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## **The Role of Competition Policy in Promoting Economic Recovery – Note by Brazil**

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More documents related to this discussion can be found at  
<http://www.oecd.org/daf/competition/promoting-economic-recovery.htm>

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## *Brazil\**

### 1. Introduction

1. Competition is always beneficial for economic growth and social welfare. Economic growth, in particular, derives from a variety of endogenous sources such as accumulation of physical capital (e.g. machinery and new sources of raw material and energy), human capital (e.g. education and job training) and organizational capital (effective and efficient structures of production within firms), as well as innovations that increase total factor productivity. Competition is important to foster both accumulation and innovation. Therefore, there is no question that antitrust and competition advocacy policies will be crucial to boost economic recovery after the COVID-19 crisis.

2. During most of 2020, competition advocacy focused on avoiding initiatives intended to eliminate specific economic issues caused by the pandemic but with unnoticed anticompetitive consequences. In Brazil, for instance, there has been attempts to impose: (i) price freeze on drugs and personal protective equipment to fight price gouging; (ii) mandatory price cuts for private schools justified on the grounds that lectures have been forced to shift online and average incomes have fallen during the crisis; and (iii) price caps on liquefied petroleum gas once its price started to rise. The Administrative Council for Economic Defense (CADE), the Brazilian antitrust authority, succeeded in putting in a significant deal of effort to prevent the implementation of these anticompetitive initiatives. While there are still concerns regarding paternalistic practices in some states of Brazil, at this point it seems plausible to focus on competitive policies for when the crisis is over.

3. This paper presents an overview of five ongoing initiatives intended to increase competition in Brazil. It starts by describing an initiative to promote free trade, which is not the most promising project since it depends on long rounds of cross-border negotiations. However, it is always worth repeating the importance of advocacy supporting free trade. International trade has always been key to increasing market contestability since it exposes internal producers to external competition. It becomes particularly significant after economic crises when interest groups get empowered and tend to exert intense political pressure.

4. Afterwards, the text goes on to address tax reform projects which are being debated in the Congress. In Brazil, states have the discretion to grant consumption tax exemptions. Moreover, consumption goods are taxed by the state where they are produced, rather than where they are consumed. Thus, states are tempted to attract companies by granting exemptions from consumption taxes. Not only does this practice cause many fiscal problems, it also has a distortionary effect because firms end up not where they are more productive (close to ports, consumers, or input supply) but in whichever states are more willing to make up for their inefficiencies with tax exemptions. Furthermore, exemptions also tend to favor specific economic sectors, leaving a heavy tax burden to other sectors, which also has a distortionary effect. These are the key factors of the proposed tax reform that requires competition advocacy measures.

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\* This document was prepared by CADE Commissioner Luis H.B. Braido. The views and opinions expressed in this paper are those of the author and do not necessarily reflect the official policy or position of CADE. The author would like to acknowledge the invaluable comments from Guilherme M. Resende, Ricardo M. de Castro and Gerson C. Bênia.

5. The third policy addressed in this paper is PIX, an electronic payment system which has been recently launched. It is essentially a new technology that allows for quicker e-transfers between individuals, businesses and the government. It is available for financial institutions such as banks and fintech companies in Brazil at low maintenance fees. It is expected to bring about innovations related to e-payments, especially by digital banks and fintech companies, but also by major banks. This system is expected to reduce the costs of money transfers and e-payments, reducing consumer dependence on cash and increasing the ability of entrants to compete with large banks that control most ATMs. At this point, the competition authority should just monitor the changes in the financial sector and be prepared to act should any exclusionary practices arise.

6. Then, there is the open banking initiative which is likely to increase competition in the credit market. It involves adopting banking practices that force financial institutions to provide access to their customers' transactional data (with their permission) to other financial services providers, which is likely to increase competition in the credit market by increasing the availability of credit since more information on credit risks should be available to all financial institutions. Naturally, credit is essential for economic recovery. Therefore, the Brazilian antitrust authority will need to watch out for anticompetitive practices which could negatively impact the outcome of this initiative.

7. The last policy addressed in this paper is related to data protection. In 2018, the Brazilian Congress passed the Data Protection Law and established a specific schedule for its implementation. The Brazilian data protection authority was recently created and is expected to be fully operative by August, 2021. This policy is particularly important to antitrust since there has been a significant increase in price discrimination in e-commerce and exclusionary practices in the context of online platforms. Therefore, data protection, data access and antitrust are closely interconnected, and bridges between the two agencies should be built soon.

8. Details on each of these projects and initiatives are provided below. While there are many other initiatives intended to promote economic growth, these are the ones most intimately connected to antitrust matters in general and to competition advocacy in particular.

## 2. Free Trade

9. The British economist David Ricardo was the first to stress the importance of international trade for exploring comparative advantages and promoting efficiency gains related to production specialization. His ideas have been revisited many times over the past centuries, especially after economists started to use game theory to analyze international trade. In a world with strategic interactions, barriers to trade might play an interesting role. However, fixing market frictions is the main goal of modern Economics and, in this context, reducing barriers to trade is important for social welfare and economic growth since it increases competition and reduces prices in all countries involved.

10. There is an obvious parallel between antitrust and international trade. Antitrust is also aimed at promoting competition to improve economic performance and welfare. It acknowledges the existence of inefficiencies resulting from strategic interactions, market power, externalities, and economies of scale and scope. Nonetheless, in general, promoting competition improves welfare. Therefore, it is no surprise the antitrust community supports international free trade since reducing trade barriers increases competition.

11. Brazil has been intending to open its economy (and markets for its products as well) for the last 30 years, with more and less enthusiasm at different times. The goal of

promoting free trade has public support and is desirable for the Brazilian Government. The most visible step towards achieving this goal so far was the announcement on June, 2019, of an ambitious and comprehensive trade agreement between Mercosur and the European Union. The negotiations for this agreement have lasted for almost 20 years and are likely to still take some more years since it needs to be assessed by the parliaments of all countries involved.

12. While the agreement with the European Union is the most ambitious, there are also discussions underway with China and, more recently, the United States and Brazil have announced a trade deal to reduce regulatory barriers and align the processes involved in transfers of goods between the two countries. So far, the agreement is very limited but it is a step forward and its implementation does not depend on parliamentary approval.

13. The free trade agenda has enemies in every country. Many economic sectors will be exposed to external competition and will have to become more efficient to survive. However, free trade is always good for consumers, and this is enough for competition advocacy measures to be taken. Thus, it would be useful gathering information about the consequences of the agreement for each country. Naming who would benefit from the agreement or be hurt by it in each country would help prepare for potential difficulties by designing economic policies to alleviate the consequences for workers in losing sectors.

### 3. Tax Reform

14. Consumption taxes are complex in Brazil: there are three different federal taxes (IPI, PIS and COFINS) with specific rates and exemptions; a state tax (ICMS) established by each of the 26 states and the Federal District; plus a local tax (ISS) with rates established separately at each of the over five thousand cities.

15. Aside from the high number of different rates, taxes are collected where the good is produced instead of where it is consumed. This creates incentives for granting tax exemptions to attract investments, thus creating a distortionary effect caused by firms choosing where to have their factories according to tax costs instead of transportation costs.

16. The reform being currently discussed was inspired by the European value added tax in which local taxes are collected where consumption actually happens. Rates should be the same for every sector and while states and cities would still be able to establish their rates, they would then only be in charge of the tax burden on local consumers. Therefore, firms would pay taxes according to the local rates of wherever products are sold regardless of where production is located.

17. In short, the tax reform is aimed at simplifying the system by reducing the number of tax legislations and at connecting local taxes to consumption (instead of production). This simplification could reduce barriers to entry. Moreover, shifting where local taxes are collected eliminates states incentives to establish tax exemptions, which should have remarkable effects on competition, causing new investments to be made with the intention to minimize production costs instead of tax costs.

18. It seems worth mentioning this is not a new antitrust issue in Brazil. In 1999, CADE was consulted about the inefficiency caused by tax competition among states (Consultation 0038/99) and defended that it causes allocative inefficiency and could limit competition. Since this discussion is likely to be front and center in the country very soon, competition advocacy measures should focus on potential competitive effects of new projects and amendments that could be taken to Congress.

## 4. PIX

19. In October, 2020, the Central Bank of Brazil launched PIX, an electronic payment system that allows for instant money transfers between individuals, businesses, and the Government. The new system, which uses phone numbers, social security numbers, e-mail addresses, and QR codes for identification purposes, is available around the clock.

20. The new technology will be provided to financial institutions at low maintenance fees and is expected to lower e-payment costs in the retail sector and reduce the use of cash. It could also increase competition in the banking sector—as entrants will be less dependent on access to ATMs—thus promoting financial inclusion.

21. It is worth mentioning bank charges are considerably high in Brazil: many banks charge a fee for each transfer made, regardless of the amount transferred, which is especially harmful to the poor. Besides, until very recently, a significant part of the population did not have a bank account. The pandemic changed this landscape, since a banking account was required for enrollment in the cash transfer program designed to alleviate the effects of the lockdown, and two public banks (Banco do Brasil and Caixa Econômica Federal) created free digital accounts with limited services. Fintech companies and digital banks—which had already been offering accounts and credit cards with zero fees—experienced an enormous increase in their number of customers. PIX will most likely reinforce this trend.

22. Moreover, electronic payments are expensive in Brazil. Small retailers pay around 3% of the selling price for every electronic transaction. Through PIX, banks and fintech companies can easily introduce lower-cost alternatives for retailers.

23. Since PIX is already in place, there is no need for advocacy measures. However, the competition authority should keep an eye out for potential exclusionary practices by incumbents, which could limit innovation.

## 5. Open Banking

24. As in many other countries, Brazil is currently implementing a framework for banking in which consumers and businesses will be able to authorize financial service providers to access their banking transaction data through Application Programming Interfaces (API). It is expected to be fully operational by October, 2021.

25. Financial institutions are the firsts to adopt it. Participation is mandatory for large institutions which must join the program by January, 2021. Smaller ones may voluntarily opt in before May, 2021.

26. As from June, 2021, participants will be required to make their transactional data—on credit card and banking accounts, including saving and payment accounts—available. Then, data on loans and, subsequently, transactional data on financial investments, insurances, and currency exchange transactions will also be made available.

27. The banking sector is highly concentrated in Brazil and the lack of information on individuals' needs and credit risks is an important barrier to entry. This initiative will most likely increase competition and make it easier for new institutions to operate. Similarly to PIX, this initiative does not require advocacy measures for the time being. It should be enough for antitrust officials to keep an eye out for potentially exclusionary practices.

## 6. Data Protection

28. The 2018 Data Protection Law is being gradually implemented in Brazil. It is aimed at addressing the defense of privacy, reputation, image, informational self-determination, free speech, economic and technological development, innovation, human rights and citizenship, among others. In particular, the law explicitly mentions the defense of some competition ideals such as free enterprise, free market and consumer protection, which clearly overlaps with antitrust matters.

29. The Brazilian data protection authority was recently established and is legally required to be fully operational by August, 2021. The overlap between antitrust and data protection issues is clearly established in Law 12529/2011, the Brazilian Competition Law, and Law 13709/2018, the Data Protection Law.

30. As antitrust is experiencing an increase in e-commerce price discrimination and exclusionary practices in the context of online platforms, a weak data protection policy could intensify the problem. However, access to data can also have beneficial effects to competition since it allows for more efficient price discounts and better matches between consumers and suppliers.

31. Sharing data among suppliers is also an important issue. On the one hand, it allows entrants to compete for consumers with well-established incumbents, an outcome expected from the open banking initiative. On the other, authorities should beware of the possibility of anticompetitive coordination between firms when they have access to details of each other's activities.

32. Thus, the antitrust community has the obligation to share its experience with the new agency, and this calls for intragovernmental advocacy.

## 7. Final Remarks

33. Advocacy is the public institutional support for, or opposition to, a particular policy. Antitrust authorities should always be actively engaged in competition advocacy. This is particularly important after economic crises, which usually empower interest groups to propose anticompetitive policies to compensate for their losses.

34. Economic crises are usually followed, in different countries, by an increase of the "failing firm" defense for lowering the standards for reviewing mergers and acquisitions. Criticisms of welfare analysis and claims that antitrust authorities should take unemployment concerns into account also arise after crises. However, as noble as the task of saving jobs can be, it is an unfortunate consequence that consumers always bear the burden of reduced competition.

35. Competition advocacy requires extra efforts after economic crises for another reason: projects aimed at increasing productivity are also more likely to come forth after crises. This paper has focused on five specific projects that either are being discussed or have recently started being implemented in Brazil. They all emphasize the importance of antitrust advocacy and supervision, which should play a key role in the post-pandemic economic recovery.