazil-en.pdf.

[8] Ibidem.

[9] Administrative Council for Economic Defense (2024), *Contributions to the Ministry of Finance's Public Consultation on the Regulation of Digital Platforms*. https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/contribuicoes-do-cade/contribuicoes-cade-ministerio%20fazenda-ingl%C3%AAs.pdf.

including data protection measures and compliance obligations — highlighting CADE's readiness to tailor its interventions to the specific characteristics of digital markets.

61. In the three antitrust investigations examined — involving iFood, Gympass/Wellhub, and Apple — CADE responded to unilateral conduct complaints filed by third parties by swiftly adopting interim measures under Article 45 of Law 12529/2011. These preventive measures aimed to avert irreparable harm and preserve the effectiveness of final decisions.

62. One feature of CADE's recent approach to digital remedies is the introduction of performance-based commitments in the iFood and Gympass cases. In both settlements, CADE allowed some degree of exclusivity only when demonstrably linked to investments that ensured above-average growth for exclusive partners. These provisions recognise that certain efficiencies from exclusivity may be temporary and seek to ensure that such arrangements benefit both platforms and the businesses that use them.[10] Moreover, these cases underscore the importance of negotiated solutions in digital markets. Given the complexity and rapid evolution of these environments, Cease and Desist Agreements have proven to be a flexible and effective tool to address competitive concerns.

63. In turn, in Apple's case, CADE's analysis looked at specific issues related to the dynamics of the iOS ecosystem. As a preventive measure, the Brazilian authority imposed remedies aimed at addressing competitive concerns arising from Apple's conduct within this integrated environment.

64. Finally, the regulatory debate in Brazil is still evolving. While Bill No. 2768/2022 proposes an ex-ante framework under the authority of ANATEL, the Ministry of Finance has advanced an alternative model centred on CADE. The latter approach builds on CADE's experience in implementing remedies in digital markets. A regulation rooted in the antitrust authority may provide a more coherent and contestability-oriented framework, better suited to the challenges posed by large digital platforms.

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