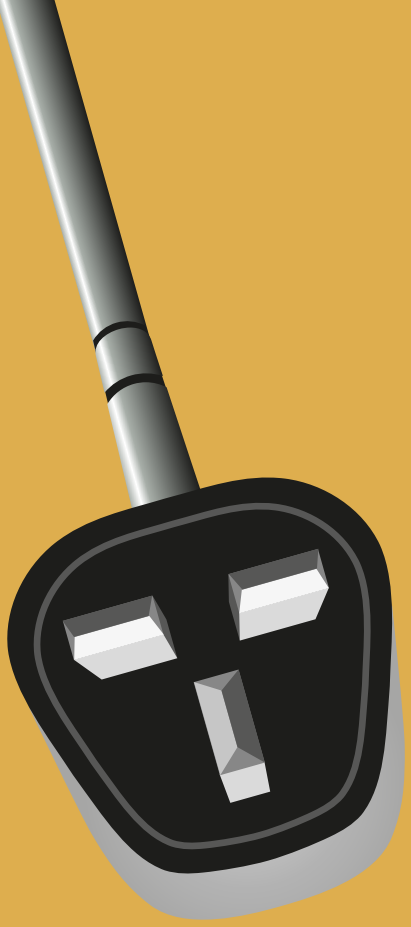

DIGITAL MARKERT REGULATION *in* BRAZIL

CRITICAL ANALYSIS OF BILL Nº 4675

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REGULATION *OF* DIGITAL MARKETS *IN* BRAZIL: CRITICAL ANALYSIS OF PL 4675

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EXECUTIVE SUMMARY

Bill No. 4,675/2025 proposes a structural change to the Competition Law by introducing into the Brazilian legal system an ex ante intervention regime applicable to "systemically relevant" agents in digital services and duplicating the structure of the CADE (Administrative Council for Economic Defense) superintendency with a division dedicated solely to digital markets. This initiative represents a significant shift in the competition defense model in Brazil, where CADE previously acted solely as a repressive judicial body against specific market practices and as a preventative measure against mergers. Now, CADE has added a regulatory role in digital services markets, allowing it to pre-establish obligations and prohibitions on commercial practices by agents in order to promote competition and increase the contestability of these markets.

The theoretical justification for adopting the ex ante regime stems essentially from concerns regarding the reaction time of the ex post system, which would be slow in the face of the dynamics of the digital environment, and from structural characteristics of digital markets that would bring gaps and limitations to the traditional methodology of antitrust investigation and analysis of conduct. These concerns led to the adoption of the Digital Markets Act (DMA) in the European Union, whose expedited passage in 2022 marked a turning point in European competition law. The ex ante approach has influenced initiatives such as the Digital Markets, Competition, and Consumers Act (DMCC) in the United Kingdom and has become part of the regulatory agenda in other jurisdictions, generating considerable controversy and diverse solutions in terms of the intensity and scope of interventions. In Brazil, the discussion followed distinct institutional paths until culminating in Bill No. 4,675/2025, drafted by the Secretariat for Economic Reforms of the Ministry of Finance.

The European initiative had the merit of raising relevant concerns about the dynamics of digital markets and about the advisability of adopting measures and mechanisms that complement antitrust enforcement, in order to make its application to digital markets effective. The debate regarding the suitability of these measures to the Brazilian context, considering international experience and that of Europe itself, points to the need for caution and an approach that starts from CADE's own recent practice, assessing its limitations and improving existing tools. In particular, CADE's successful experience with solutions agreed upon

between the authority and market agents appears as a spearhead for building its own model, more suited to the Brazilian context of digital markets and services.

The proposal from the Ministry of Finance, embodied in Bill 4,675, is inspired by the British model, with the designation of gatekeepers and the specification of ex ante obligations by the competition authority itself, based on parameters contained in the legislation. Currently, the Bill is awaiting a vote on a request for expedited processing.

There are a number of issues to be addressed, both regarding the suitability of the ex ante approach for the current context and Brazilian institutional design, as well as flaws contained in the proposed text.

This diagnosis is based on the following observations developed in this report:

(i) The ex ante approach has not found consensus in international debate and legislative initiatives, resulting in varied solutions that are sensitive to the competitive dynamics of digital services in each country where it has been proposed;

(ii) Europe has begun to review its digital regulation, considering that its complexity and compliance costs may have negatively affected the competitiveness of the European industry;

(iii) The costs of adapting products, compliance structure, and costs of delays in launching innovations in Europe due to the application of the DMA are significant;

(iv) Artificial Intelligence markets have brought significant competitive and investment pressures on incumbents in digital services;

(v) In Brazil, in addition to local leadership, mainly in the e-commerce segment, there is a significant growth of Chinese companies, particularly driven by AI in their services and products, which makes generic impositions for different services (one size fits all) inappropriate;

(vi) In 2025, the year following the publication of the study conducted by the Ministry of Finance that underlies the proposal contained in the Bill, CADE contradicted the diagnosis of ineffectiveness present in that study by adopting a series of measures and interventions on digital markets, in particular with the use of provisional remedies and cease-and-desist orders.

Given this scenario of uncertainty regarding the ex ante approach in the international debate, the possibility of challenges arising from the market itself, driven by AI, and the increasing interventions by CADE (Brazil's antitrust authority) in digital services, it seems appropriate to enhance the existing tools in the Brazilian competition defense system, observing the successes and limitations experienced by CADE, instead of implementing an entirely new model, altering the very adjudicative nature of the agency.

In particular, Bill 4,675 does not seem to align with this experience, bringing some setbacks.

(i) It duplicates the structure of CADE by creating a superintendency with powers not only for ex ante obligations, but also for ex post processes, which not only entails costs, but may bring conflicts of jurisdiction in the face of the increasing digitalization of products, services, and markets, generating legal uncertainty and potential litigation.

(ii) It adopts alternative (non-cumulative), ambiguous, and vague criteria for characterizing systemic relevance, which can lead to very broad interpretations about the range of designated agents, granting CADE broad discretion for such determination, which brings legal uncertainty and aggravates the potential for institutional conflict pointed out above.

(iii) It designs a procedure for specifying obligations for a specific agent, even without conduct practiced in the market, which closely resembles the currently existing administrative process with a cease-and-desist order.

(iv) However, it sets tight deadlines with no room for extension to allow for the exercise of the due process of law.

(v) Also, it does not explicitly provide for a negotiation mechanism for adjusting conduct, an instrument that is part of CADE's successful experience, including in digital markets.

(vi) It does not link the imposition of obligations to the existence of prior disapprovals by CADE, not even in relation to analogous conduct or in similar markets, which may lead to speculative regulations and interventions toencourage competition, without a basis in evidence and analysis of concrete effects.

(vii) Coupled with this limitation, the text does not allow for the consideration of economic justifications or potential efficiencies and benefits to the consumer in specifying obligations and corresponding restrictions on the conduct and commercial practices of designated agents.

(viii) It introduces a surprisingly long term for designating systemically relevant agents, up to 10 years, which is incompatible with the dynamics of digital markets.

Based on this diagnosis, this report proposes two suggestions to better adapt competition protection in Brazil.

Suggestion 1: CADE's institutional strengthening for competition enforcement in digital markets

This path is independent of law and can be implemented both through legislation and through Resolutions and Guidelines issued by CADE itself, consisting of:

(1) Adopting procedural measures to prioritize and expedite the handling of cases involving digital services, considering their highly dynamic nature.

(2) Strengthening the role of the Economic Studies Department of CADE, specifying a unit dedicated to digital markets, responsible for identifying systemically relevant agents, through studies. Although non-binding, such preliminary studies would create a strong presumption of systemic relevance, shifting the burden of proof and reducing the analysis time regarding the market power of investigated agents or in mergers.

(3) Using provisional remedies to suspend practices and immediately contain potentially deleterious effects within the scope of administrative processes.

(4) Combining provisional remedies with the opportunity for negotiation, following the due process of law, with a view to signing Cease-and-Desist Agreements.

(5) Using statements or case law summaries on conducts considered illegal in relation to digital services, with a presumption of illegality, signaling to the market a high risk in adopting such practices.

With the exception of items 1 and 2, which address priority and systemic relevance studies by DEE/CADE, the measures proposed above should be

encouraged by CADE in all markets and not only in relation to digital services, due to their efficiency in resolving conflicts.

Suggestion 2. Reformulation of Bill 4,675 based on CADE's experience

The second suggestion involves amending the text of the Bill to incorporate existing practices that are established and successful at CADE, including:

(1) To make the designation criteria cumulative, in addition to promoting review to reduce vagueness and indeterminacy, in order to provide legal certainty.

(2) To establish as a necessary, but not sufficient, condition for imposing ex ante conduct that its content has already been disapproved by CADE (regulation based on experience and evidence of anti-competitive conduct) and that its application must observe economic justifications, as per recommendation 4.

(3) To extend the time limits for responding to the requirements in the designation and specification of duties process.

(4) To include in the process of specifying obligations the opportunity and duty to consider economic justifications and efficiencies in terms of the benefits of the practice to the market, innovation, and end consumers.

(5) To introduce a conduct adjustment mechanism, with negotiation between CADE and the agent designated as systemically relevant.

(6) To reduce the designation period from up to 10 years to up to 2 years (with the possibility of a justified extension for an additional 1 year).

(7) To organize a specialized unit for digital markets within the scope of the CADE Superintendency or within the scope of the DEE, with competence only for ex ante procedures for imposing obligations without the need to duplicate the enforcement structure.

Given the complexity of the intervention contained in Bill 4,675 and its potential impacts, coupled with the disagreement regarding the suitability of the ex-ante competition approach for Brazil and the various points of possible improvement in the legislative text, caution and the promotion of broad public debate during the processing of the Bill are recommended in order to reach greater consensus on the best way to strengthen CADE's role in relation to digital services.

The report argues that the decision to adopt an ex ante regime is a public policy choice involving complex trade-offs between preventing competitive risks, preserving innovation, ensuring legal certainty, and promoting international competitiveness, thus requiring a broad and in-depth debate on Bill No. 4,675/2025.

Observing the experience of CADE, international experiences in implementing ex-ante regulations, and the consolidation of competitive dynamics associated with artificial intelligence would allow Brazilian legislators to deliberate based on more robust evidence, reducing the risk of adopting solutions that may prove excessive or inadequate to the national context

SUMMARY

1. INTRODUCTION

The proposal to revise the competition law to include the so-called "*ex ante*" approach with the possibility of imposing specific obligations or restrictions on the commercial conduct of agents, regardless of investigation into any specific practice, stems essentially from two concerns pointed out by academics and antitrust authorities: on the one hand, the problem of economic time, i.e., Ex post enforcement, although indispensable, tends to be slow in the face of the intense dynamics of digital markets and, on the other hand, the problem of methodology, i.e., difficulty in specifically proving harmful potential (damage theory) given the structure of those markets and the factor of innovation as a vector of competition. Such elements, combined with the recurrence of certain conducts, judged by some foreign jurisdictions as harmful, could justify the introduction of standardized and prospective obligations, reducing investigation costs and preventively protecting the market.

Such concerns led, for example, to the adoption of the *Digital Markets Act* (DMA) in the European Union, which was approved uncharacteristically quickly in 2022. Echoing the so-called Brussels Effect, this piece of legislation influenced the adoption of this regulatory approach in other countries, such as the *Digital Markets, Competition and Consumers Act* (DMCC), in the United Kingdom.

In Brazil, the agenda followed different institutional trajectories, before materializing in PL 4,675/2025, which will be analyzed in this Report. The first proposal in this regard, PL 2,768/2022, manifestly inspired by the DMA, proposed to assign to ANATEL powers for the inspection and sanction of digital platforms in case of non-compliance with certain obligations, such as non-discrimination and offering access to the platform, stipulated in a very generic way.

In parallel with the ongoing legislative debate in the Chamber of Deputies with PL2768 under the rapporteurship of Deputy Any Ortiz, the Federal Government reorganized the discussion within the scope of the Ministry of Finance, through the Secretariat for Economic Reforms (SRE), which opened the Call for Subsidies No. 01/2024 and, based on the contributions, published technical reports with hypotheses for intervention in October 2024. This process is the basis for the proposition sent to Congress on September 19, 2025, Bill No. 4,675/2025, which amends Law No. 12,529/2011 to institute the designation of

agents of systemic relevance in digital markets, impose special obligations and create a dedicated structure at CADE.

After the proposal submitted by the Ministry of Finance, the European debate on the adequacy of the DMA intensified, with contributions and production of relevant documents, such as the Draghi Report and initiatives labeled as *Digital Omnibus*, opening space for its revision of the DMA.

The reassessment of the European regulatory initiatives that inspired the national regulation recommends caution in assessing the potential impacts of the *ex ante* approach on the Brazilian economy, before any movement of mimicry or importation of foreign solutions. Some questions seem key to examining the convenience of adopting such an approach and with what scope or depth.

First, it should be questioned whether the instruments available to the Council for the Defense of Competition (CADE) by the Competition Law (Law No. 12,529/2011), combined with institutional and procedural improvements, would be able to meet the concerns raised, considering the revision of European regulation and the effective impacts on agents operating in Brazil.

Second, considering that the dynamics of digital markets have been affected by the rapid expansion of artificial intelligence solutions, especially foundational models and generative AI services, it is worth questioning whether the concerns raised for digital markets can be transposed to AI markets, or whether AI markets bring competitive pressures on digital markets that could make state intervention unnecessary or even risky. Or even, if we are in a state of uncertainty about the interaction between AI markets and digital markets, which would recommend prudence in interventions.

Third, it is necessary to inquire about the specificities of the different digital markets in Brazil, such as, for example, the penetration of Chinese companies and the maturity and protagonism of Brazilian and regional companies, from startups, fintechs to traditional retail giants, which lead innovation and consumption in the country through strategies of personalization, influence and high use of mobile devices. Such factors can bring significant differences in relation to the European context.

The critical analysis present in this Report will be developed from these three orders of questioning. As explored in the second part of this Study, PL

4,675/2025 may bring risks of overinclusion and legal uncertainty, mainly due to the criteria for designating agents with systemic relevance, the establishment of a period of up to ten years for the status of designated agent, incompatible with the speed of digital innovation, and the absence of express mechanisms for negotiation and conduct adjustments, that consider potential efficiencies of business practices. In addition, the text seeks to draw attention to the problem of mischaracterization of CADE's essentially judicial and repressive role, as outlined in the Federal Constitution of 1988, by attributing a regulatory role to the agency.

In addition to the Introduction (Section 1), the report is organized along the following path: Section 2 reconstructs the genesis and diffusion of the European paradigm of *ex ante regulation* with emphasis on DMA in the context of the EU's digital regulatory package and its international influence, and then delves into Section 2.1 about the recent inflection of the European model itself. examining the Draghi Report and the *Digital Omnibus* as signs of a rebalancing between regulatory ambition, coherence, and competitiveness; Section 2.2 systematizes the initial impacts of the DMA, covering product adaptations and gatekeepers' policies, the Commission's iterative enforcement, and already observable economic effects; Section 3 updates the structural diagnosis by discussing the new dynamics of digital markets in the age of AI and its impacts on the competitive dynamics of digital markets. Section 4 enters into the critical examination of the design of PL 4,675/2025 and, specifically in Sections 4.1 to 4.8, details the main points of friction: broad criteria for designation, duration and review of status, separation between *classic enforcement* and *ex ante* regime with openness to promotion, absence of explicit valves for efficiencies or justifications, lack of formal negotiation instruments and compliance costs. It also evaluates the real need to adopt a specific regulatory framework for digital markets in Brazil, pointing to an alternative for institutional improvement. Finally, Section 5 presents the main findings and presents recommendations to improve the proposed draft regulatory design.

2. THE INTERNATIONAL SCENARIO IN THE REGULATION OF DIGITAL MARKETS

2.1. International dissent

The Brazilian regulatory debate on digital markets takes place in an international context marked by rapid technological evolution and the adoption, by other jurisdictions, of regulations designed with the objective of mitigating risks attributed to large digital platforms. In this scenario, the European experience has become a parameter both because it is one of the first attempts to apply a specialized and *ex ante* model, and because of its influence. Thus, understanding this path is essential to evaluate trends, identify points of attention, and situate Bill No. 4,675/2025 in relation to models already tested or being consolidated abroad.

The European Union plays an important role in the consolidation of regulatory frameworks for digital markets. As set out in the document *Shaping Europe's Digital Future*,[1] the bloc made explicit the ambition to influence the way digital solutions would be developed and used on a global scale, positioning itself as a strong digital player capable of defining its own rules and setting international standards.

In this line, it has advanced in the formulation of regulatory instruments, such as the *Digital Services Act* (DSA), *Digital Markets Act* (DMA) and *General Data Protection Regulation* (GDPR). Presented at the end of 2020, the DSA and DMA reflected the debate on digital services and markets.

[1] EUROPEAN UNION. European Commission. *Shaping Europe's Digital Future*. Brussels: European Commission, 2020.

	New EU Digital Acts	Purpose	Adoption	Applicability
Data laws	General Data Protection Regulation (GDPR)	Regulation on the protection of personal data	April 2016	May 2018
	Data Governance Act (DGA)	Regulation on data reuse	May 2022	September 2023
	Data Act (DA)	Regulation on data use, access and portability	December 2023	September 2025
Platform laws	Platform to Business Regulation (P2B)	Regulation on fairness and transparency for business users of online intermediation services	June 2019	July 2020
	Digital Services Act (DSA)	Regulation of online content	October 2022	February 2024
	Digital Markets Act (DMA)	**Regulation of the economic power of gatekeepers, mainly orchestration power**	**September 2022**	**March 2024**
AI laws	Artificial Intelligence Act (AI Act)	Regulation of AI Systems	June 2024	Gradual from August 2024 to August 2026

Table 1 – EU digital markets laws. Source: PRINCIPLES and obligations of the Digital Markets Act in regulating the economic power of gatekeepers: Positive, negative or trade-off. Springer, 2025. Available at: https://link.springer.com/article/10.1007/s12525-025-00788-6. Accessed on: November 14, 2025

While the DSA focused on fundamental rights, content governance, and the democratic control of platforms[2], the DMA was designed to address competitive challenges associated with the role of *gatekeepers* in core platform services. Although the impact assessment of the DMA[3] argues that there are structural problems arising from the dynamics of digital markets that would tend to high levels of concentration, the effective justification and central content of the regulation is based on the restriction of certain commercial practices

[2] DATA, DIGITAL MARKETS AND COMPETITION. Organized by CONTI, Camila Leite; SECAF, Helena; ZANATTA, Rafael A. F. Belo Horizonte: Letramento/Casa do Direito, 2022.

[3] European Commission. Commission Staff Working Document – Impact Assessment Report accompanying the Proposal for a Regulation on contestable and fair markets in the digital sector (Digital Markets Act), SWD(2020) 363 final, 15 Dec 2020.

attributed to platforms considered "gatekeepers", which have been condemned by the European Commission. [4]

This aspect can be observed in **Annex I**, which provides the mapping between the conducts subject to condemnation in Europe and the obligations contained in the DMA. It can be seen that the DMA did not introduce an entirely new set of standards of conduct and needs for adaptations of commercial practices, but transposed into an *ex ante regulatory regime* solutions that were already being implemented, albeit in a fragmented manner, within the scope of European competitive enforcement. It is clear that the core of the problem lies in practices considered anticompetitive and not in structural problems of the market.

The advantages and disadvantages of the *ex ante* solution must be weighed with caution, extracting what is effectively gained in relation to the *ex post model*. The main advantage attributed to the *ex ante* is that it is applied immediately to all market agents as opposed to the specific conviction of one agent. But it should be considered, on the other hand, that condemnations of *ex post practices,* with the imposition of large pecuniary penalties, not only have effects on the convicted company, but also signal to the market the risk of liabilities with corresponding practices, either for companies competing in the same service, or for companies with market power in similar markets or in which similar practices may raise similar commercial concerns.

Thus, assuming that such *ex ante* restrictions bring welfare gains and incentives for competition and innovation, this gain must be examined from what eventually adds to the model of *ex post prohibitions*. Ex post sentencing can be criticised for being sub-inclusive, for not explicitly covering other players in the same market or similar practices in similar markets. However, it cannot be overlooked that the signal given by a conviction already constrains the behavior in the risk assessment by other agents who were not part of the process. On the other hand, the imposition of *ex ante obligations* on a set of agents, without a concrete examination of the practice by the authority, can bring the opposite

[4] MARANHÃO, Juliano. *Digital markets: a retrospective regulation?* JOTA, 8 out. 2025. Available at: https://www.jota.info/opiniao-e-analise/artigos/mercados-digitais-uma-regulacao-retrospectiva. Accessed in: 02/02/2026.

problem, of overinclusion also affecting practices by agents that could bring economic efficiencies.

Exactly this consideration brought a series of nuances in the international debate, which did not follow the "*Brussels effect*",[5] whereby European regulatory standards in the digital environment are adopted globally. In the case of the regulation of digital markets, the DMA has not translated into normative convergence, with large differences in the rationale and objectives promoted within each jurisdiction.

In the United States, for example, the regulatory landscape for digital markets contrasts significantly with the European model. Instead of a unified framework, a fragmented arrangement is in force, composed of sectoral federal laws and state legislation. This scenario reflects the North American tradition of confidence in self-regulation and competitive dynamism. Still, the growing power of platforms and the challenges arising from the data economy have reignited this internal debate, reflected in the advancement of antitrust actions conducted by the Department of Justice (DoJ) and the *Federal Trade Commission* (FTC), as well as in the presentation of legislative proposals aimed at practices such as *self-preferencing*, such as the *American Innovation and Choice Online Act*[6].[7]

In other jurisdictions, there was also debate about the appropriateness of *ex ante mechanisms*.

In South Korea, proposals to regulate digital markets have been debated since 2020, when the *Korea Fair Trade Commission* (KFTC) presented a bill aimed at disciplining vertical relationships between platforms and suppliers, with a focus on protecting small and medium-sized companies[8]. The initiative faced significant opposition from academic and business sectors, which argued that the existing antitrust *enforcement* was sufficient . Since then, the regulatory strategy has

[5] BRADFORD, Anu. The Brussels Effect. *Northwestern University Law Review*, v. 107, n. 1, 2012. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2770634. Accessed on: November 17, 2025.

[6] UNITED STATES. Congress. Senate. Open App Markets Act (S.2992): Bill text. Available at: https://www.congress.gov/bill/117th-congress/senate-bill/2992/text

[7] This regulatory overview was prepared based on a study developed by Giovanna Diniz, a researcher at Legal Wings, to whom we thank for her contribution.

[8] PROMARKET. The future of the Online Platform Regulation Act in South Korea. 2 set. 2025. Disponível em: https://www.promarket.org/2025/09/02/the-future-of-the-online-platform-regulation-act-in-south-korea/

undergone successive reformulations, oscillating between proposals for *ex ante regulations* and alternatives based on the improvement of current competition legislation.[9] Part of the resistance to *ex-ante bonds* stems from the perception that the structure and competitive dynamics of the Korean digital market differ from the European context. In the country, unlike in the EU, local companies still lead several segments, such as search, e-commerce and delivery[10], which raises concerns that the adoption of *ex ante obligations* could artificially distort the local competitive environment.

In Japan, the debate, which is quite controversial, resulted in the adoption of an *ex ante* instrument for specific digital services. In 2024, the first competitive regulatory framework aimed at the mobile digital ecosystem was approved: the *Smartphone Software Competition Promotion Act*, also called Mobile *Software Competition Act* ("MSCA")[11]. Enacted on June 12, 2024, with entry into force on December 18, 2025[12], the rule is structured as a supplementary instrument to the Japanese Antimonopoly *Act*.[13] Unlike the transversal regime instituted by the DMA, the Japanese legislation adopts a specific regulatory scope for mobile operating systems, app stores, browsers and search systems[14]. In addition to the more delimited object, the MSCA also differs from the European model in terms of *enforcement*. The rule provides for *ex ante obligations*, but admits a case-by-case evaluation of its implementation, with the possibility of technical justifications when compliance with the measures may compromise the security, integrity or operation of the services, configuring a hybrid structure between prior regulatory discipline and contextual review.[15]

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[9] PROMARKET, *op. cit.*

[10] Ibidem.

[11] COMPETITION POLICY INTERNATIONAL. The Mobile Software Competition Act and its impact on the Japan Fair Trade Commission. Disponível em: https://www.pymnts.com/cpi-posts/the-mobile-software-competition-act-and-its-impact-on-the-japan-fair-trade-commission/. Acesso em 11 de fevereiro de 2026.

[12] GLOBAL COMPETITION REVIEW. Digital Markets Guide: Fifth Edition – Article: Japan competition policy and enforcement trends in digital markets and the rise of platform accountability. Disponível em: https://globalcompetitionreview.com/guide/digital-markets-guide/fifth-edition/article/japan-competition-policy-and-enforcement-trends-in-digital-markets-and-the-rise-of-platform-accountability. Acesso em 11 de fevereiro de 2026.

[13] COMPETITION POLICY INTERNATIONAL. *op. cit.*

[14] Ibid.

[15] EUROPEAN CENTRE FOR INTERNATIONAL POLITICAL ECONOMY (ECIPE). Reviewing the Digital Markets Act: inspirations from Japan. ECIPE.org, Feb. 9 2026. Available at https://ecipe.org/insights/dma-review-inspirations-from-japan/. Accessed on February 11, 2026.

In Germany, the institutional response followed a very different trajectory. Instead of creating a stand-alone regulation for digital markets, some adjustments have been made to the existing competition law (*Geset gegen Wettbewerbsbeschränkungen* – GWB).[16] to extend the powers of the competition authority (*Bundeskartellamt)* for preventive intervention in digital markets[17].

With the amendment to the GWB, the competition authority has a two-step mechanism provided for in Article 19a: (i) power to designate certain agents as having "fundamental importance between markets" due to several factors, which include strategic market position, control of resources such as data and financial capacity;[18] and (ii) for such agents, the authority may restrict certain conducts, even in markets where the agent does not have a dominant position, provided that the conduct is not "objectively justified" by the agent.[19] Unlike the DMA, this list of conducts only brings presumptions of illegality, which depends on the determination of the authority (case-by-case analysis, different from the express list of rules and prohibitions of the DMA[20]) and includes the presentation of economic justifications (absence of negative effects on the market or economic efficiencies and benefits to innovation and end consumers) by the agent in order to remove the restriction. By being closer to the traditional *ex-post* mechanism, Article 19a of the GWB can be applied more flexibly as part of German competition law and may cover other practices, new or already existing, that may give rise to competition problems in the future.[21] The difference in relation to the traditional control of conducts is the reversal of the burden of proof, since, with

[16] SCIDA PROJECT. Sec 19a of the German Act Against Competition Restraints (GWB). ScidaProject.com, 10 Dec. 2024. Available at: https://scidaproject.com/sec-19a-of-the-german-act-against-competition-restraints-gwb/. Accessed on February 18, 2026

[17] GERMANY. GWB, Article 19a, (1). Available at: https://www.gesetze-im-internet.de/englisch_gwb/englisch_gwb.html#p0071. Accessed on 24 Feb. 2026.

[18] BUNDESKARTELLAMT, *Rules for the digital economy*, cit. "Important differences between the DMA and Section 19a".

[19] BUNDESKARTELLAMT, *Rules for the digital economy*, cit. "Important differences between the DMA and Section 19a".

[20] GERMANY. GWB, Article 19a, (2). BUNDESKARTELLAMT, *Rules for the digital economy*, cit.

[20] BUNDESKARTELLAMT, *Rules for the digital economy*, cit. "Amendments to the GWB: keeping pace with the digital transformation".

[21] OECD. *Ex-Ante Regulation and Competition in Digital Markets – Note by Germany*. December 2021. Available at: https://one.oecd.org/document/DAF/COMP/WD(2021)61/en/pdf. Accessed on 24 Feb. 2026.

the amendment, it becomes the burden of the designated agent to bring economic justifications and demonstrate the efficiencies of the conduct.[24]

In addition to the specific rules for designated agents, the amendment expanded and detailed the provisions for the traditional control of conducts, providing, for example, intermediation in multi-sided markets as a possible source of market power. The amendment also adjusted the rules on what practices are prohibited for companies with "relative market power" (a concept in Article 20 of the GWB related to economic dependence) with a view to the power of digital platforms, including the possibility of imposing a behavioral remedy, in certain circumstances, that guarantees "dependent companies" access to data held by companies with "relative market power" in exchange for reasonable compensation.[25]

Finally, among the procedural changes to speed up the control of anticompetitive conduct in digital markets, it is noteworthy that the amendment to the GWB mitigated the requirements for the establishment of provisional measures.[26]

In the United Kingdom, the controversy also resulted in the construction of its own standard. The entry into force of the *Digital Markets, Competition and Consumers Act* (DMCC), in January 2025, establishes a specific regime for digital platforms, giving the *Competition and Markets Authority* (CMA) powers to designate companies with *Strategic Market Status* (SMS), based on its own assessment of the company's strategic position, the existence of market power, as well as the link of this activity to the United Kingdom, in addition to compliance with the minimum billing requirements provided for by law. Unlike the DMA, the DMCC does not establish automatic presumptions of designation based on quantitative criteria[22]. Once designated, platforms are subject to tailored *conduct requirements*, defined by the CMA itself, observing legal parameters such as proportionality and objectives of *fair dealing*, *open choices,* and *trust and transparency*. The UK regime combines such requirements with additional instruments, such as pro-competitive interventions and prior notification obligations for certain corporate transactions, setting up a model in which the

[22] ASHURST LLP. Digital markets regulation in the EU and UK: DMA v DMCC. Ashurst.com, 22 Aug. 2024. Available at: https://www.ashurst.com/en/insights/digital-markets-regulation-in-the-eu-and-uk-dma-v-dmcc/. Accessed on February 19, 2026.

specification of bonds is based on a case-by-case assessment by the authority, in contrast to the structure established by the European model.[23]

In India, there is a movement more aligned with the European reference. The country presented the normative proposal *Digital Competition Bill*, the terms of the project, a company can be classified as an SSDE by the antitrust authority if it has a significant presence in essential digital services or exerts relevant influence over end users and businesses.[24]element. Once designated, such companies would be subject to *ex ante* obligations aimed at preventing potentially harmful practices to competition, such as *self-preferencing*. Although adapted to the particularities of the Indian market, the initiative signals adherence to the European regulatory paradigm.[25]

In Australia, there is also a movement towards European regulatory trends, although with its own arrangement. Successive investigations conducted by the Australian *Competition and Consumer Commission* (ACCC) – such as the *Digital Platforms Inquiry* (2017–2019), the *Digital Platform Services Inquiry* (2020–2025) and the *Digital Advertising Services Inquiry* (2021)[26] led the Australian government to initiate, in December 2024, a public consultation on a digital competition regime based on the designation of critical platforms for consumers and businesses, subject to *ex ante* obligations organised in codes of conduct per service.[27] However, the propositions that, among other topics, deal with interoperability, self-preference and define a stricter inspection, have generated relevant internal debates, highlighting the impact on GDP and local innovation of possible ex ante regulation.

Country/Region	Regulatory instrument	Main focus

[23] Ibid.

[24] INDIA. Draft Digital Competition Bill, 2024. Available at: https://www.medianama.com/wp-content/uploads/2024/03/DRAFT-DIGITAL-COMPETITION-BILL-2024.pdf. Accessed on November 17, 2025

[25] This regulatory overview was prepared based on a study developed by Andressa Delmondes, a researcher at Legal Wings, to whom we register our thanks for her contribution.

[26] AUSTRALIA. Australian Competition & Consumer Commission. *Digital platform services inquiry: final report*. March 2025.

[27] ACCC, *op. cit.*

European Union	Digital Markets Act (DMA) e Digital Services Act (DSA)	Ex ante ***obligations***, obligations stipulated by law, for gatekeepers. The designation is made in advance and per se, without analysis of efficiency and potential for harm Cross-cutting regulation for all digital products and services
United States	Antitrust actions (DoJ/FTC) and legislative projects (e.g., AICOA)	Ex post ***action*** from DoJ/FTC Sectoral proposals (e.g. AICOA)
United Kingdom	*Digital Markets, Competition and Consumers Act (DMCC)*	Ex ante ***obligations*** for companies designated as *Strategic Market Status (SMS)* as determined by the competition authority. Analysis of potential harm and specification of obligations by the competition authority. Regulation applied to specific activity, covering similar or combined activities
South Korea	*Platform Competition Promotion Act*	**Ex post e**nforcement Proposal for ex-ante obligations for structurally relevant platforms under discussion

Germany	Section 19a of the Law against Restrictions on Competition	This section lists ex ante obligations, however, only as a relative presumption of wrongdoing, combined with preventive powers of the antitrust authority and a mechanism for designating high risk companies. The obligation covers services specified in the investigation
Japan	*Mobile Software Competition Act* ("MSCA")	Ex ante ***obligations*** stipulated by law only apply to practices in the mobile ecosystem
India	*Digital Competition Bill*	Proposal for **ex ante** obligations for Systemically Significant Digital Enterprises (SSDEs*).*
Australia	New regime under public consultation (ACCC)	Proposal for ex-ante obligations for platforms with a critical position in the economy and that are significant to consumers

Table 2 – International dissent. Source: Original work.

In summary, the comparative panorama shows that the regulation of digital markets has become the subject of intense international debate, without resulting in the consolidation of a uniform model. The solutions adopted differ in terms of the option for *ex ante mechanisms* or the reinforcement of existing instruments, the extent of the services covered by the obligations, the degree of discretion granted to the authorities and the enforcement instruments. The scenario thus reveals a process of institutional experimentation and successive adjustments, marked by controversies and revisions. It is in this still consolidating environment that the Brazilian legislative debate is inserted, whose trajectory also reflects the absence of consensus observed at the global level.

In 2022, Bill No. 2,768 was presented, authored by Federal Deputy João Maia (PL/RN), providing for the organization, operation, and operation of digital platforms that offer services to the Brazilian public[28]. The proposition was later distributed to the Economic Development Committee, and Deputy Any Ortiz was appointed as rapporteur, within the scope of which an agenda of legislative and technical discussions was structured, with the approval of requests for public hearings aimed at deepening the central aspects of the project[29]. Inspired by the DMA, Bill No. 2,768/2022 proposes the imposition, on *an ex ante* basis, of obligations applicable to platforms considered to have significant access control power, converting into previously defined legal duties conducts that, in the Brazilian antitrust tradition, are analyzed contextually and *ex post*. Throughout the process, the public debate began to point out weaknesses in this design, which intensified the discussion about regulatory alternatives.

Although the project is in progress, the Executive Branch chose to develop, in parallel, its own normative initiative.[30] Thus, in the first half of 2024, the Ministry of Finance promoted subsidies aimed at the economic and competitive regulation of digital platforms, bringing together contributions from public and private agents, and civil society[31]. The objective of the process was to assess the adequacy of the current competition rule and to discuss the possible need for new regulatory instruments for the Brazilian context. The final report[32], published in

[28] BRAZIL. Bill No. 2,768, of 2022. Chamber of Deputies, Brasília, DF, 10 nov. 2022. Available at: https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2337417. Accessed on February 19, 2026.

[29] BRAZIL. Chamber of Deputies. Economic Development Commission (CDE). Requests No. 7, 8, 9 and 10/2023 and No. 58/2024, authored by Rep. Any Ortiz, regarding the holding of public hearings within the scope of PL No. 2,768/2022. Brasília, DF, 2023–2024.

[30] DIGITAL ADVICE. Understand the Federal Government's digital competition bill. ConselhoDigital.org.br, 16 Sept. 2025. Available at: https://conselhodigital.org.br/2025/09/entenda-o-pl-de-concorrencia-digital-do-governo-federal/. Accessed on February 18, 2026.

[31] BRAZIL. Ministry of Finance. Ministry of Finance promotes consultation on economic and competition regulation of digital platforms. Gov.br, 25 Jan. 2024. Available at: https://www.gov.br/fazenda/pt-br/assuntos/noticias/2024/janeiro/ministerio-da-fazenda-promove-consulta-sobre-regulacao-economica-e-concorrencial-de-plataformas-digitais. Accessed on February 18, 2026.

[32] BRAZIL. Ministry of Finance. Secretariat of Economic Reforms (SRE). Digital Platforms Report – Consolidated. Brasília, DF: Ministry of Finance, 10 Oct. 2024. Available at: https://www.gov.br/fazenda/pt-br/central-de-conteudo/publicacoes/relatorios/sre/relatorio-sre-tomada-de-subsidios.pdf. Accessed on February 18, 2026.

2024, concluded that traditional competition law instruments, focused on *ex-post* analysis and verification of anticompetitive effects in linear markets, have limitations in the face of complex digital ecosystems[33]. Based on this diagnosis, the government sent to the National Congress, in 2025, its own proposal for competition discipline for digital markets, materialized in Bill No. 4,675/2025.

The presentation of this proposal did not imply the replacement of Bill No. 2,768/2022, which remains in progress, so that the Brazilian legislative scenario now includes two distinct initiatives on the subject, with differences in institutional design and normative technique, especially regarding the competent authority, the criteria for framing platforms, and the model for imposing obligations and sanctions, summarized in **Annex II.**

2.2. The revision of the European Regulation

Although the European Union was among the first jurisdictions to structure *an ex ante* regulation regime for digital markets, the bloc itself has, in recent years, begun to critically reassess its effects on the market and innovation. As DSA, DMA, GDPR, AI Act, and other instruments began to interact with each other, the diagnosis intensified that regulatory complexity and the proliferation of sectoral obligations could compromise European competitiveness, affecting the bloc's ability to innovate and sustain its geopolitical influence.

In this context, two initiatives began to guide the review of the European regulatory model. On the one hand, the *Draghi Report*, which offers a diagnosis of the structural weaknesses that limit the economic and technological dynamism of the EU. On the other hand, the *Digital Omnibus*, a package presented by the European Commission (EC) to simplify and harmonize existing instruments — especially in AI, data, and cybersecurity — and reduce regulatory barriers resulting from regulatory fragmentation. These two milestones help explain the EU's recent move to rebalance its regulatory framework, seeking greater coherence,

[33] ALMEIDA, Ricardo. The defense of competition in digital markets and the urgency of regulatory modernization. JOTA, 25 jul. 2024. Available at: https://www.jota.info/opiniao-e-analise/artigos/a-defesa-da-concorrencia-nos-mercados-digitais-e-a-urgencia-da-modernizacao-normativa. Accessed on February 18, 2026.

proportionality, and alignment between innovation and competitiveness objectives.

2.2.1 Draghi Report

As part of this movement of strategic review of European regulations, the EC asked the former president of the European Central Bank, Mario Draghi, to prepare a diagnosis of the factors that condition the bloc's competitiveness. Published in September 2024, the Draghi Report presents a systematic assessment of the elements that limit the EU's economic growth and strategic autonomy, organized into two complementary parts: (i) strategic vision of competitiveness (Part A) to identify obstacles to the bloc's dynamism[34]; and (ii) a set of sectoral and horizontal analyses and recommendations (Part B), covering areas such as energy, critical raw materials, telecommunications, computing, artificial intelligence, semiconductors and competition policy.[35]

At the diagnostic level (Part A), the report outlines internal and external limits of European economic performance. It points out that chronic low economic growth reduces the ability of the EU and its member states to maintain the level of goods and services to which their citizens are accustomed, while at the international level it weakens the bloc's geopolitical influence and places it in a secondary position in relation to the United States and China[36]. This picture, according to the document, stems from profound transformations in the global environment: the replacement of the multilateral trading system with greater protectionism and *friendshoring practices*; the interruption of the supply of cheap

[34] EUROPEAN COMMISSION. *The future of European competitiveness: competitiveness strategy for Europe*. [s.l.], [s.d.]. Disponível em: https://commission.europa.eu/document/download/97e481fd-2dc3-412d-be4c-f152a8232961_en?filename=The%20future%20of%20European%20competitiveness%20_%20A%20competitiveness%20strategy%20for%20Europe.pdf. Acesso em: 19 de novembro de 2025.

[35] EUROPEAN COMMISSION. *The future of European competitiveness: in-depth analysis and recommendations*. [s.l.], [s.d.]. Disponível em: https://commission.europa.eu/document/download/ec1409c1-d4b4-4882-8bdd-3519f86bbb92_en?filename=The%20future%20of%20European%20competitiveness_%20In-depth%20analysis%20and%20recommendations_0.pdf. Acesso em: 19 de novembro de 2025.

[36] COLEGE OF EUROPE. *Road-map or road not taken? The Draghi Report on EU competitiveness*. Available at: https://www.coleurope.eu/newsarticles/road-map-or-road-not-taken-draghi-report-eu-competitiveness. Accessed on: November 19, 2025.

energy after the invasion of Ukraine; and the need to increase defense spending in the face of the reconfiguration of traditional security guarantees.

Based on this diagnosis, the report structures its recommendations in three central axes[37]: (a) reduce the innovation gap vis-à-vis the United States and China, especially in advanced technologies; (b) integrate the decarbonization agenda with the logic of competitiveness, preventing one from advancing to the detriment of the other; and (c) strengthening European security by reducing dependence on third countries. What is of interest here are the considerations dedicated to the first item, both in terms of diagnosis and recommendations.

Draghi emphasizes that Europe has failed to turn innovation into commercialization and to allow innovative companies to scale their operations, in addition to facing competitive pressures arising from heavily subsidized industrialization models — such as China's — and growing economic and military vulnerabilities, which reinforce the need for a more coordinated foreign economic policy.

Part B of the report devotes a specific chapter to digitalisation and advanced technologies, highlighted as key to sustaining the EU's future competitiveness. It is based on the premise that digitalization is essential for three dimensions: (i) the functioning of the European social model, by allowing public administrations to maintain standards of provision of goods and services; (ii) economic performance, given that the competitiveness of all industrial and service sectors will increasingly depend on digital infrastructure, data and automation; and (iii) strategic autonomy, as global value chains in critical technologies have become more exposed to geopolitical tensions, protectionist practices, and aggressive industrial policies of other blocs.

The report emphasizes that the European industrial model — traditionally anchored in the import of advanced technologies and the export of sectors such as automotive, precision mechanics and chemicals — is misaligned with the new logic of the global economy, in which about 70% of the value created in the next ten years will be digitally enabled. In this scenario, the EU remains overly dependent on third countries for more than 80% of its digital products, services,

[37] Ibid.

infrastructure, and intellectual property, which amplifies risks in terms of security, productive continuity, and ability to capture value.[38]

This situation is aggravated by two factors. First, the security of European supply in critical technologies – such as semiconductors – and in essential inputs – such as strategic raw materials – has been threatened by increased geopolitical competition and aggressive industrial policies by third countries targeting technology-intensive exports. Second, the report draws attention to the so-called "data value loss", estimated at around 90% of European data being transferred outside the EU, which carries the risk of loss of industrial know-how in the long term.

Given this combination of technological dependence, loss of scale, and geopolitical vulnerabilities, the report identifies two priority areas for intervention: (i) high-capacity telecommunications networks; and (ii) computing and artificial intelligence. These areas are presented as indispensable bases for restoring European strategic autonomy, rebuilding industrial capacities and enabling local actors to scale data- and compute-intensive innovations. In addition to proposing regulatory simplification and investments in the field of telecommunications (infrastructure), we are particularly interested in the analysis of the computing, data and AI sectors.

The report points out that the EU faces significant structural disadvantages in the domain of cloud computing, artificial intelligence and advanced processing technologies. While the EU has relevant scientific capabilities and supercomputing centers with a global reach, its *cloud* market is largely dominated by *U.S. hyperscalers*, which concentrate most of the investment needed to operate large-scale services. As a result, the participation of European companies remains limited – the result of the combination of lack of scale, high energy costs and the continuous need for heavy investments – and the volume of private investment in AI remains significantly lower than that observed in the United States and China.[39]

[38] EUROPEAN COMMISSION. *The future of European competitiveness: in-depth analysis and recommendations*. [s.l.], [s.d.]. Disponível em:https://commission.europa.eu/document/download/ec1409c1-d4b4-4882-8bdd-3519f86bbb92_en?filename=The%20future%20of%20European%20competitiveness_%20In-depth%20analysis%20and%20recommendations_0.pdf. Acesso em 20 de novembro de 2025.
[39] Ibid.

The Report points out, then, how regulatory complexities can contribute to such limitations and bring obstacles to innovation. Despite being well-intentioned, both the GDPR and the AI Act are a complex framework, whose interaction can generate overlaps and zones of uncertainty that affect companies and research centers. The way the GDPR is implemented and enforced in each Member State, added to potential points of friction with the AI Act, tends to increase the cost of compliance and create legal doubts precisely for those who develop or operate AI models in the EU. In this context, and considering that global competition in AI is marked by "*winner takes most*" *dynamics*, the European Union is faced with a difficult trade-off: balancing regulatory safeguards with the need for a lighter and clearer environment that encourages investment, experimentation, and innovation without compromising consumer protection standards.[40]

In view of this diagnosis, the document proposes the creation of an *EU Cloud and AI Development Act*, designed to reduce regulatory fragmentation and strengthen the technological bases necessary for the development of AI and computing services on a large scale. According to the report, the current regulatory heterogeneity generates legal uncertainty, raises compliance costs and hinders experimentation. Therefore, it considers it essential to simplify and standardize the implementation of the GDPR among the Member States, removing barriers that currently limit European innovation and competitiveness.

2.2.2 Digital Omnibus

Due to the perception of excessive complexity, fragmentation and onerous nature of the set of regulations on the digital environment, the European Commission presented the *Digital Omnibus* as an effort to simplify and rationalize regulations. The initiative seeks to reduce overlaps, harmonize obligations and adjust existing instruments in areas such as artificial intelligence, cybersecurity

[40] Ibid.

and data protection, in order to mitigate regulatory barriers and strengthen the competitiveness of European companies.[41]

In the artificial intelligence axis, the package advances with specific adjustments to the AI Act to make its implementation more effective and less costly. The measures include extending the simplifications currently applied to small and medium-sized enterprises also to *small mid-cap* enterprises (SMCs), in particular with regard to technical documentation and compliance requirements, in order to significantly reduce costs. The package also expands compliance mechanisms to allow a greater number of innovators to use regulatory sandboxes, providing for the creation of a sandbox at the European level from 2028 and the expansion of tests in real conditions, especially in strategic sectors such as automotive. It also strengthens the competences of the AI Office and centralises the oversight of AI systems built on general-purpose models, with the aim of reducing governance fragmentation and ensuring greater regulatory coherence across the Union.[42]

In terms of cybersecurity, Digital Omnibus faces one of the main challenges pointed out by companies: the dispersion of reporting obligations between different regimes, such as NIS2, GDPR and DORA. To address this fragmentation, the package creates a single point of reporting for incidents, with robust security safeguards and testing, eliminating duplication and reducing administrative burdens.[43]

In the field of data protection, the package proposes specific changes to the GDPR aimed at harmonizing, clarifying and simplifying rules, without changing the core of the regulation. The goal is to reduce interpretive uncertainties, support compliance by organizations, and create an environment more conducive to innovation. The measures include modernizing cookie rules, decreasing the frequency of banners and allowing users to express consent with a single click, as well as storing preferences through centralized settings in browsers.

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[41] EUROPEAN COMMISSION. *Press release IP/25/2718*. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_25_2718. Accessed on: November 21, 2025.
[42] Ibid.
[43] Ibid.

The package also advances the agenda of expanding access to data, recognizing it as a strategic input for innovation. In this sense, it consolidates the European regulatory framework through the *Data Act*, which unifies different instruments - such as the *Free Flow of Non-personal Data Regulation*, the *Data Governance Act,* and the *Open Data Directive*[44] - into a single regime, offering greater legal certainty and clarity. In addition, it introduces specific exemptions for SMEs and *small mid-cap* companies in certain portability and *cloud-switching rules* of the *Data Act*, with estimated savings of €1.5 billion in one-off compliance costs. The package also presents new guidance to facilitate compliance with the rules, including model contractual clauses for data access and use, as well as standard terms applicable to cloud service contracts.[45]

As a complement, the Digital Omnibus is part of the launch of the *Data Union Strategy*, which seeks to strengthen European sovereignty in data through, for example, data labs and a *Data Act* legal *helpdesk*, as well as the creation of the *European Business Wallet*, a unified digital identity tool aimed at reducing costs and bureaucracy.[46]

Together, the Draghi Report and Digital Omnibus reposition the European regulatory debate, pointing to the need for a shift in emphasis: simplification of rules to reduce unnecessary bureaucracy with compliance, less accumulation of disconnected sectoral obligations, and more coherence, proportionality, and institutional coordination.[47]

This convergence between diagnosis and normative response is relevant because it reveals a paradigm shift in digital policymaking in the EU. If before the focus was on expanding regulatory instruments, the new European moment recognizes that regulatory complexity itself can become a systemic risk factor, capable of generating excessive costs, lack of coordination between authorities, misaligned incentives, and reduced innovation capacity. This reorientation — towards simpler, more coherent regulations anchored in practical tests, proportionality, and continuous impact assessment — offers important lessons

[44] WHITE & CASE LLP. EU Digital Omnibus: what changes lie ahead for the Data Act, GDPR and AI Act. Insight Alert, 5 Dec. 2025. Available at https://www.whitecase.com/insight-alert/eu-digital-omnibus-what-changes-lie-ahead-data-act-gdpr-and-ai-act. Accessed on February 17, 2026.
[45] EUROPEAN COMMISSION. Op cit.
[46] Ibid.
[47] Ibid.

for jurisdictions that, like Brazil, are discussing the creation of *ex ante regimes* for agents of great economic relevance in digital markets. By illuminating the effects of a dense and fragmented regulatory model, the European experience provides warnings and parameters that will serve, in the following sections, to critically evaluate the design of PL No. 4,675/2025.

2.3. The *Digital Markets Act* and its impacts on innovation markets

In this process of reviewing the regulatory complexity generated by the different European normative documents, studies were carried out, evidence was gathered and analyses were carried out that were very useful for reflecting on the effects of DMA on the European market.

It is at this point of tension – between the need to impose obligations on *gatekeepers* and the risk that normative accumulation will harm innovation and competitiveness – that the initial analysis of the DMA is framed. From this perspective, we will examine: (i) the main product and policy adaptations adopted by *gatekeepers*; (ii) the initial enforcement action of the EC and the responses of companies; and (iii) the effects already observable on market agents and on the dynamics of innovation.

2.3.1. The main product and policy adaptations adopted by gatekeepers

The entry into force of the DMA brought about a set of structural adaptations in the products, interaction flows and internal policies of gatekeepers, producing a transformation in the way platforms operate in the European market. It is important, however, to note that a significant part of these changes had already been constructed on a case-by-case basis by the European Commission and competition authorities, having been consolidated in the DMA, which brings a longer period of observation of the impacts.

A first axis of these adaptations concerns the reconfiguration of interfaces, user experiences and operating patterns, aimed at strengthening users' freedom of choice. In this context, the Commission identified concrete adjustments, including the revision of *choice screens*, the removal of restrictions and difficulties for switching browsers, and the expansion of the options for uninstalling pre-

installed applications[48]. Measures of this nature had already been imposed in previous cases, such as in the Google Android case (AT.40099), in which it was concluded that pre-installation and the definition of default standards constituted instruments of anticompetitive leverage[49].

At the same time, gatekeepers have also been compelled to open previously closed ecosystems, especially in the field of application distribution and digital stores. In mobile ecosystems, this has meant enabling the installation of apps outside of integrated app stores, enabling alternative distribution sources, and supporting third-party app stores, including through web sideloading mechanisms.[50] In the investigations against Apple, the Commission qualified as abusive the rules that reserved to the App Store exclusive control over distribution channels and communication with users, restricting the ability of developers to inform and direct consumers to external offers (AT.40437 and AT.40716).[51]

Another set of adaptations focused on commercial policies, steering practices and data processing rules, areas in which the DMA also made significant adjustments. To comply with the regulation, gatekeepers had to reformulate consent mechanisms, limit data combination and cross-use practices, and offer users clearer options to control internal information flows.[52] The regulation reflects, here, the understanding of the case as Bundeskartellamt v. Meta, in which

[48] EUROPEAN UNION. European Commission. *Report from the Commission to the Council and the European Parliament: Annual report on Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act).* COM(2025) 166 final, Brussels, 25 April 2025. Available at: https://eur-lex.europa.eu/legal-content/PT/TXT/PDF/?uri=CELEX:52025DC0166. Accessed on November 22, 2025.

[49] EUROPEAN COMMISSION. *Antitrust: Commission fines Google €4.34 billion for abuse of dominance regarding Android devices*. Brussels, 17 Jul. 2018. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_18_4581. Accessed on: 26 jan. 2026

[50] Ibid.

[51] EUROPEAN COMMISSION. *Commission fines Apple over €1.8 billion over abusive App Store rules for music streaming providers*. Brussels, 3 Mar. 2024. Available at: https://ec.europa.eu/commission/presscorner/detail/da/ip_24_1161. Accessed on: 26 jan. 2026

[52] Ibid.

abuse was pointed out in the integration of personal data from different services.[53]

Finally, in parallel with product adaptations and commercial policy reviews, gatekeepers had to restructure their internal compliance policies. In compliance with Article 28 of the DMA, all companies have established the role of *compliance officer*, conceived as a body independent of daily operations and in charge of advising management, monitoring compliance actions and acting as a liaison with the Commission.[54] In addition, *gatekeepers* began to prepare and publish formal compliance reports, documenting the measures adopted to meet each obligation provided for in the regulation. These reports were structured based on the model provided by the EC, but the companies adopted different formats and levels of detail, reflecting different internal approaches to the organization and communication of compliance actions.[55]

2.3.2. The EC's initial enforcement action and the companies' responses

In the first year of the DMA, it is possible to observe how the new regime began to produce effects both in the performance of the EC and in the strategy of the companies designated as *gatekeepers*.

Apple was the first company to face preliminary findings of non-compliance under the new regime.[56] In June 2024, the Commission announced preliminary findings that the App Store rules could violate Article 5(4) of the DMA by preventing developers from freely informing consumers about alternative supply and content channels, as well as by imposing restrictions on the "link-out" process that, in the authority's preliminary assessment, would compromise the

[53] VAN DE WAERDT, Peter J. *Meta v Bundeskartellamt: something old, something new*. European Papers, v. 8, n. 3, p. 1077–1103, 2023. Available at: https://www.europeanpapers.eu/europeanforum/meta-bundeskartellamt-something-old-something-new. Accessed on: 26 jan. 2026.

[54] CENTER ON REGULATION IN EUROPE (CERRE). *Implementing the DMA: early feedback*. 2024. Available at: https://kgi.georgetown.edu/wp-content/uploads/2024/12/DMA-Early-Feedback_FINAL.pdf. Accessed on: November 22, 2025.

[55] Ibid.

[56] TechPolicy Press. *European Commission Targets Apple in Digital Markets Act Enforcement Action*, 25 June 2024. Available at: https://www.techpolicy.press/european-commission-targets-apple-in-digital-markets-act-enforcement-action-/. Accessed on February 21, 2026.

effective freedom of commercial communication. The Commission also opened an additional investigation into Apple's new contractual terms for alternative stores and apps in the European Union, including the so-called Core Technology Fee, understanding that such conditions could not ensure effective compliance with DMA obligations.[57]

In response, Apple implemented structural changes to the functioning of iOS in the European market, including the introduction of alternative business terms that allow: (i) distribution through third-party app stores, (ii) use of alternative payment systems, and (iii) sideloading of apps.

The openness of the ecosystem, however, has also produced public controversies about security and content control. In February 2025, after the availability of a pornography app through an alternative marketplace made possible by the DMA, Apple declared that it was obliged to allow its distribution by third-party operators, stating that the new regulatory architecture could compromise user trust.[58]

In parallel with the reconfigurations in the application distribution model, the first year of implementation of the DMA was also marked by impacts on the release schedule of new technological features. In July 2024, Apple and Google announced that certain AI-based functionality would not be made available to EU users at the time of launch, citing concerns related to the implementation of the DMA and GDPR.[59]

According to an analysis published by ACT | The App Association, the companies indicated that European requirements — especially those related to interoperability and data sharing — could generate regulatory uncertainty and security risks, leading to the postponement of the availability of these tools in the European market.[60] Delays of this nature tend to affect developers and small

[57] Ibid.

[58] Associated Press. *Apple lashes out at iPhone porn app maker and the EU rules allowing its download*. 5 February 2025. Available at: https://apnews.com/article/apple-app-store-porn-495465278f404b38eb9ec472cd2ca6e3. Accessed on February 21, 2026

[59] *ACT | The App Association, Balancing Innovation and Regulation: The Impact of the EU Regulatory Environment on SMEs*. 8 julho 2024. Disponível em: https://actonline.org/2024/07/08/balancing-innovation-and-regulation-the-impact-of-the-eu-regulatory-environment-on-smes/. Acesso em 21 de fevereiro de 2026

[60] Ibid.

businesses that rely on the rapid incorporation of new platform capabilities to innovate and compete globally.

In the specific case of Apple, the "Apple Intelligence" feature was not initially launched in the EU. Only in February 2025 did the company announce that European users would have access to AI features with the update scheduled for April 2025, confirming the time deferral in relation to other markets.[61]

In addition, the regulatory debate gained a new dimension in December 2024, when the EC opened two public consultations under the specification procedures aimed at supporting Apple's compliance with the interoperability obligations under Article 6(7) of the DMA. These obligations relate to third-party access to hardware and software functionality controlled by iOS, iPadOS, and connected devices.[62] In response, Apple published a white paper[63] in which it said that the interoperability requirements provided for in the DMA could put users at risk by requiring them to open their devices and sensitive data to companies with a controversial history in terms of privacy protection. Thus, the company maintained that certain access requests could reduce the level of personal data protection that users have come to expect from the iOS ecosystem.[64]

In this context, the first DMA *enforcement* cycle reveals relevant side effects. Controversies around interoperability, warnings about potential risks to security and data protection, as well as the postponement in the launch of artificial intelligence-based functionalities, indicate that the compulsory opening of digital ecosystems does not occur without costs. Although oriented to the promotion of competition, the regime can impact the technical architecture of platforms, generate regulatory uncertainties and influence the pace of innovation and availability of new resources to European consumers and developers.

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[61] Apple Newsroom. *Apple Intelligence expands to more languages and regions in April. 21 fev. 2025*. Disponível em: https://www.apple.com/newsroom/2025/02/apple-intelligence-expands-to-more-languages-and-regions-in-april/. Acesso em 21 de fevereiro de 2026

[62] TechPolicy Press. Digital Markets Act Roundup: December 2024 – January 2025. 4 Feb. 2025. Available at: https://www.techpolicy.press/digital-markets-act-roundup-december-2024january-2025/. Accessed on February 21, 2025

[63] APPLE. It's getting personal: How abuse of the DMA's interoperability mandate could expose your private information. December 2024. Available at: https://developer.apple.com/support/downloads/DMA-Interoperability-Dec-2024.pdf. Accessed on February 21, 2025

[64] Ibid.

2.2.3. The effects already observable on market agents and on the dynamics of innovation.

The already observable effects of the DMA on market agents do not stem only from product adaptations and the first *enforcement actions*, but also from the costs associated with the set of rules that structure the regulation of digital markets in the EU. Recent estimates indicate that European regulations in this sector generate up to $97.6 billion annually[65] in costs and revenue losses for incumbent companies. Such a cost can, on the one hand, reduce investments in innovation and, on the other hand, imply barriers for entrants, particularly smaller companies.

In the specific plan of the DMA, the observable effects on market agents stem from the very design of the obligation regime, which requires gatekeepers to profoundly reconfigure products, services and operational flows. In addition, the 21 obligations and prohibitions provided for in the regulation have broad and poorly detailed formulations from a technical point of view, which shifts the responsibility of interpreting the text and proposing compliance solutions subject to Commission validation and stakeholder analysis to companies. This generates an iterative and costly process, in which successive adjustments are continuously required under the possibility of penalties.

The materialization of this financial impact can be illustrated by the data released by Meta, which reported having dedicated approximately 590 thousand engineering hours to DMA compliance by the beginning of 2024 - the equivalent of 284 full-time engineers, in addition to about 71 legal professionals, totaling 355 professionals exclusively allocated to the compliance process.[66]

According to the Compute & Communications Industry Association (CCIA), the DMA, in isolation, represents an annual compliance cost of approximately US$ 200 million per company, making it one of the most onerous instruments in the European regulatory framework. This amount exceeds that of other sectoral

[65] CCIA. *Costs to U.S. Companies from EU Digital Services Regulation: Final Report*. 2025. Disponível em: https://ccianet.org/wp-content/uploads/2025/07/CCIA_Costs-to-US-Companies-from-EU-Digital-Services-Regulation_finalreport.pdf. Acesso em 24 de novembro de 2025.
[66] Ibid.

legislation — such as the DSA (US$ 150 million per year) and the AI Act (US$ 15.2 million) — when added to the costs of other rules that focus on digital services, it makes up a total of approximately US$ 430 million per year per company to operate in the European market, which brings significant institutional barriers to entry.

In addition to compliance costs, the DMA also significantly increases the exposure of companies to regulatory litigation, due to imprecise provisions, the multiplicity of obligations and the punitive nature of the penalties provided for. From a financial point of view, the regulation establishes one of the most severe penalties among European digital market regulations: fines that can reach 10% of annual global turnover, reaching 20% in case of recurrence, which, for a typical large US company, corresponds to an estimated maximum exposure of $35.8 billion.[67]

Regarding innovation, with the costs of compliance, product adaptation, and regulatory litigation, CCIA estimates a loss of revenue of between US$ 879 billion and US$ 2.2 trillion by 2030 [68]– an amount that, in a competitive scenario, could encourage innovation and technological development.

From the perspective of barriers to entry, in addition to the projected impacts on large companies, ACT | The App Association (global trade association for small and medium-sized technology companies) identified, in its study "EU Digital Markets Law: One Year On", a series of challenges faced by SMEs after the entry into force of the DMA.

Among the effects pointed out are: (i) weakening of the control and curation mechanisms of app stores, with increased risks related to piracy, malware, and deceptive design; (ii) reduced user confidence; (iii) regulatory uncertainty and market instability arising from the still evolving implementation of the regime; (iv) fragmentation of distribution channels and increased operational complexity, especially in view of the need for simultaneous submission and management in multiple stores with different rules; (v) increased compliance burden and regulatory risk, including reports of application removal due to formal failures; (vi) increased costs of development, testing and technical

[67] Ibid.
[68] Ibid.

adaptation for different jurisdictions; (vii) additional difficulties in customer support and managing release schedules; and (viii) delays in the availability of new technologies and resources - such as artificial intelligence tools - due to obligations related to data sharing. According to the entity, the combination of these factors tends to divert innovation resources to regulatory compliance and operational adaptation activities, which can reduce the global competitive capacity of small companies, a [69] critical factor when we think about the impacts on the Brazilian market.

A study produced by ALAI, [70]with economic modeling conducted by the specialized economic consultancy, ECOA Consultores, sought to estimate the potential distributional impacts of the implementation of the regulatory regime provided for in PL No. 4,675/2025. The simulation considers different scenarios of cost pass-through and two main environments: (i) ecosystems of marketplaces for services and goods and (ii) direct sales.

In the simulated scenarios, the aggregate regulatory cost varies approximately between R$2.6 billion and R$10.8 billion, depending on the intensity of the transfer and the profile of the designated agents. Even in the scenarios of partial transfer (70% or 85%), it is observed that the largest portion of the economic burden tends to fall on end users and professional users, while the portion absorbed by the platforms, in the form of profit reduction, is proportionally smaller.

In the scenario of full transfer (100%), for example, about 78% to 80% of the total cost is borne by end consumers, while professional users absorb approximately 16% to 19%, leaving the platforms with a relatively small portion. Even when the pass-through is estimated at 70%, consumers still bear somewhere between 67% and 70% of the total burden, with professional users bearing about 13% to 15%. In the intermediate scenario of 85%, distribution remains concentrated in consumers (approximately 69% to 72%), with residual participation of platforms.

In the marketplace ecosystem, the underlying economic logic is relatively straightforward: imposing new obligations on platforms drives up their operating costs, which tend to be passed on to professional sellers in the form of higher

[69] ACT – THE APP ASSOCIATION. Global lessons to strengthen the ecosystem of digital platforms and artificial intelligence in Brazil. [S.l.]: ACT | The App Association, 2025.
[70] LATIN AMERICAN INTERNET ASSOCIATION (ALAI). *Ibid.*

fees or less favorable access conditions. These additional costs, in turn, are incorporated into the final prices of the products and services offered to consumers. The net effect will depend on the price elasticity of demand, but in price-sensitive markets, the likely consequence is a reduction in consumption, with an adverse impact especially on lower-income consumers.

In the direct sales model, although the transfer structure is different, the conclusion is similar. Compliance costs fall on both regulated companies and economic agents that interact with them, generating price increases, reduced margins, and potential retraction of supply and demand. The decrease in profits can affect future investments, including in innovation.

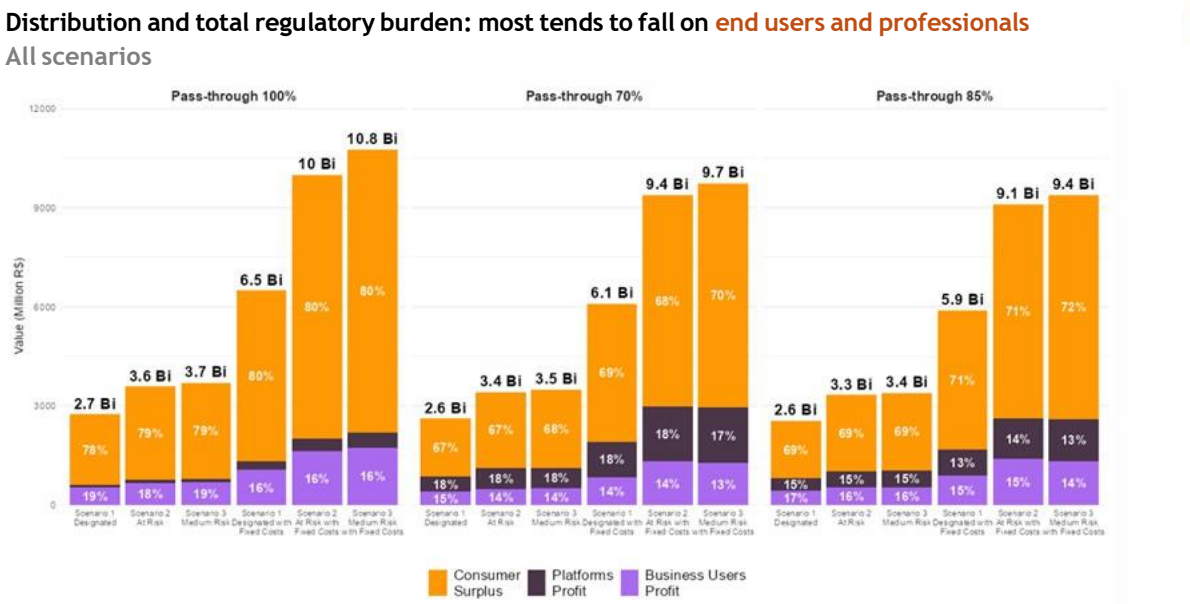

Figure 2: Distribution of the regulatory burden. Scenarios for the application of PL 4675.
Source: ALAI, 2026.

The quantitative analysis suggests, therefore, that the introduction of an ex ante regulatory regime may produce regressive distributional effects, concentrating the economic burden on end users and small or medium-sized professional users, especially in markets characterized by high price sensitivity. This finding does not imply, in itself, rejection of regulatory intervention, but reinforces the need for rigorous empirical evaluation and consideration of the proportionality of the proposed measures.

It is also worth bringing one more relevant fact. In addition to compliance costs, there is an impact on innovation and the risk of greater exposure to litigation, and such effects are seen empirically in the European Union after the issuance of the DMA, as further detailed in Section 2 of this study.

DIMENSION	EUROPEAN UNION	BRAZIL
COST OF COMPLIANCE	DMA: USD 200 million annually for large companies	Bill 4,675: BRL 2.7 billion and BRL 11.34 billion over 10 years
IMPACT ON INNOVATION	Need for product adaptation - revenue loss between USD 879 billion and USD 2.2 trillion by 2030 (reduced investments) Delays in new product launches (interoperability, third-party access) Security risks in digital ecosystems (sideloading)	Costs due to delays in launching innovations and losses to consumers: BRL 4.4 billion to BRL 8.7 billion
EXPOSURE TO LITIGATION	DMA fines: up to 10% of total revenue (20% for repeat offenses) Estimated maximum exposure: ~USD 35.8 billion per company	The Bill provides for a fine of up to 2% of the group's revenue in Brazil, plus daily penalties

Table 6: Costs of ex-ante regulation. Sources: CCIA (Costs to U.S. Companies from EU Digital Services Regulation) and Ecoa (ALAI Report)

In summary, any decision on the adoption of PL No. 4,675/2025 must consider not only competition prevention objectives, but also the concrete effects on prices, consumption, investment, and consumer welfare, to the extent that the incidence of the new regulation may bring regulatory costs to end consumers and generate results contrary to the declared purpose of protecting competition and the consumer.

In light of these elements, the initial experience of the DMA has entailed significant costs that can delay innovation, reduce investments and create institutional barriers to entry, which must be weighed against the actual expected

gains in terms of protecting competition in the market. Thus, it is relevant to carry out a prospective analysis in light of the recent dynamics of competition in digital markets, driven by advances in artificial intelligence and the penetration of Chinese companies in the global market, to question whether the current market movement itself would not be able to bring competitive pressures, making deeper and more costly interventions negligible, which allows the evaluation of more flexible and compatible solutions with the Brazilian market.

3. NEW DYNAMICS IN DIGITAL MARKETS

To assess the appropriate depth of possible intervention in the so-called digital markets[71], the recent competitive pressures that shape these markets must be investigated. In this chapter, we analyze two factors that have inserted relevant competitive pressures in digital markets: (i) the advance of Chinese technology companies in different services; (ii) the dissemination of artificial intelligence and its impact on the competitive dynamics of digital services.

3.1. Advancement of Chinese platforms

Incumbents from different digital markets have their *market shares* threatened by the rapid expansion of Chinese platforms, especially in *e-commerce*, but also in the social media and IAG assistant markets.

In the field of *e-commerce*, platforms such as Shein, Temu, TikTok Shop, and AliExpress have progressively flooded international consumer markets over the past decade. Several factors explain the expansion of these platforms, such as the industrial policy of the Chinese state, production efficiencies, low costs in the production and transportation chain, as well as the ability of these platforms to understand and meet the demands of local consumers in other countries.[72] This ability is linked, among other factors, to the use of AI in the expansion strategy of these platforms and the trend is for the technology to evolve from a tool to increase efficiency to a strategic asset of competitive differentiation.[73]

The role of technology is highlighted as key to the success of Chinese platforms, far beyond the efficiencies that allow for low prices. Platforms like Shein

[71] "Digital markets" is a colloquial expression widely used in the literature that discusses competition in many markets involving digital products and services. There is no single relevant market covering all major digital services, which may have different characteristics relevant to antitrust analysis. In this sense, the term covers markets for different digital services, such as search engines, social media, online marketplaces, among others, and is used throughout this Report to dialogue with the existing debate.

[72] INFORMATION TECHNOLOGY AND INNOVATION FOUNDATION. *How The Rise of Chinese E-Commerce Platforms Will Impact the U.S*. 22 Apr. 2025. Available at: https://www.youtube.com/watch?v=3WdfX9rXuIE&t=3s. Accessed on 18 Nov. 2025.

[73] WEN, Haozhen. *A Case Study of Temu: Development Strategies for Emerging Cross-Border E-Commerce Platforms*. Proceedings of the 3rd International Conference on Management Research and Economic Development. DOI: 10.54254/2754-1169/181/2025.23336. p. 198.

and Temu use information technology to directly connect consumer demand to production dispersed by factories in China.[74]

Shein is an emblematic example because it was born specifically to operate in the foreign market, aiming to solve the problem of Chinese factories that could not directly reach the North American public and their rapidly changing preferences in fashion. As John Deighton describes, Shein's great contribution is its sensitivity to consumer preferences. The consumer-facing side of the platform uses digital marketing expertise to position *fast-fashion* products in front of target customers on social networks such as Instagram, Facebook, and TikTok, as well as its own website and apps, as well as employs email marketing, influencers, and paid advertising to reach its target audience, initially in the U.S. and later in much of the world. The other side of the platform transmits the tastes, patterns and trends of consumers monitored with the help of AI to factories in China, mobilizing an ultra-fast production network, in a system called "*large-scale automated test and reorder (LATR) model*", which uses the data and its software capacity to match demand with the supplier network and to monitor the performance of products and their service to consumers.[75]

Temu, an online retailer of miscellaneous goods controlled by software specialist Pinduoduo, has taken the example of Shein[76] and achieved aggressive penetration in the North American, European and emerging markets based on

[74] DEIGHTON, John. *How SHEIN and Temu Conquered Fast Fashion—and Forged a New Business Model*. Harvard Business School, 2023. Available at: https://www.library.hbs.edu/working-knowledge/how-shein-and-temu-conquered-fast-fashion-and-forged-a-new-business-model. Accessed on 19 Nov. 2025.
KAUFMAN, Nicholas. *Shein, Temu, and Chinese e-Commerce: Data Risks, Sourcing Violations, and Trade Loopholes*. Issue brief prepared by the research staff of the U.S.-China Economic and Security Review Commission (USCC.gov). Abril 2023. Disponível em: https://www.uscc.gov/sites/default/files/2023-04/Issue_Brief-Shein_Temu_and_Chinese_E-Commerce.pdf. Acesso em 17 nov. 2025.
[75] DEIGHTON, John. *How SHEIN and Temu Conquered Fast Fashion—and Forged a New Business Model*. Harvard Business School, 2023. Available at: https://www.library.hbs.edu/working-knowledge/how-shein-and-temu-conquered-fast-fashion-and-forged-a-new-business-model. Accessed on 19 Nov. 2025.
KAUFMAN, Nicholas. *Shein, Temu, and Chinese e-Commerce: Data Risks, Sourcing Violations, and Trade Loopholes*. Issue brief prepared by the research staff of the U.S.-China Economic and Security Review Commission (USCC.gov). Abril 2023. Disponível em: https://www.uscc.gov/sites/default/files/2023-04/Issue_Brief-Shein_Temu_and_Chinese_E-Commerce.pdf. Acesso em 17 nov. 2025.
[76] Ibid.

the use of AI in pricing and marketing on social media, reaching the top of the shopping category in the US app store, surpassing Amazon and Shein just two months after its launch. Specifically, Temu uses AI for hyper-personalized marketing, dynamic pricing based on real-time analysis of competitors, inventory forecasting using predictive analytics, and intelligent customer service systems based on natural language processing.[77]

TikTok Shop, in turn, further deepens the integration between retail and the formation of consumer tastes and trends on social networks (specifically TikTok), in a model that has been called "*social commerce*" (integration of *e-commerce* and *social media*) – different from the *e-commerce* model such as Amazon, eBay and Shopee. TikTok Shop stands out for its algorithms, which curate ultra-personalized video content, allowing users to easily discover products and influencing their purchasing decisions through influencers, brand recommendations, and other forms of content. In addition to AI being part of the algorithms used to analyze data and recommend content to users, TikTok Shop also uses it in product fraud detection tools.[78]

Thus, incoming Chinese platforms gain *market share* in global e-commerce both due to production and logistics efficiencies, as well as AI-based competitive differentiation, creating new business models (such as *large-scale automated test and reorder*) and consumer trends (such as the direct integration of purchases on social networks). In this way, they challenge the dominant position of incumbent companies globally (such as Amazon) or regionally (such as Mercado Libre in Latin America).

In the global market, Alibaba's global gross merchandise value (total value of goods and services sold on its platforms) was more than double that of Amazon in 2023.[79] China's expansion in global *e-commerce*, as well as in other

[77] WEN, Haozhen. *A Case Study of Temu: Development Strategies for Emerging Cross-Border E-Commerce Platforms*. Proceedings of the 3rd International Conference on Management Research and Economic Development. DOI: 10.54254/2754-1169/181/2025.23336.
[78] YUSOF, Mohamed et al. *Challenges and Opportunities in TikTok Shop for Advancing Social Commerce and Consumer Engagement Strategies*. International Journal of Business and Technology Management, e-ISSN: 2682-7646, Vol. 7, No. 2, 60-71, 2025.
[79] RAYMOND, Peter. *Re-platformed Planet? Implications of the Rise and Spread of Chinese Platform Technologies*. Center for Strategic & International Studies (CSIS), 2023. Available at: https://www.csis.org/analysis/re-platformed-planet-implications-rise-and-spread-chinese-platform-technologies. Accessed on 21 Nov. 2025.

internet sectors such as social networks – challenged by the entry of TikTok from 2017, which has more downloads in the United States than Facebook – raises questions about a potential break with the leadership of US companies in digital markets.[80]

Therefore, the entry of Chinese players in the *e-commerce* and social media markets reinforces the contestability of several markets commonly considered difficult to enter.

3.2. AI as a competitive pressure factor for digital services

The recent spread of AI, in particular generative AI (AGI), has generated new competitive dynamics that challenge the regulation of competition in digital markets. On the one hand, the popularization of large language models has boosted the incorporation of AI in various digital services, fostering competition for new features and improvements in quality. Nicolas Petit already described a scenario of dynamic competition in digital markets until 2020, in which, although some large companies held a dominant position in certain markets, they continued to suffer intense competitive pressures. These pressures often stemmed not from perfect substitutes, but from potential new products or trends that would make their services obsolete, which is why they maintained a rapid pace of innovation.[81]

This dynamic has intensified with IAG. As we observed in the study "*Competition in AI markets*", AI-centric markets[82] are at an early stage of development, with high levels of competition marked by frequent entries, relevance of startups, high investments, and uncertainties about which applications will prove to be profitable, since so far most AI tools have not generated profit. In this scenario of high investments and uncertainties about which applications will be profitable, vast experimentation has been created to

[80] Ibid.

[81] PETIT, Nicolas. *Big Tech and the Digital Economy: The Moligopoly Scenario*. Oxford University Press, 2020.

[82] We use the term "AI-centric markets" to refer to the AI products and services sector, such as foundational models, Generative AI, and Predictive AI, covering diverse markets across the AI chain. See LEGAL WINGS INSTITUTE, *Competition in AI markets – Full version*. October 2025. Available at: https://www.legalwings.com.br/_files/ugd/df689d_5bc2e9363a0f42d7953305b98d88c9c3.pdf.

insert AI (in particular IAG) in various services and products. Thus, AI increases the competitive pressures that established digital ecosystems can exert on each other through non-replaceable offerings and alternative complementarities.

In this context, the integration of language models becomes a strategic tool for differentiation and rivalry. For example, Microsoft, by incorporating GPT into its Office suite through Copilot, creates a significant differentiator that injects new competitive pressure into the text generation markets. Similarly, Meta integrates its own LLM into its private messaging services, Google redefines the search experience with Gemini, and other participants, such as Anthropic, combine the computational power of its models with cloud computing ecosystems, thus creating distinct value propositions.

More recently, we were able to observe a drastic change in the retail and e-commerce business model by Google's announcement, in partnership with other companies such as Shopify, Walmart and Target, of the *Universal Commerce Protocol (UCP)* – an open standard that allows AI agents to fully process the online shopping procedure, from the search for products to the payment phase.[83] In this way, the purchase process of a certain product could be carried out within the platform's search system with the connection, reshaping the e-commerce business model based on a new vector of competitive pressure based on agency AI technology.

What is observed, therefore, is not an isolated leadership model in each central service assigned to digital ecosystems, but rather the emergence of dynamic competitive differentials driven by AI, with multiple competitors vying for consumer preference within the same or adjacent markets. This phenomenon injects competitive dynamism into established digital ecosystems.[84]

On the other hand, some digital services are threatened by competition with native AI services. The most emblematic example is that of search engines, since the proliferation of search engines and AI-based response interfaces has made explicit the contestability of the traditional search domain and led established leaders to review business models, such as Google, which made its

[83] Google Strikes at the Heart of E-commerce with Open Protocol for AI Purchases. Available at: https://analytikos.com.br/blog/geo/google-ucp-comercio-agentico/

[84] LEGAL WINGS INSTITUTE. *Op cit. Section 3.1 Entries and the competitive dynamic of AI markets* c/c *Chapter 5 - A different perspective: AI enhances competition in digital markets.*

AGI assistant (at the time called Bard) available shortly after the launch of ChatGPT and the consequent trend of using AGI assistants to perform searches. The same logic affects other digital segments, such as image editing software threatened by image and video AIs, which has also led Photoshop to incorporate AI tools, or even *marketplaces*, which may suffer competitive pressures for the development of autonomous AI agents.[85]

Consequently, it is no longer possible to analyze the main digital markets in the same way as before the spread of AGI, nor independently of AI-focused markets. Although these two "categories" are subject to their own dynamics, and always need specific market evaluations, it has become evident that AI strongly influences competition in digital markets, injecting new competitive pressures and challenging the previously established position of players in digital markets. Therefore, AI imposes the revision of a large part of the debate on the competitive structures of digital markets, which are the presupposition of the debate on the regulation of these markets.

3.3. Conclusion

The two factors listed above, i.e. the advance of Chinese platforms challenging incumbents in digital markets and AI as an instrument of competition and disruptive force in digital markets, point to the need to review the assumptions of possible regulation of digital markets on concentration and competitive dynamics in these markets.

This is because the regulation model of the DMA and PL 4675/2025 is based on retrospective analyses of competition in digital markets, providing obligations for a set of technology incumbent companies with the objective of prohibiting certain practices considered anticompetitive, avoiding lengthy antitrust investigations. If not re-discussed in view of the competitive pressures imposed by AI on digital markets, this regulatory model risks becoming inadequate to deal with relevant conducts or to promote competition and

[85] HAGIOU, Andrei; WRIGHT, Julian. *Artificial intelligence and competition policy*. October 2024. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4985840. Accessed on: June 23, 2025. LEGAL WINGS INSTITUTE. *Op cit. Chapter 5 - A different perspective: AI enhances competition in digital markets.* Google Strikes at the Heart of E-commerce with Open Protocol for AI Purchases. Available at: https://analytikos.com.br/blog/geo/google-ucp-comercio-agentico/

innovation in digital markets. There is also a risk of inappropriately impacting AI services embedded in digital services if discussions disregard the particular dynamics of innovation and competition in AI – which ultimately undermines competition itself in digital markets.

4. ASSESSMENT OF BILL NO. 4,675/2025

Bill No. 4,675/2025 proposes a restructuring of the Brazilian Competition Defense System (SBDC) by providing for the creation of a new superintendency, the Digital Markets Superintendency (SMD), within CADE, specifically focused on digital markets, with competence to investigate ex post conduct and additional powers for ex ante regulation of certain economic agents supplying digital products and services.

The ex ante regulation process is addressed to specific actors. In other words, the rule of conduct (obligation/prohibition) applies to a certain agent that is the object of an "investigation" process. This process is structured in two stages. In the first, SMD initiates and conducts an administrative proceeding for the designation of economic agents of systemic relevance in digital markets, based on a set of legal characteristics related to market architecture, scale, integration and access to data, subject to billing filters and culminating in a final decision by CADE's Administrative Tribunal. Inthe second stage, which can run in parallel to the first, a procedure is established for the imposition of special obligations, aimed at reducing barriers to entry, protecting the competitive process and promoting freedom of choice, through measures that can include transparency, portability, interoperability, access to metrics and governance and interface adjustments.

Potential special obligations include (i) to submit mergers to CADE even if they fall outside the criteria established by Art. 88; (ii) to disclose in a clear and accessible manner to end users and business/professional users relevant information about the offer and use of products and services, including terms of use and technical requirements, rules for data collection and processing, ranking/display criteria (including search), and pricing/fee structure; (iii) to communicate, through the usual channels, changes to the terms of use; (iv) to refrain from closing and abusive practices, such as limiting the participation of competitors in markets in which it operates or adjacent markets or restricting access to relevant inputs and offers, favoring its own offers; and (v) to adopt duties of openness and user choice, such as offering free data portability, free and effective interoperability via interfaces, allowing the installation and use of third-

party apps, guaranteeing access for business or professional users to data and performance measurement tools, among others.

By dissociating the application of the regime from a prior demonstration of specific wrongdoing, the project goes beyond the repressive judicial nature of CADE, as an agency for suppressing abuses of economic power, making it also a regulatory authority to positively structure operating conditions and contestability in digital markets.

The objective of the following sections is to systematically analyze the normative design of Bill 4,675/2025 and identify structural points where the text can be improved to support recommendations for legislative enhancement and institutional calibration. The analysis begins with the Brazilian context of competition law application, characterized by consolidated instruments of competition enforcement and CADE's relevant experience with negotiated solutions and remedies in complex cases, engaging with recent literature on new forms of ex ante regulation of digital markets.

In this sense, comparisons with the DMA and the British regime are justified for complementary reasons, as they are the instruments for implementing specific preventive regimes in digital markets with the greatest accumulation of institutional experience, so that their designs and practical effects have exerted normative and regulatory influence in other economies, either through the diffusion of models or through the incorporation of similar legal mechanisms in legislative debates and regulatory initiatives in various countries, as seen in the Brazilian debate[86]. Thus, international experiences and the results observed in their implementation provide concrete input for evaluating risks, trade-offs, and potential improvements, contributing to the adaptation of the regulatory options chosen in the Brazilian proposal to the country's institutional and competitive conditions.

In this chapter, Section 4.1 will present specific elements of the Brazilian markets that show there is greater contestability regarding certain services compared to other jurisdictions. Next, in Section 4.2, we demonstrate how CADE has used existing tools for the protection of competition in digital markets, with

[86] FERNANDES, Victor Oliveira. 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**, v. 52, p. 105937, 2024.

mechanisms that bring it closer to the German solution. This analysis will reveal that institutional and procedural adjustments may be sufficient to address the competitive challenges posed by digital markets in the Brazilian context.

Section 4.3 demonstrates that the new administrative process for the imposition of obligations for digital services has substantial similarities with the *ex post repression* and that the promised speed is obtained essentially by the compression of the adversarial procedure. **Section 4.4** analyzes the absence in PL 4675 of business justifications, efficiencies and benefits to consumers to be considered in the specification of obligations, which may mean a setback in the malleability of antitrust prevention, which would be relevant for Brazil as an emerging country. Next, **Section 4.5** points out the scope and openness of the designation criteria, highlighting how an expressly non-cumulative list and assessed at the level of an economic group expands CADE's discretion and increases the risk of intervention errors. **Section 4.6** examines the designation period of up to ten years and the restricted form of review of obligations, discussing the potential mismatch with the dynamics of digital markets and with parameters adopted in comparative experiences. **Section 4.7**, in turn, brings another setback in relation to the current procedural tools, given by the absence in PL4765 of explicit mechanisms for negotiation and adjustment of conduct, contrasting this gap with CADE's experience in consensual solutions and with the need for iterative calibration in technically complex and rapidly evolving markets. **Section 4.8** argues that the design of PL 4675 opens space for ambiguous development interventions and generates misalignment with CADE's constitutional mission. Finally, **Section 4.9** will assess the *compliance* costs related to the implementation of regulation in the value chains linked to the so-called digital markets.

4.1. Divergent features of digital markets in Brazil

The Brazilian economic context presents competitive dynamics that are significantly different from those observed in the markets that inspired the benchmark regulatory models. Digital markets in Brazil have been marked by a significant presence of local and regional players in strategic segments, the entry and growth of Chinese platforms in e-commerce, and, above all, the transformation caused by the use of artificial intelligence, which is reshaping the conditions of competition in multiple digital markets. These competitive

pressures, often underestimated, reveal a contestability that relativizes the need for state intervention to promote competition.

Beyond the transformation of digital services through the incorporation of tools and the evolution of AI markets, as previously discussed, there are underestimated vectors of competitive pressure that reveal sources of contestability in these markets in Brazil. Competitive pressures arise from innovation and technological transformations, both abruptly, as in the case of AI, and progressively, as in the increasing computational capacity and experience of tablets and smartphones, which act as a vector of competition between desktop and mobile operating systems.[87] New economic players can also penetrate markets considered difficult to enter, a notable example being TikTok in the social media market, which reached 111 million users in Brazil. [88] Also, several Chinese platforms entered the Brazilian e-commerce market.

It is necessary to consider that Brazil has its own market dynamics. For example, here, unlike other regions, three of the ten largest *e-commerce companies* are Chinese (Temu, Shein and AliExpress), in addition to Singapore's Shopee, which has the second largest market share, and the dominant player is Latin American (Mercado Libre), instead of Amazon as in many countries in the global North.

[87] **RESEARCH.COM.** Mobile vs Desktop Usage Statistics for 2026. 2025. Available at: https://research.com/software/guides/mobile-vs-desktop-usage.

[88] **TIKTOK Shop could represent 5% to 9% of Brazilian e-commerce by 2028.** Mercado&Consumo, 29 jan. 2025. Available at: https://mercadoeconsumo.com.br/29/01/2025/ecommerce/tiktok-shop-pode-representar-de-5-a-9-do-e-commerce-brasileiro-ate-2028/.

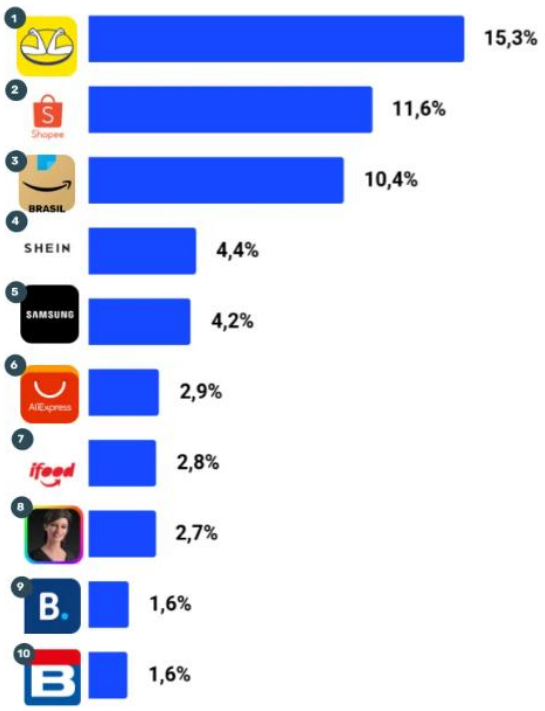

Figure 1: 10 largest e-commerce sites in Brazil by market share in 2025. Source: https://www.conversion.com.br/blog/relatorio-ecommerce-mensal/

Finally, another often overlooked source of competitive pressure is cultural change and consumption habits, which can vary across generations. For example, among young people, TikTok has become a rival to Google as a primary search tool.[89] This reveals the complexity of the competitive dynamics between digital platforms. Thus, the absence of competitive pressure or contestability in these markets is a diagnosis that deserves at least some consideration.

Also within the context of Brazil and Latin America, the online retail and e-commerce market differs significantly from the European and American markets. Estimated sales volume data shows local agents are larger than international economic agents. In this sense, Mercado Libre and Magazine Luiza, as the main economic agents, would hold sales volumes of BRL 138.9 billion and BRL 46.1 billion, respectively, followed by Shopee and Amazon with BRL 40 billion and BRL

[89] **YPULSE.** TikTok rivals Google as a go-to search tool for Gen Z. YPulse, 22 set. 2025. Disponível em: https://www.ypulse.com/newsfeed/2025/09/22/tiktok-rivals-google-as-a-go-to-search-tool-for-gen-z/.

39 billion.[90] The same scenario is found in the food delivery market [91], in which iFood (82.2%) and Rappi (9.1%) pose a significant challenge for large players, such as Uber and Didi (99 in Brazil), to replicate their dominance in the ride-hailing app market to the delivery market, as has occurred in other countries[92]

The fintech market is also a dissonant example of the competitive dynamics in sectors marked by digitalization in Brazil and Latin America.[93] Given the central role of the financial sector in a market economy, regulatory changes adopted by the Central Bank, focused on facilitating business models based on digital technologies, have fostered a pro-competitive environment of constant economic growth and new entrants. In Brazil alone, between 2017 and 2022, the number of fintechs tripled, reaching more than 800 players.[94] In addition to that, PIX transfer, introduced in 2020, has established itself as the leading payment method in terms of number of transactions and the third in terms of financial volume, reaching 63.4 billion transactions worth USD 4.6 trillion in 2024.[95] This contrasts with the weak integration of payment methods offered by major digital platforms, such as WhatsApp Pay. [96] In Brazil, this reveals that specific sectoral regulations and the availability of public infrastructure can often play a much

[90] **RETAIL THINK TANK (IRTT) INSTITUTE.** Mastercard Top 300 Brazilian Retail Ranking | IRTT. 2025 edition. IRTT; Mastercard, 2025. Available at: https://irtt.com.br/Ranking-Top300-IRTT_Mastercard2025.pdf.

[91] **ALMEIDA, Matheus.** Delivery war: understand billionaire dispute between apps for leadership in Brazil. **This is money**. 17 Jun. 2025. Available at: https://istoedinheiro.com.br/guerra-do-delivery-entenda.

[92] BEYER, Scott. Latin America's Food Delivery Wars. Independent Institute, Oakland, 8 May 2023. Available at: https://www.independent.org/article/2023/05/08/latam-delivery/.

[93] ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD). Latin American and Caribbean Competition Forum - Session III: Practical Approaches to Assessing Digital Platform Markets for Competition Law Enforcement. Paris: OECD, 2019. Disponível em: https://one.oecd.org/document/DAF/COMP/LACF(2019)4/en/pdf.

[94] **BRAZIL. Ministry of Finance. Secretariat of Economic Reforms.** Digital Platforms in Brazil: economic fundamentals, market dynamics and competition promotion. Brasília: Ministry of Finance, Secretariat of Economic Reforms, 2024. Available at: https://www.gov.br/fazenda/pt-br/central-de-conteudo/publicacoes/relatorios/sre/relatorio-economico_plataformas_publicacao_rev.pdf.

[95] **GEFFERIE, Dwayne.** Brazil: The $346 Billion Opportunity That PIX Built. *Payments Strategy Breakdown*, 1 dez. 2025. Disponível em: https://dwaynegefferie.substack.com/p/brazil-the-346-billion-opportunity.

[96] According to available data, only 7% of WhatsApp users in Brazil registered their cards in the app: **MARTINS, Paula.** Pix or WhatsApp Pay: which payment method will be preferred by Brazilians? *PagBrasil Blog*, 24 Sept. 2021. Available at: https://www.pagbrasil.com/blog/pix/pix-or-whatsapp-pay/.

more significant role in promoting competition than interventions based on asymmetric regulations.[97]

These elements and differences call into question cross-cutting approaches that impose generic rules and obligations or even designate agents as systemically relevant to any service within the ambiguous label of "digital markets." Given the heterogeneity of market structures and conditions of dominance of various digital services in Brazil, a contextual approach seems more appropriate, one that assesses efficiency conditions and the potential for effective harm to the market, in addition to restricting the designation of economic power and obligations to specific digital services and not to a set of services encompassed by the expression "digital markets."

This assessment should consider the possibility of regulating specific niches within digital markets rather than adopting a general solution that subjects heterogeneous categories of agents to a uniform regime. E-commerce markets, ride-hailing apps, streaming services, social networks, mobile operating systems, and cloud computing services all exhibit substantially different economic characteristics, market structures, and competitive dynamics. Addressing all these activities under the broad category of digital markets, with designation criteria based on revenue thresholds and qualitative characteristics of non-cumulative application, as Bill 4,675/2025 does, implies disregarding these specificities and subjecting agents with radically different competitive profiles to the same regime of obligations.[98]

Sector-specific regulations can be tailored to the particularities of each segment, avoiding both the under-inclusion of relevant conduct and the over-inclusion of agents that do not present the competitive risks that justify

[97] ZUNIGA, Mario A. ¿ Ex Ante Regulation of Digital Platforms in Latin America (or, the. Background, Market Dynamic and Relevant Public Policy Objectives (November 05, 2024), 2024.

[98] In this regard, a recent economic study by ALAI reinforces concerns about the adverse effects of the proposed regulation on innovation and investment in Brazil's digital ecosystem. According to the estimates presented, the discretion granted to CADE would increase uncertainty regarding the number of regulated entities, discouraging investment in innovation, with a potential reduction in investment of between 8.3% and 12.5%. Added to this is the cost of technological delay arising from the reduction or postponement of the launch of products and services imposed by the need for prior compliance, resulting in an estimated loss of consumer welfare of between R$ 4.4 billion and R$ 8.7 billion, as consumers, startups, and companies fail to gain timely access to the latest technologies. This data shows that the economic costs of the proposed regulation may be substantial and ultimately fall on the very parties the legislation seeks to protect, reinforcing the need to assess its actual suitability to the Brazilian context.

intervention. Any specific regulatory initiative for digital markets should therefore be preceded by an impact analysis that defines clear criteria for categorizing digital actors, products, and services according to their own characteristics, moving away from one-size-fits-all solutions that can lead to distortions and unintended effects.[99]

Considering these unique features and differences of digital services in Brazil compared to the characteristics of the countries whose regulations inspired Bill 4,675, the following is recommended:

Promote prior regulatory impact assessments focused on costs and end-user well-being. It is recommended that project approval be preceded by an objective and quantitative analysis of compliance costs and their economic impact throughout the value chain, especially on professional users and end consumers. Evidence suggests that a significant portion of the regulatory burden tends to be passed on through price increases, fees, or reduced margins, potentially leading to decreased consumption, profits, and investment. Without this prior assessment, there is a real risk that the new regulation will reduce consumer well-being and produce adverse economic effects that outweigh the intended benefits.

4.2. CADE's recent actions regarding digital services

The changes proposed by the bill assume that the current antitrust tools available would be inappropriate for dealing with the competitive dynamics of digital markets. The study, commissioned by the Ministry of Finance, indicated that the concentration of power in large platforms has created a new market power structure in which the available antitrust instruments would be insufficient to adequately and promptly identify and remedy competitive conduct and promote contestability.

In turn, the explanatory memorandum of the bill is based on the alleged need to provide legal mechanisms to prevent abuse by *large digital platforms* operating in different market segments as operational hubs for other businesses in the digital economy. Thus, Bill 4,675 would provide CADE with specific tools to prevent *potential abuses of economic power* and foster a *fair competitive*

[99] BOSCHECK, Ralf. *The EU's Digital Markets Act: Regulatory Reform, Relapse or Reversal?* Intereconomics, v. 59, n. 3, p. 154–159, 2024.

environment in a *swift* and *timely* manner, as required by the dynamics of digital markets.[100]

When the Ministry of Finance conducted and concluded the study that underpinned the legislative proposal, it highlighted the minimal intervention by CADE in digital markets, which reinforced its diagnosis of institutional inadequacy, both substantive and procedural. However, over the past few years, and particularly after the publication of the study prepared by the Ministry of Finance, there has been a significant shift in the agency's actions, with various impositions and swift interventions in different digital services, making use of procedural mechanisms such as prioritizing investigations in these segments, using provisional remedies, and cease-and-desist orders.

The justifications for adopting specific regulations for digital markets based on the response time of currently available instruments are based on the fact that, due to the highly dynamic nature of digital markets, the intervention tools of the competition authority would not respond quickly enough to prevent the consolidation of the anti-competitive effects of anti-competitive conduct in these markets (the problem of intervention time).[101] Thus, the explanatory memorandum states that there is "*a need to improve the legal framework for competition defense in order to provide CADE with swift and timely prevention instruments to deal with the specific dynamics of digital markets*."[102]

Although the *ex ante* instruments present in the legislative proposal are motivated by the alleged slowness of *ex post* oversight in rapidly evolving digital markets, the procedural timeframe of the Bill seems both long (approximately one year for each procedure) and restrictive regarding opportunities for defense (approximately 45 days in total in the Superintendency phase). On the other hand, the text does not expressly provide an opportunity to formally challenge the SG's final conclusion on the designation or the imposition of special obligations before the Court, nor to comment on the DEE's opinions or on due diligence. Thus, this

[100] **BRAZIL.** Interministerial Explanatory Memorandum No. 00099/2025 MJSP AGU MF MGI, of June 26, 2025. Submits Bill No. 4,675, of September 18, 2025.

[101] **BRAZIL.** Ministry of Finance. Secretariat of Economic Reforms. Digital Platforms. Brasília: Ministry of Finance, 2024.

[102] BRAZIL. Interministerial Explanatory Memorandum No. 00099/2025 MJSP AGU MF MGI, of June 26, 2025. Submits Bill No. 4,675, of September 18, 2025.

combination can weaken due process without addressing the problem of temporal efficiency that expressly motivated the adoption of an *ex ante* framework.

Beyond this contradiction, it is possible to observe that the current legal framework of CADE already has sufficiently agile and effective preventive instruments to stop anti-competitive conduct in digital markets. Law No. 12,529/2011 grants CADE the power to adopt provisional remedies swiftly, regardless of the conclusion of the administrative process (Art. 84).

CADE's most recent actions demonstrate that provisional remedies can be used as a preventative mechanism against potential anti-competitive conduct. To cite the efficiency of the action in a fairly recent precedent, CADE applied a provisional remedy regarding the alteration of the Terms of Use of the *WhatsApp Business Solution*, which prohibited access to the solution by AI assistants only three months after the publication of the terms.[103] Thus, CADE suspended the application of the measure introduced by Meta. In addition to this most recent case, the table below summarizes other provisional remedies applied by CADE [104] in segments typically embedded in digital markets.

Segment	**Conduct**	**Provisional Remedy**	**Term[105]**
Providers of general-purpose Artificial Intelligence solutions integrated with WhatsApp [106]	Unilateral alteration of the WhatsApp Business Solution terms, prohibiting the use of the platform by Artificial Intelligence providers.	Suspension of the new WhatsApp Business Solution Terms that would prevent artificial intelligence providers from using the platform to offer their services as a primary function	52 days

[103] The amendment was published by Meta on October 15, 2025. In turn, CADE imposed the preventive measure on January 13, 2026.
[104] The table does not include cases in which the preventive measure was considered and denied, such as Administrative Inquiry No. 08700.001797/2022-09 (ABBT v. iFood), Preparatory Proceeding No. 08700.004569/2024-44 (Wexp v. Uber), and Administrative Proceeding No. 08700.005694/2013-19 (CADE v. Google).
[105] Considers the time elapsed between the start of the proceeding and the preventive decision.
[106] Administrative Inquiry No. 08700.012397/2025-63

Market for digital platforms aggregating gyms[107]	Contractual imposition that would prevent partner gyms and some corporate clients from registering with or forming partnerships with competing platforms, and control of the minimum price charged by registered gyms through MFN clauses.	Suspension of exclusivity obligations imposed on gyms and employers, as well as most favored nation (MFN) clauses, except for contracts in which there is proven financial contribution in capital goods or infrastructure of the gym, for the time necessary for the return on investment.	14 months and 25 days
Food delivery apps [108]	Celebrating exclusive contracts with partner restaurants, creating incentives for adhering to the exclusivity model.	Prohibition on entering into new contracts with exclusivity clauses; existing contracts may be maintained and renewed exclusively, but limited to 1 year per renewal, with no limit on successive renewals.	5 months and 10 days
iOS operating system digital ecosystem [109]	Mandatory linking of the use of Apple's own payment processing system (In-App Purchase) for the distribution of digital goods on iOS and limitation of sideloading.	Among the requirements are permission for developers to inform users about alternative purchase methods, the allowance of external links in apps, and authorization to use payment systems other than Apple Pay. The measure also requires the company to enable the distribution of apps outside the App Store	23 months and 20 days

[107] Administrative Inquiry No. 08700.004136/2020-65
[108] Administrative Inquiry No. 08700.004588/2020-47
[109] Administrative Proceeding No. 08700.009531/2022-04

	through alternative stores or sideloading

Table 3: Provisional remedies applied by CADE in investigations of conduct in digital markets. Source: Original work.

It is important to note that, with the exception of the most recent case involving Meta, the other cases in which provisional remedies were applied resulted in the signing of a Cease-and-Desist Agreement between the economic agents and CADE, information that will be presented in more detail in **Section 4.7** below. This pattern demonstrates that the combination of provisional remedies and Cease-and-Desist Agreements constitutes a particularly effective mechanism for resolving competition issues in digital markets.

This system offers significant advantages in terms of speed, suitability of interventions, and legal certainty. Firstly, it allows competitive concerns identified by the authority to be addressed quickly and adjusted in order to mitigate the concern without unduly compromising the economic efficiencies pursued by the economic agent, as well as avoiding the need for lengthy administrative processes. Secondly, the consensus inherent in the Cease-and-Desist Agreements, as explained in **Section 4.7**, substantially reduces the risk of judicialization of the agency's decisions, providing greater legal certainty for both the authority and the regulated entities.

Furthermore, there is also a recent history in which CADE acted in an inter-institutional and coordinated manner with ANPD and Senacon in a logic of governance based on complementary competencies. In the case of WhatsApp's Privacy Policy in 2021[110], ANPD and Senacon focused, respectively, on transparency and data subject rights and on information duties and consumer protection, while CADE added to the diagnosis the potential competitive effects and risks of market foreclosure arising from the new data sharing design. This coordination materialized in a joint recommendation to (i) postpone the policy; (ii) refrain from restricting access and functionalities for users who did not adhere to it; and (iii) refrain from sharing data obtained via WhatsApp by the economic

[110] WHATSAPP. Updated Terms of Service and Privacy Policy for January 2021. WhatsApp Help Center, [2021]. Available at: https://faq.whatsapp.com/1182985198951186/?locale=pt_BR

group based on the change, until the authorities issue a position.[111] The case concluded with the formal verification that the recommendations had been followed, without the need for any further action, demonstrating how coordinated and consensus-based actions can be effective in mitigating risk and inducing compliance without relying on sanctioning mechanisms.

Even with regard to scenarios of controlling the structure in the case of market player concentration, CADE, according to §1 of article 61 of the LDC, has various antitrust remedies that can be employed if there is identification of competitively harmful effects arising from a merger. Antitrust remedies have been sporadically adopted by CADE as a tool for structural intervention targeting agents operating in various markets, with the potential for replication in cases involving digital markets.

For example, local government is constantly concerned [112] with the flow of competitively sensitive information between economic agents in mergers, determining the implementation of mechanisms that limit access to information held by one company to another (e.g., *Chinese walls*). This situation can be adapted and transposed to scenarios where, for example, the integration of databases between companies can be seen as an irreplaceable competitive advantage.[113] Furthermore, CADE has also observed important elements of the so-called attention economy, as the limitation on contracting online advertising tools imposed in a merger involving a specialized pet retailer with a strong digital presence.[114]

These cases demonstrate that, even in complex digital markets and when faced with sensitive technical issues, CADE has been able to structure negotiated

[111] NATIONAL DATA PROTECTION AUTHORITY (Brazil); ADMINISTRATIVE COUNCIL FOR ECONOMIC DEFENSE (Brazil); FEDERAL PUBLIC PROSECUTOR'S OFFICE (Brazil); NATIONAL CONSUMER SECRETARIAT (Brazil). Joint Minutes ANPD, CADE, MPF, Senacon: Minutes No. 008/2022/AC/3CCR/MPF (PGR-00193357/2022). Brasília, DF, 20 May 2022.

[112] See, for example, Merger No. 08700.002488/2022-48 (Viação Águia Branca S.A. and JCA Holding Transportes, Logística e Mobilidade Ltda.)

[113] FARBOODI, Maryam; VELDKAMP, Laura. Data and Markets. Annual Review of Economics, v. 15, n. 1, p. 23-40, 2023

[114] CADE required Petz and Cobasi (Merger Filing No. 08700.009264/2024-29) not to acquire, contract for, or bid on keywords and search terms on the Google Ads platform or equivalent tools that reproduce the trademarks, trade names, or domains of competitors in the specialized pet retail market in a way that diverts customers. Although it is an incidental obligation under the signed merger control agreement, the example indicates how the authority has been understanding new dynamics of integration between physical and digital markets and its capacity to intervene through the tools available to it.

solutions that mitigate competitive risks quickly, without the need to immediately resort to sanctions or rigid unilateral remedies. Even jurisdictions that have adopted specific regimes (such as the DMA and the DMMC) still face implementation challenges and have not demonstrated results superior to those obtained by traditional antitrust enforcement, in addition to their effects being uncertain to date.

Another relevant instrument for supervision in digital markets is the possibility for CADE to mandate the notification of mergers that, according to the revenue criteria of Art. 88 of Law No. 12,529/2011, would not be subject to mandatory submission. Art. 88, § 7, authorizes the authority to request the submission of transactions that do not meet the legal thresholds, whenever the transaction may generate relevant competitive effects. This instrument is particularly relevant for digital markets where acquisitions of nascent startups or small-revenue companies can produce significant structural effects. Although there is no record of the instrument being used in digital markets, CADE has recently adopted a proactive stance and requested information to evaluate partnerships in the artificial intelligence market (Microsoft/Mistral[115], Microsoft/Inflection[116] and Amazon/ Anthropic[117]), still without a final decision

In addition to the suggestions listed, there is the possibility for CADE itself to adapt its analysis methodologies, routines, and procedural flows by revising the guidelines and regulations it issues in the exercise of its powers, with regard to digital markets, without this requiring any amendment to Law No. 12,529/2011. These powers have historically been exercised by the agency, as demonstrated by the various analysis guides published over the years (e.g., analysis of mergers, analysis of cartels, antitrust remedies, and leniency programs).

In this regard, it is relevant to discuss CADE Department of Economic Studies (DEE), an agency that already has legal powers to prepare technical studies, economic opinions, and guidance documents aimed at improving competitive analysis. The DEE has the institutional capacity to develop, in addition to methodological guides, general studies and sectoral mappings aimed at

[115] Process No. 08700.005961/2024-19. Official Letter No. 7181/2024/SG-TRIAGEM AC/SGA1/SG/CADE.
[116] Process No. 08700.005966/2024-33. Official Letter No. 7051/2024/SG-TRIAGEM AC/SGA1/SG/CADE.
[117] Process No. 08700.005962/2024-55. Official Letter No. 7182/2024/SG-TRIAGEM AC/SGA1/SG/CADE.

identifying market patterns, economic power structures, and the systemic relevance of certain agents in different digital services. The prior production of technical diagnoses of this nature, based on empirical data, analysis of multilateral business models, alternative participation metrics, and evaluation of specific competitive dynamics, could provide a qualified basis to guide the actions of the General Superintendency and the Administrative Court in specific cases.

Although such studies are not binding, their technical authority and institutional backing contribute to reducing the time of the evidentiary stage, increasing regulatory predictability, and raising the analytical quality of decisions. Instead of replacing the current model with an ex ante structural regime, strengthening the analytical role of the DEE (Department of Economic and Social Security) could represent an incremental, technically consistent path compatible with the tradition of Brazilian competition enforcement.

Strengthening procedural and institutional instruments as indicated above — the DEE's role as a "designator" for studies of systemic relevance; the use of negotiated solutions with conduct adjustment agreements; the use of the power of avocation for mergers in the sector; presumptions of illegality for practices according to the Court case law; priority proceedings for conduct in digital services — can bring the enforcement of Law 12,529/2011 by CADE closer to the German approach, presented in **Section 2.1**.

As seen, the German experience with the *ex ante* approach, through the amendment to competition law, grants powers to the authority to specify obligations, based on a list of conduct in digital markets that is only presumed to be illegal. This measure combines a review of procedural rules that favor the application of provisional remedies and facilitate the identification of market power or conduct harmful to competition. These measures make the analysis faster but preserve the presentation of justifications and efficiencies, shifting the burden of proof against designated companies.

In addition to the instruments previously mentioned, which have been applied by CADE, Brazilian competition law provides for behavioral, non-pecuniary remedies, with cease-and-desist orders (which may be equivalent to a temporary obligation imposed on a specific agent, as outlined in Bill 4,675) in the control of both conduct and structures, and shifts the burden of proof, which may bring CADE's current enforcement closer to the model established in the German amendment.

Although the shift in the burden of proof requiring the represented agent to demonstrate the pro-competitive nature of the investigated conduct is not expressly provided for in Law 12,529/2011, this mechanism has been applied by CADE in specific circumstances established in the Court's case law. By way of example, case law has established a rebuttable presumption of illegality, with a shift in the burden of proof regarding efficiencies, in relation to the setting of minimum prices or the setting of resale prices.[118] With the development of case law in digital markets, it is possible to establish shifts in the burden of proof for certain conduct carried out by agents considered to be of systemical relevance.

The table below systematizes these instruments provided for in the competition laws of Germany and Brazil, demonstrating that the main mechanisms introduced by the amendment to the German competition law already have a direct or indirect equivalent in Law 12,529/2011. Thus, the instruments currently provided for in Law 12,529/2011 are sufficient to equip CADE to intervene swiftly and effectively in digital markets, without requiring profound legislative changes or duplication of the administrative structure.

Rule	Germany (Amendment - Digital Markets)	Brazil Law 12.529/2011 (LDC)
Designation of Agents	Yes. Bundeskartellamt designates agents of "fundamental importance for cross-market competition." GWB, Art. 19a(1)	DEE/CADE can develop preliminary economic studies to identify agents with market power and systemic relevance. LDC, Art. 17 (reduction of analysis time)
List of conducts specific	Yes. Preliminary list of obligations and prohibitions for digital services with the effect of relative presumption GWB, Art. 19a(2)	There is no list. CADE case law establishes, for certain conducts, a presumption of wrongdoing with a shift in the burden of proof (possibility of binding precedents)

[118] See consolidation in Administrative Proceeding No. 08012.001271/2001-44, vote of the Reporting Commissioner Vinícius Marques de Carvalho.

Rule of reason	Yes GWB, Art. 19 and Art. 19a(2)	Yes LDC, art. 36
Non-pecuniary Remedies	Yes. Example: Access to data for companies dependent on platforms with "relative market power." GWB, Art. 20(1a)	Yes. Monetary penalties and any measures to eliminate harmful effects or cease practices (including through Cease-and-Desist Agreements). LDC, Art. 38 and Art. 85
Provisional Remedies and Speed	Yes. Provisional remedies with eased requirements under the 10th Amendment are limited to 1 year. GWB, Art. 32a and Art. 73(5)	Yes. Swift provisional remedies at any stage of the process, without time limitations. LDC, art. 84

Table 4. Relevant rules for digital platforms – a comparison between Germany and Brazil. Source: Original work.

Based on CADE's recent experience, the following is recommended:

Prioritize the institutional and methodological improvement of CADE before legislative changes. A significant portion of the benefits sought by the Bill can be achieved without legislative change, by: (i) updating CADE's analysis guidelines to incorporate methodologies adapted to digital markets, including defining the relevant market on multilateral platforms and alternative participation metrics; (ii) DEE conducting prior mappings of market structure, market power, and systemic relevance in digital segments, reducing the time required for the subsequent evidentiary stage; (iii) regulating the use of provisional remedies (Art. 84) with specific criteria for digital markets; (iv) the improvement of the procedures for Cease-and-Desist Agreements (Art. 85) for digital markets; and (v) the strategic use of the competence to request notification of mergers below the legal thresholds (Art. 88,§7).

4.3. Individualized imposition of ex ante conduct obligations *versus* the cease and desist order in ex post proceedings

Before examining the specific flaws in the procedural design of Bill 4,675, it is necessary to assess to what extent the individual imposition of conduct obligations on designated agents actually represents an ex ante instrument distinct from ex post competition enforcement and what efficiency gains would result from this option. A closer analysis of the project's structure reveals that the proposed mechanism bears substantial similarities to the ex post repression already provided for in Law No. 12,529/2011, which raises questions about its true nature and the effective gains of the tool.

In a typical ex ante regime, such as that adopted by the European DMA, general, self-executing obligations are established and defined in advance by law, which apply uniformly to all agents that meet certain objective designation criteria. In this model, the authority does not need to initiate, a priori, an individualized administrative process to define which conducts will be required of each agent, since the catalog of obligations is already defined in the regulation, and the authority's role is only to verify the classification and monitor compliance.

Bill 4,675/2025, unlike the others, does not impose self-executing obligations. It creates two distinct and sequential administrative processes: one to designate a systemically relevant agent (Art. 87-A) and another one to determine, on an individual basis, what special obligations will be imposed on it (Art. 87-B). The obligations in Art. 47-E constitute a merely illustrative list, and it is up to CADE, in each specific case, to select, modulate, and justify which of them will be applied to the designated agent.

This procedural architecture substantially approximates the new instrument to ex post repression. In both cases, the competition authority must: (i) initiate an individualized administrative process; (ii) conduct evidentiary proceedings; (iii) notify the respondent and ensure the right to due process of law; (iv) justify the decision based on the particularities of the specific case; and (v) submit the decision to the Court trial. The key difference is that the process of determining special obligations does not charge a monetary fine for past conduct, but rather lists what should and what should not be done.

The fact is that the current legal framework already contemplates exactly this type of outcome. Law No. 12,529/2011, in Art. 38, paragraphs IV to VII, provides, as sanctions applicable to violations of economic order, the

recommendation to the competent public bodies that they not grant incentives to the offender (Art. 38, IV), the prohibition against engaging in commerce (Art. 38, VI), and any other act or measure necessary to eliminate the harmful effects on the economic order (Art. 38, VII), which notably authorizes the imposition of obligations to do and not to do. In other words, the decision in an administrative sanctioning process may result in behavioral orders, provided that the Court so decides in the specific case based on the elements that require them, according to the seriousness of the facts or public interest (Art. 38, caput).

From this perspective, the individualized imposition of special obligations as established in the bill resembles, in practice, an administrative sanctioning process that simply does not charge a monetary fine, but only enters cease-and-desist orders or requires a certain conduct. The distinction, therefore, does not lie in the nature of the result, which in both cases is an individualized rule of conduct, but essentially in the time frame and the assumption of action: the Bill regime dispenses with proof of wrongdoing and promises a faster process. A comparison of the timelines and opportunities for the due process of law in both judicial proceedings highlights their differences:

Aspect	Administrative Sanctioning Project (Law 12.529/2011)	Designation + Special Obligations (PL 4675/2025)
Initial defense	30 days for allegations, extendable further 10 non-extendable days (art. 70 + Art. 152 RICADE)	30 days for allegations, extendable to further 10 non-extendable days (art. 87-C)
Additional Production of Evidence	No fixed deadline. Extensive investigations and production of evidence by the represented party.	Up to 30 days, extendable once for an equal period (Art. 87-D, § 1) with evidentiary stage conducted by the SMD
Statement of the instructing body	Technical note without a fixed deadline; possibility of additions.	Preliminary statement within 45 days (Art. 87-D, § 2), followed by a public hearing and contributions for 15 days.
Final arguments of the defendant	Final arguments within 5 business days. (art. 73)	5 working days after the deadline for contributions (Art. 87-D, § 4, I)
Further investigation by the Court	Decision of the Reporting Counselor that the represented party has 15 days to respond (art. 76)	Decision of the Reporting Counselor without opportunity for response (article 87-F)

Total deadline in the instruction	No maximum legal deadline for the SG	180 days for automatic referral to the Court (art. 87-E, sole paragraph)
Trial in Court	No defined maximum time limit, with opportunities for oral arguments and appeals	120 days for the rapporteur to include it on the agenda, with automatic inclusion after this period (art. 87-F, § 1 and § 2)
Third-party participation	Third-party intervention at any time during the process	Public hearing on preliminary statement with contributions for 15 days (art. 87-D, §3)
Complementary manifestation opportunities	The defendant may respond and present information any time before the trial	There is no chance for response other than the outlined scenarios
Possible outcome	Fine + behavioral obligations + structural remedies	Behavioral obligations only (art. 47-E), without original fine

Table 5: Comparison of deadlines and procedures between Law No. 12,529/2011 and Bill 4,675/2025. Source: Original work.

Thus, the comparison above shows that the new judicial proceedings achieve speed primarily by reducing the evidentiary stage period and the opportunities for the agent to state their case. In the proposed new model, the actions of the economic agent are limited to specific moments without the opportunity for response. Furthermore, the evidentiary stage in the designation and imposition of obligations procedure is limited, whereas in the administrative sanctioning process, the investigation can be conducted more broadly, with the production of expert evidence, hearing of witnesses, and more complex investigations.

It is also worth noting that the Bill allows the designation and imposition of special obligations processes to proceed concurrently (Art. 87-C, § 1). This means that an economic agent can simultaneously be the subject of a process to be designated as systemically relevant and another process to impose special obligations on it, even before the designation is finalized. This possibility substantially aggravates the restriction on the right to a fair hearing, insofar as the represented party may be compelled to defend themselves against special obligations without it even being established whether they meet the criteria for designation.

If the main advantage of the new instrument is speed, and if this speed is primarily achieved by reducing the adversarial process, it is worth asking whether the same results could not be achieved by improving the existing instruments in

Law No. 12,529/2011 without the cost of restricting procedural guarantees. Two instruments stand out in this context: provisional remedies (Art. 84 of Law No. 12,529/2011) and the Cease-and-Desist Agreements (Art. 85 of the same law).

Provisional remedies allow for the immediate imposition of obligations to act or refrain from acting, with ex parte effectiveness in urgent situations, something that is not even possible under Bill 4,675/2025 for the process of imposing special obligations. More detailed regulations governing the use of provisional remedies in digital markets, with clear criteria and streamlined procedures, combined with an institutional structure specialized in digital markets, could achieve faster and more effective results than the proposed special obligations process. The Cease-and-Desist Agreements, in turn, allow for the negotiation of behavioral obligations between CADE and the represented party, with the termination of the administrative sanctioning process. This instrument combines speed and consensus, ensuring the imposition of corrective actions without the need to go through the entire judicial proceedings.

Furthermore, the administrative sanctioning process already provides for the possibility of imposing cease-and-desist agreements which, in themselves, constitute relevant signals to the market. A decision by the CADE Court that orders an economic agent to cease certain conduct and adopt specific obligations, within the context of an administrative sanctioning process with adequate investigation and broad adversarial proceedings, tends to produce signaling and deterrent effects comparable to those of the new instrument, with the added advantage of being based on more robust evidentiary proceedings and more solid procedural guarantees.

Given these findings, the most appropriate path to improving competitive performance in digital markets might lie not in creating a new type of procedure with reduced procedural guarantees, but rather in the institutional improvement of existing instruments. More detailed regulations governing the use of provisional remedies, improved procedures for Cease-and-Desist Agreements, and organizational specialization could produce equivalent or superior results while fully preserving the guarantees of due process of law.

Regarding the points discussed in this item, the following is recommended:

To broaden the scope of response and the opportunities for designated agents to express their views. The proposed framework should ensure robust procedural guarantees for economic agents subject to the designation and the resulting

obligations. This includes: (i) enhanced opportunities for response and contribution throughout the designation process, allowing agents to present data, studies, and arguments before the final decision; (ii) clear and accessible mechanisms to challenge the recommendations, assessments, and decisions of the Digital Markets Superintendency, ensuring the right to due process of law; (iii) adequate deadlines for response and preparation of defense, commensurate with the complexity of the analyses involved; and (iv) the right to hearings and technical meetings to clarify factual and legal issues. Adherence to due process contributes to quality regulatory decisions that are informed by market realities and less prone to errors and subsequent litigation.

4.4. Disregard of business rationale, efficiencies and consumers benefits

The ex ante regime proposed by Bill 4,675 is noteworthy for not allowing designated agents to present business justifications or efficiencies that, in certain cases, could mitigate or even overcome competitive concerns. Art. 87-B, §1 only requires that the imposition of special obligations be "preceded by an economic justification of the decision," that is, a motivation on the part of CADE from an economic point of view as to why a certain obligation is appropriate. However, there is no provision for the designated agent to submit a defense of efficiencies to demonstrate that a particular practice, even if outside the scope of the established special obligation, generates objective benefits to the digital ecosystem or to consumers – a fact that would justify calibrating, relativizing, or even dismissing the intervention.

It is true that paragraph 2 of Art. 47-E mentions that, when determining special obligations, CADE may consider aspects of information security, compliance with legal and regulatory obligations, and characteristics of products and services that improve the functionality of the designated agent's digital ecosystems. However, this reference appears only as an additional criterion for CADE to consider specific aspects of its decision, not allowing the designated agent to present a defense of efficiencies or net benefits for users or other economic agents.

Although the legal design of Bill 4,675 is closer to the DMCC – with the provision for a first phase to designate economic agents as systemically relevant and a subsequent phase for the implementation of special obligations – the lack

of scope for defending efficiencies and analyzing harm is closer to the more radical design present in the European DMA. Even with warnings about potential losses in well-being resulting from this option[119], the DMA opts for a set of obligations applied largely as prohibitions per se to gatekeepers, without providing a general mechanism for defending efficiencies analogous to that of antitrust law. Although there is some degree of consideration for efficiencies (e.g., consideration of proportionality by the European Commission),[120] the obligations were designed to apply, regardless of the specific effects of the conduct.[121] Some of the prohibitions foreseen are even called "efficiency offenses," being prohibited even if associated with significant gains in innovation or user experience.[122]

In turn, the British DMCC model introduces a mechanism to weigh benefits and efficiencies. Section 29 of the DMCC provides for the so-called countervailing benefits exemption, which occurs when a given agent infringes a special obligation imposed (conduct requirement), and the CMA must terminate the investigation if the agent's representations demonstrate that the conduct generates benefits to users that outweigh the negative consequences for

[119] MONOPOLKOMMISSION. Recommendations for an effective and efficient Digital Markets Act: Special Report 82. Monopolkommission, 2021. Disponível em: https://www.monopolkommission.de/images/PDF/SG/sr_dma_fulltext.pdf

[120] If the European Commission concludes that a gatekeeper has systematically infringed the Digital Markets Act (DMA) and, as a result, consolidated its position, it may impose both behavioral and structural remedies (Art. 18(1) of the DMA). Structural remedies, however, may be especially burdensome from the standpoint of efficiencies, insofar as they tend to affect economies of scale and scope, and such impacts should be considered by the Commission when deciding whether to adopt them and when designing the content of the corrective measures. This logic opens up relevant space for efficiency claims, especially (i) within the scope of the anti-circumvention clause of Art. 13(4) of the DMA and (ii) in the updating or specification of obligations provided for in Arts. 12 and 49. In these contexts, gatekeepers may argue that certain conduct does not compromise effective compliance with the DMA when it generates structural efficiencies and does not impair contestability, and is therefore compatible with the objectives of the regime. Furthermore, since the DMA imposes on the gatekeeper itself the duty to ensure the compliance of its conduct (Arts. 8(1) and 11(1)), there is room for ex ante behavioral adjustments that preserve efficiencies or, at the very least, minimize efficiency losses, a logic that also applies when the Commission has discretion in the application of the DMA, such as in specification proceedings or in defining remedies in cases of systematic non-compliance.

[121] BÜREN, Eckart; ZOBER, Marcel. An effects-based approach to the DMA? Network Law Review, Fall 2025.

[122] Arts. 5(2)(b) and 6(2) of the DMA enshrine a veritable "efficiency offence" by prohibiting the combination and use of data by gatekeepers even when such practices could enable the identification of new markets and the development or testing of new products, thereby dispensing with any concrete balancing of efficiency or innovation gains

competition, provided that they are indispensable and proportionate. This exception mandates that the CMA consider statements made by designated agents regarding practices that allegedly violate the requirements.[123] Therefore, the DMCC expressly recognizes that certain practices by strategically positioned economic agents can increase consumer well-being or ecosystem efficiency and that these effects should not be ignored. Even though the evidentiary standard is high, there is procedural room to present, discuss, and eventually accept justifications, even if to refute an alleged breach of the imposed obligations.

This distancing of Bill 4,675 from DMCC and its approximation to DMA by not allowing, at least expressly, the defense of efficiencies is contradictory when comparing the history of precedents that gave rise to the obligations foreseen in DMA with the history of precedents of CADE regarding similar practices. In European jurisdictions, the argument used by the European Commission to reject this appeal was that the efficiencies claimed in precedents involving digital markets were either unilateral or had not been proven by the agents who claimed them.[124] However, this jurisprudential framework is not reflected in CADE's case history, which reveals the dissonance between the two jurisdictions and their respective legislative choices, since it would allow for a situation in which a certain conduct considered lawful by CADE due to its recognized efficiencies and benefits is subsequently prohibited by the same authority based on the criteria of Bill 4,675.

For example, the obligation stipulated in the DMA to "ensure that commercial users can offer their products and services in app stores, search engines, and social networks defined as essential on an equal footing with those products and services offered by the gatekeeper," one of the variants of self-preferencing that the DMA intends to curb, amounts to a generalization of a fine imposed to Google, in the case of Google Shopping[125]. In that case, search results on Google Search would show product pictures from its price comparison tool, a

[123] KUBARIC, Ondřej. Op. Cit.

[124] BLAŽO, Ondrej. Efficiencies under the Digital Markets Act–Is There Space for the Rule of Reason?. Acta Universitatis Carolinae Iuridica, v. 69, n. 2, p. 53-70, 2023.

[125] EUROPEAN COMMISSION. Antitrust Cartel Cases: 39740 Google Search (Shopping). 27 Jun. 2017. Available at: https://bit.ly/3dBy2HK. Accessed on: 06.18.2024.

feature not offered to rival price comparison websites (the same practice was deemed legitimate by CADE).[126]

The absence of an explicit efficiencies defense step is particularly sensitive because many of the obligations established in Art. 47-E directly impact decisions regarding product design, security architecture, data governance, and the organization of the platform or digital ecosystem. Measures such as broad interoperability obligations, data sharing with enterprise users, changes to default settings, or restrictions on self-preferencing may, in some contexts, mitigate market-foreclosure practices; in others, however, they may compromise system integrity, weaken privacy protections, reduce the consistency of the user experience, or discourage investment in new features and complementary services. The European experience with the DMA has demonstrated this tension in practice. Agents designated as gatekeepers, and even consumers, have repeatedly claimed that certain interoperability requirements, open interfaces, or the ability to allow alternative payment channels compromise device security and hinder the delivery of integrated experiences that consumers value.[127]

In an emerging country like Brazil, disregarding the potential beneficial effects these could have on consumers, technological development, or the market can be quite detrimental. The Brazilian economy depends on digital platforms as vectors for technological diffusion, reduction of transaction costs, integration of small businesses into national and international markets, and attraction of investments in innovation. Imposing rigid ex ante obligations, without the possibility of demonstrating efficiency gains, can discourage the adaptation of global models to the local market, reduce incentives for offering customized services, and limit integrations that currently enable scale and economic inclusion.

[126] ADMINISTRATIVE COUNCIL FOR ECONOMIC DEFENSE - CADE. Administrative Proceeding No. 08012.010483/2011-94. Interested parties: Google Inc and Google Brasil Internet Ltda. Federal Official Gazette, July 2. 2019.

[127] In this regard, see APPLE INC. The Digital Markets Act's impacts on EU users. Cupertino, 2025. Available at: https://www.apple.com/br/newsroom/2025/09/the-digital-markets-acts-impacts-on-eu-users/; MEDIA NAMA. Google asks EU to "reset" Digital Markets Act, citing risks to innovation and user experience. [S.l.], 2025. Available at: https://www.medianama.com/2025/09/223-google- reset-eu-digital-markets-act/. Accessed on: January 13, 2026; and EUROPEAN CENTRE FOR INTERNATIONAL POLITICAL ECONOMY (ECIPE). Consumer response to the Digital Markets Act. Brussels, 2024. Available at: https://ecipe.org/publications/consumer-response-to-the-digital- markets-act/. Accessed on: January 13, 2026

This evidence does not mean that ex ante regimes are undesirable by definition, but it reinforces the importance of calibration mechanisms that allow for the removal or adaptation of obligations when they clearly sacrifice more efficiency and innovation than they promote contestability. An approach that does not allow for the defense of efficiencies assumes that the competitive process in digital markets would not be able to bring about efficiencies on its own.[128]

Thus, the bill could be improved by including safeguards inspired by the British experience, such as a provision that obliges CADE to consider claims of compensatory benefits, or even the provision for defending efficiencies for certain types of obligations. In other words, it is recommended that Bill 4,765 be revised to:

Consider efficiency arguments when defining obligations or approving behavioral adjustments. Before restricting practices, consider verifiable efficiencies (quality, security, privacy, fraud prevention, innovation) and less costly alternatives. The current text lacks explicit mechanisms for economic agents to demonstrate that certain practices, while potentially falling within the scope of the prohibitions, generate consumer benefits that outweigh competitive concerns. Explicit mechanisms should be introduced to allow for behavioral adjustments and agreements with economic agents in order to enable negotiated solutions that preserve consumer benefits and reduce litigation, making enforcement more effective. Such efficiency protection clauses are essential safeguards against regulatory overreach.

4.5. Scope of the designation criteria

The regulation of criteria for designating "systemically relevant economic agents in digital markets" is one of the aspects of Bill 4,675 that most deviates from comparative experiences of legislation establishing special classes of economic agents, while excessively expanding the CADE's margin of discretion.

[128] As noted, this view tends to underestimate competition between ecosystems, the competitive pressure exerted by different vectors, the structural changes brought about by the development and application of AI in these markets, and the disruptive potential of new entrants, such as Chinese entrants

Based on legitimate objectives established in Art. 47-B – reducing barriers to entry, protecting the competitive process, and promoting freedom of choice – Bill 4,675 enables in Art. 47-C designation criteria based on a list of open and indeterminate characteristics[129], being expressly non-cumulative and non-exhaustive (complemented by the expression "among others").

According to the text, CADE may, after an administrative process, designate as systemically relevant in digital markets agents that present, individually or cumulatively, a presence in multi-sided markets, market power associated with network effects, vertical integrations and activity in adjacent markets, a strategic position for the development of third-party business activities, access to a significant amount of personal and commercial data, a significant base of professional and end users, or the offer of multiple digital products or services (Art. 47-C, §3). Furthermore, the list of characteristics could be discretionarily expanded by the authority, given that the expression "among others" appears in the heading of Art. 47-C, leaving it to CADE to determine, in the context of each evaluation, which characteristics not foreseen in the text would justify the designation of the economic agent. As a limiting factor, only agents whose economic groups have a global annual gross revenue exceeding BRL 50 billion or an annual gross revenue in Brazil exceeding BRL 5 billion may be designated. (Art. 47-C, §1).

From the point of view of legal certainty, the combination of these elements – non-cumulative criteria, open clause, and revenue – creates ample room for discretionary assessment by the authority. Unlike regimes that seek to define ex ante the universe of categories of digital services or activities, Bill 4,675 describes a set of broad characteristics that are difficult to measure and can be applied to different types of businesses with distinct economic and competitive characteristics without establishing adequate grounds to justify the designation. Ultimately, Bill 4,675 allows for the broad designation of economic agents that meet the legal criteria, but which, in reality, may present themselves as vectors of competition in dynamic markets.[130] This underscores the need for very well-calibrated entry criteria, otherwise, the regime may also affect companies that are still competing with established players, incurring the risk of over-regulation.

[129] LYONS, David. Open texture and the possibility of legal interpretation. Law and Philosophy, p. 297-309, 1999.

[130] PETIT, Nicolas. *Big Tech and the digital economy: The moligopoly scenario*. Oxford: Oxford University Press, 2020.

In essence, Bill 4,675 adopted a regulatory technique analogous to that provided for in the Digital Markets, Competition, and Consumers Act (DMCC) enacted by the United Kingdom. In the case of the DMCC, it provides for the designation of companies with Strategic Market Status (SMS) always in respect of a digital activity that is linked to the United Kingdom. In turn, digital activity is defined as the provision of a service via the Internet or the supply of digital content and is considered linked to the United Kingdom if it has a significant number of users in the country, if the company operates there in relation to that activity, or if that activity, or the way it is carried out, could have an immediate, substantial, and foreseeable effect on trade in the United Kingdom.

The Competition and Markets Authority (CMA) can only grant SMS status if the company, within a specific digital activity linked to the United Kingdom, possesses substantial and entrenched market power and is in a position of strategic significance with respect to that digital activity, in addition to meeting economic group turnover thresholds of €1 billion in the United Kingdom or €25 billion globally.[131-132] To verify whether an economic agent holds substantial and entrenched market power, the CMA must conduct a prospective assessment for at least 5 years, considering foreseeable developments if it were not designated with SMS and factors that may affect the development of its activity. Furthermore, an economic agent will hold a position of strategic importance with respect to the activity when it has significant size or scale, is used by many other companies as an input, can leverage its power for other activities, or is able to substantially determine or influence the conduct of third parties.

[131] DMCC, Section 2 through 8.

[132] The contrast with the European Union's Digital Markets Act (DMA) reinforces this perception. The DMA combines qualitative and quantitative criteria to identify gatekeepers in relation to a closed set of core platform services, such as search engines, mobile operating systems, online intermediation services, and social networks. A company is designated if it meets revenue and user-base thresholds for three consecutive years in the European market. Exceptionally, the European Commission may designate firms as gatekeepers based on a qualitative assessment even if they do not meet the quantitative revenue and user-base criteria. Although the European regime also allows for discretion and has been criticized for its regulatory breadth, the "core platform services" structure acts as an additional filter: not just any digital activity can lead to designation, but only those belonging to a set defined by regulation. See also MORENO BELLOSO, Natalia; PETIT, Nicolas. The EU Digital Markets Act (DMA): a competition hand in a regulatory glove. European Law Review, vol. 48, pp. 391-421, 2023.

Nevertheless, attention has been drawn to the risk of excessively broadening the notion of digital activity in the DMCC[133] and to the possibility that the breadth of this category might facilitate a progressive expansion of the scope of the regime [134]. The legal definition of digital activity would be broad enough to encompass a wide range of services, and this could favor more intrusive regulatory interventions than initially announced[135], with potential negative effects on investment and innovation.[136] This is because adopting a definition broad enough to encompass any activity mediated by digital means would mean that the DMCC would no longer anchor intervention in clearly defined risks, generating deterrent effects on investment, especially in innovation-intensive sectors.[137]

While these concerns regarding the DMCC are valid in the British context, the situation is even more serious in Brazil, as Bill 4,675 does not even offer its own definition of the term "digital markets," a concept that competition authorities themselves have difficulty to define[138]. In reality, there is no single relevant market that encompasses all major digital services, which may present distinct characteristics pertinent to antitrust analysis, and currently, almost all sectors and industries are supported by digital technologies. In this sense, the term encompasses markets for different digital services, such as search engines, social media, and online marketplaces, which are very different from one another, and their analysis must take these specific dynamics into account when evaluating any digital services associated with them. Therefore, in theory, under the terms

[133] DNES, Stephen; DE FOSSARD, Fred. *The Digital Markets, Competition and Consumers Bill: How to protect prosperity and innovation in the digital economy*. London: Legatum Institute (British Prosperity Unit), dez. 2023

[134] PRICE, Rebecca. *A comparative analysis of enforcer discretion across the DMCC and DMA*. In: NORTH EAST LAW REVIEW. Newcastle: Newcastle University, v. 10, special issue, 2024.

[135] BOWMAN, Sam; DUMITRIU, Sam; BABU, Aria. *Conflicting Missions: The Risks of the Digital Markets Unit to Competition and Innovation*. International Center for Law & Economics (ICLE) / The Entrepreneurs Network, Policy Brief, jun. 2021

[136] AUER, Dirk; LESH, Matthew; RADIC, Lazar. Digital Overload: How the Digital Markets, Competition and Consumers Bill's sweeping new powers threaten Britain's economy. Institute of Economic Affairs, IEA Perspectives, v. 4, 2023.

[137] FABRIZIO, Kira R. The effect of regulatory uncertainty on investment: evidence from renewable energy generation. The Journal of Law, Economics, & Organization, v. 29, n. 4, p. 765-798, 2013.

[138] EBEN, Magali; ROBERTSON, Viktoria HSE. Digital market definition in the European Union, United States, and Brazil: Past, present, and future. Journal of Competition Law & Economics, v. 18, n. 2, p. 417-455, 2022.

set forth by the legislation, CADE would have the power to consider a wide variety of services as falling within the scope of the legislation simply by using the term

By working with an open-ended formula without specifying whether it refers to typical platform intermediation services, any service offered through digital means, or even hybrid chains where digital and physical channels combine, the legislation greatly expands the authority's margin of discretion, undermining legal certainty and predictability regarding which types of services and activities would be subject to the designation process.

In comparison to the qualitative designation criteria of the British legislation, it establishes tests that require the authority to conduct a prospective assessment of the consolidation of the economic agent's position and the need for intervention, considering the competitive dynamics of these markets themselves[139], and verify conditions that demonstrate significant market power of the economic agent linked to digital activity. In turn, the material criteria of Art. 47-C of Bill 4,675 are expressly disjunctive and list, side by side, elements of architecture, scale, and market power without necessarily having a connection between these elements. Thus, Bill 4,675 does not clearly specify which structural market configurations of concern the legislation aims to mitigate, which may lead to disproportionate burdens on agents in the designation processes due to a lack of clarity regarding the problem addressed by the legislation, allowing measures initially justified by correcting specific flaws in certain digital markets to be extended at the discretion of the authority.

In the Brazilian case, it would be enough for an economic group with revenues exceeding BRL 50 billion globally or BRL 5 billion in Brazil to, for example, possess a certain form of vertical integration and process a significant amount of personal data, or offer more than one digital product or service, to theoretically be designated as systemically relevant by the SMD, even if there were no evidence of illicit conduct, entrenched market position, or strategic significance. This tends to blur the line between scale, architecture – elements that can be pro-competitive or efficient – and market power itself. If any combination of characteristics is potentially relevant, it becomes difficult to demonstrate that a given business model, however large, remains exposed to

[139] PETIT, Nicolas. Op. Cit.

significant competitive pressures, including from emerging players and new technologies.[140]

In practice, large industrial, retail, or financial conglomerates that are just beginning to develop digital offerings[141] – including, for example, AI-based models, specialized marketplaces, or new intermediary platforms – may meet the revenue requirements and some of the material criteria of Art. 47-C, being subject to scrutiny by the authority even without necessarily holding a consolidated position of access control in digital markets. In these cases, the classification stems less from a consolidated position of access control or structural intermediation in digital markets and more from prior economic scale, which weakens the link between the designation criteria and the competitive risk that the regime aims to mitigate. Furthermore, foreign groups with a strong global presence, such as Chinese platforms in the process of expansion, may be included based on their aggregate scale, even if their digital operations in Brazil are in their initial stages. By not linking the designation to defined digital activities, by allowing any of the listed characteristics – plus other unspecified ones – to be sufficient, and by using revenue thresholds measured at the economic group level, the device opens up space to broaden the scope of the designation process. In this sense, the qualitative criteria associated with the revenue criterion carry the risk of the regime becoming overly inclusive, compromising its adherence to the objectives of promoting competition.

In this regard, an economic impact study conducted by ALAI[142] corroborates observations regarding the breadth of the designation criteria and the risks of over-inclusion and discretion inherent in Bill 4,675. Based on the combined application of the quantitative revenue criteria and the qualitative criteria set out in art. 47-C, which encompass, in a non-cumulative manner,

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[140] PETIT, N.; TEECE, D. J. Taking Ecosystems Competition Seriously in the Digital Economy: A (Preliminary) Dynamic Competition/Capabilities Perspective, December 9, 2020.
DEILEN, Marius; WIESCHE, Manuel. The role of complementors in platform ecosystems. In: International Conference on Wirtschaftsinformatik. Springer, Cham, 2021. p. 473-488.

[141] Public data indicates that more than 250 companies in Brazil have net revenue above the 5-billion-reais threshold, according to data published by Valor and Exame. See EXAME. Best and Largest 2025: ranking of the largest companies in Brazil. Available at: https://exame.com/mm/maiores/?ano=2025. Accessed on: Jan. 12, 2026; VALOR ECONÔMICO. Valor 1000 — Ranking of the 1,000 largest companies in Brazil — 2025 edition. Available at: https://infograficos.valor.globo.com/valor1000/rankings/ranking-das-1000-maiores/2025. Accessed on: Jan. 12, 2026.

[142] LATIN AMERICAN INTERNET ASSOCIATION (ALAI). *Ibidem*.

characteristics such as presence in multi-sided markets, market power associated with network effects, vertical integrations, access to significant personal and commercial data, a substantial user base, and the offering of multiple digital services.

The study identified that the universe of companies potentially subject to regulation is considerably broader than suggested by the justifications centered on the large platforms of the GAFAM acronym. In one scenario, at least 10 economic groups would likely be designated. In an intermediate scenario, 26 other groups would be at risk of being included; and, in a third, medium-risk scenario, that number could reach 32 economic groups — including not only large global platforms, but also local players such as Magazine Luiza, iFood, and Brazilian fintechs, as well as expanding Chinese platforms like AliExpress and Shopee. The study also highlights that the Bill does not establish guidelines for the interpretation of qualitative criteria, leaving its application entirely open to the discretion of the authority, which amplifies the risk that agents acting as vectors of competition and innovation in the Brazilian market will be unduly affected by regulatory obligations disproportionate to their actual competitive position.

Due to the lack of clarity in the designation criteria, there is a greater risk of diluting the focus on specific structural problems and generating regulatory uncertainty for a wider range of companies, including those that may contribute to market contestability. In the case of Bill 4,675, the criticism is not directed at the intention to provide CADE with tools for operating in digital markets, but at the fact that the combination of open, non-cumulative criteria assessed at the economic group level, without association to specific activities or services, increases both the margin of discretion and the possibility that new entrants and new vectors of competition may be regulated with the same intensity as established incumbents, which requires a semantic densification of the designation criteria.

Regarding the criteria for designating systemically relevant agents, the following is recommended:

Make the designation criteria cumulative. Require the conjunction of essential elements (significant economic power and essential intermediary control and dependence) to reduce excessive breadth and focus on cases that truly imply systemic relevance. The law should not allow for discretionary selection of which

criteria to use in designating an economic agent; it should require a mandatory combination of criteria accompanied by a duty to provide justification. This cumulative approach ensures that the designation only reaches those agents whose market position genuinely justifies ex ante intervention, avoiding the capture of smaller players or platforms operating in competitive segments.

4.6. Period during which the agent is designated as systemically relevant

The regime for the designation period proposed in Bill 4,675, when confronted with the dynamics of digital markets, tends to produce a degree of rigidity that clashes with the dynamism inherent and necessary to digital markets[143], in contrast to other foreign experiences that allow some degree of flexibility to ex ante regulations. According to Art. 87-A, the designation of a systemically relevant economic agent in digital markets is valid for up to ten years, renewable through a new administrative procedure, and covers the entire economic group to which the designated agent belongs. Art. 87-B, in turn, links the validity of the special obligations to the designation period, causing these obligations to become effective 60 days after the decision following the determination of the special obligations, ending with the end of the designation period. The revision of special amendments is possible in the event of significant market changes through a new administrative process. Thus, the regulatory design combines a long maximum designation period, applicable to the entire economic group, with a relatively narrow exit door, dependent on a new formal procedure for any relevant adjustment.

Even the European DMA model, which has been criticized for its intensity and regulatory soundness[144], establishes that the European Commission will periodically review, at least every three years, whether gatekeepers continue to meet the designation requirements.[145] At the same time, gatekeepers have a considerably longer period of up to six months after the designation decision to ensure compliance with all applicable obligations.[146] In the British system, DMCC

[143] ALLEN, Darcy WE et al. Dynamic Competition and Digital Platforms. SSRN, 2025.

[144] PORTUESE, Aurelien. The Digital Markets Act: A Triumph of Regulation Over Innovation. Information Technology & Innovation Foundation, strani, p. 1-16, 2022.
BOSCHECK, Ralf. The EU's Digital Markets Act: regulatory reform, relapse or reversal?. Intereconomics, v. 59, n. 3, p. 154-59, 2024

[145] DMA, Article 4 (2)

[146] DMA, Article 4(3)

sets SMS designations for five-year periods, with the regulator required to open a new investigation at least nine months before the end of the period, precisely to decide whether to maintain, adjust, or revoke the designation[147], providing for an active monitoring duty so that the authority alters or revokes conduct imposed on those designated.[148]

A designation period of 10 (ten) years becomes more problematic if we consider how PL 4,675 defines the scope of the designation decision and the hypotheses for reviewing the imposed obligations. Unlike DMA and DMCC, where gatekeeper or SMS status is assigned in relation to specific digital services or activities so that obligations fall on delimited functions of the economic agent, the Bill projects the designation onto the agent as a whole and, by extension, onto the entire economic group, causing the special obligations to radiate beyond the core activity that justified the intervention. While the European and British regimes allow for the revision of obligations – and, in certain cases, of the designation itself – when the characteristics of the company, the service, or the facts that underpinned the decision change significantly, the Bill essentially conditions the revision on demonstrating significant changes in the market. This represents a contradiction in the Brazilian design, since the decision to designate and impose obligations is motivated by attributes of the economic agent and its activities, but the revision of obligations is subject only to change due to structural market transformations, as if the evolution of the agent itself or of the regulated services were not sufficient reason to reassess the scope and intensity of the imposed obligations.

The excessive designation period may also be inappropriate considering the intense transformation and dynamic innovation that digital markets are undergoing[149], characteristics which we can observe in present-day phenomena. As seen in Section 3, we have seen how AI assistants have come to exert competitive pressure on established players in the internet search market, which reacted by incorporating LLMs and GenAI tools into their core services, reshaping the competitive dynamics in these markets. Meanwhile, in other markets, the recent trajectory of Chinese platforms reinforces the idea that the planned designation period may be inadequate given the effective contestability observed

[147] DMCC Sections 10(1), 10(2), and 18.
[148] DMCC Section 25.
[149] MANNE, Geoffrey A.; RADIC, Lazar; AUER, Dirk. Regulate for What? A Closer Look at the Rationale and Goals of Digital Competition Regulations. Berkeley Bus. LJ, v. 22, p. 201, 2025.

in digital markets such as e-commerce, social networks, and AGI. In just a few years, entrants like Shein, Temu, AliExpress, and TikTok Shop have not only captured significant portions of the global and Brazilian e-commerce market, but have also introduced innovative business models based on the intensive use of AI for marketing, dynamic pricing, demand forecasting, and content curation, shifting the competitive axis to new parameters of efficiency and differentiation. This movement is putting pressure on global and regional incumbents, while the rise of Chinese AGI models, such as DeepSeek-V3, demonstrates that even the technological infrastructure underlying the leadership of big tech companies can be quickly challenged. In a context where new vectors of competition may emerge and old incumbents may see their position eroded, crystallizing the condition of systemic relevance for up to ten years for an entire economic group, with obligations that only cease with the end of the designation, increases the risk of mismatch between the regulatory framework and competitive reality, threatening the preservation of the competitive process itself, which is listed as a legal objective.

In this regard, some literature warns that, in highly dynamic digital markets, ex ante regulatory commitments with long designation periods can crystallize a static view of the market and quickly become obsolete. Even a five-year designation period is considered excessive by many, as there is a risk of binding agents to regulatory obligations even if market conditions — those that led to the establishment of those obligations — change significantly[150]. More critical viewpoints emphasize that, in rapidly evolving digital markets, ex ante regulatory arrangements tend to quickly become outdated [151], given the practical difficulty of its continuous adaptation.

Given this set of factors, the designation regime proposed by Bill 4,675 proves to be disproportionately rigid in relation to the evolving nature of digital markets. The combination of (i) broad criteria for designation, (ii) review of the decision limited to significant changes in the market, and (iii) an extended period of up to 10 years for maintaining special obligations substantially increases the risk of regulatory mismatch, with potential static and dynamic costs for the competitive process, which the Bill itself aims to promote. Instead, the proposed

[150] CONIGLIO, Joseph V.; KISS, Lilla Nóra; CASTIGLIA, Giorgio. *Comments to the Australian Treasury Regarding Proposal of a New Digital Competition Regime*. Washington, DC: Information Technology and Innovation Foundation (ITIF), 26 fev. 2025.
[151] AUER, Dirk; LESH, Matthew; RADIC, Lazar. Op. Cit.

design may inadvertently solidify outdated regulatory structures, restricting firms' ability to adapt and slowing the competitive process in the face of new competitive drivers.

Regarding the designation period, the recommendations are:

Reduce the designation period to 2 years (with justified extension). Establishing 24-month designation periods creates incentives for calibration and avoids regulatory 'freezing' in dynamic markets. Given the pace of technological change in digital markets — particularly those affected by developments in artificial intelligence — shorter designation periods allow for periodic reassessment of whether the conditions that justified the intervention remain applicable. Any extension must be motivated by an impact assessment and preceded by economic justification demonstrating the persistence of systemic relevance and that the obligations remain necessary and proportionate to current market conditions.

4.7. Absence of explicit mechanisms and procedures for negotiation and adjustment of conduct

Given CADE's successful experience with negotiated solutions, the absence in Bill 4,675 of explicit mechanisms and procedures for negotiation and adjustment of conduct with the designated agents is noteworthy. Notwithstanding the fact that the project provides for some participatory mechanisms, such as consultations and public hearings in the designation procedure (Art. 87-D, §3) and space for intervention by interested third parties (Art. 50, sole paragraph), it is essentially organized around a unilateral model, in which CADE, once it designates a systemically relevant agent, defines and imposes a package of obligations that can only be altered by a new decision from the authority itself.

In this sense, the Bill falls short due to the lack of a clear procedure for negotiated commitments – similar to the Cease-and-Desist Agreement (TCCs) and Merger Control Agreements (ACCs) widely used by CADE itself in cases of conduct and mergers – with monitoring by trustees, intermediate milestones, the possibility of adjustments, and the joint construction of solutions with the affected companies. By failing to incorporate a mechanism for negotiating obligations with designated agents, Bill 4,675 may lead to shortcomings in adequacy and efficiency, both because it fails to adopt an efficient method with

a history of success at CADE and because of the potential inadequacy of the scope of special obligations due to unilateral determination by the authority.

Regarding the first hypothesis, between 2012 and 2025, CADE signed more than 460 Cease-and-Desist Agreements.[152] This number highlights the authority's experience in jointly developing and negotiating solutions, allowing competition concerns identified by the authority to be addressed quickly and efficiently in cooperation with the economic agent, avoiding lengthy and drawn-out processes.[153] Furthermore, this alternative approach avoids the judicialization of decisions made by the regulatory body due to its consensus with the economic agent. Beyond traditional markets[154], this resource has recently been applied to cases involving digital platforms, such as those investigating the occurrence of unilateral anti-competitive practices in the markets of digital platforms that aggregate gym memberships[155], digital platforms for fast food delivery orders [156] and OTA platforms that sell bus tickets[157].

This track record has been reinforced more recently with the execution of Cease-and-Desist Agreements in investigations involving digital ecosystems of mobile operating systems[158] and mobile devices[159]. These cases demonstrate that, even in complex digital markets and sensitive technical issues such as security, privacy, and user experience, the regulatory body has been able to structure negotiated solutions that address competitive risks without immediately

[152] Information obtained from data made available by the authority on its website, under the agreements tab, available at: https://www.gov.br/cade/pt-br/assuntos/acordos

[153] Although the bill sets deadlines for some stages of the procedure, it theoretically has no defined deadline for completion, as it allows the Reporting Commissioner to carry out investigative measures without a specified time frame. Based on estimates, the proceedings to designate an economic agent of systemic relevance and to impose special obligations will each take approximately one year.

[154] CADE has already entered into cease-and-desist settlement agreements in markets such as oil and natural gas production, banking and merchant-acquiring services, beverage distribution, and fuel distribution, among others.

[155]Cease and Desist Agreement No. 08700.006611/2021-19. Interested party: GPBR Participações Ltda.

[156] Cease and Desist Agreement No. 08700.005597/2022-17. Interested party: Ifood.com Online Restaurant Agency S.A.

[157] Cease and Desist Agreement No. 08700.003919/2023-74. Interested parties: J3 Participações Ltda. and Bus Serviços de Agendamento S.A.

[158] Cease and Desist Agreement No. 08700.006953/2025-62. Interested parties: Apple Inc. and Apple Services LATAM, LLC.

[159] Cease and Desist Agreement No. 08700.007062/2025-23. Interested parties: Google Inc. and Google do Brasil Internet Ltda

resorting to sanctions or rigid unilateral remedies. Recent experience with Cease-and-Desist Agreements demonstrates not only CADE's institutional ability to conduct sophisticated regulatory discussions, but also the existence of clear incentives for negotiation mechanisms in the processes of designating and imposing obligations, especially when seeking to calibrate interventions in dynamic and technically complex markets.

Furthermore, negotiation mechanisms can mitigate the problems of regulatory delegation in areas of high complexity and technological expertise, notably the regulation of digital markets.[160] By delegating the specification of normative content to secondary actors – regulators, courts, or even the regulated agents themselves – the process of densifying the normative content of the legal text becomes distributed throughout the set of adjudication practices, interpretative agreements, or other soft law mechanisms.[161] However, this regulatory design, in which delegation is exclusively assigned to the competition authority, can be problematic considering the potential difficulties authorities face in designing remedies within the context of digital markets[162] due to their inherent complexity and dynamism and the risk of over-regulation[163].

To some extent, in the DMA and DMCC, there is some room for regulatory discussions between designated agents and authorities in the processes, with greater or lesser scope depending on the design of the legislation. For example, the DMA establishes obligations that are not easily transferable to the operational level of economic agents' activities.[164] This encourages designated agents, when uncertain about how the obligations should be applied, to approach the European Commission for clarification or further specification.[165] The DMCC, analogous to Bill 4,675 in this system, goes a step further and encourages more intense regulatory dialogue with the competition authority, insofar as there is a generic list of obligations that can be imposed and specified later on the

[160] ALMADA, Marco. Technology neutrality in EU digital regulation. SSRN, 2025.
[161] Ibid.
[162] LANCIERI, Filippo; PEREIRA NETO, Caio Mario S. Designing remedies for digital markets: The interplay between antitrust and regulation. Journal of Competition Law & Economics, v. 18, n. 3, p. 613-669, 2022.
[163] Prionidis, O., Hall, G., Pang, C., Ruth, B., Sundar, M., & Wijaya, R. Market Interventions. Leeds Policy Institute, 2024.
[164] FESSEY, Kai. Balancing Power in Digital Markets: Enforcer's Discretion. NEL Rev., v. 10, p. 35, 2024.
[165] BAUER, Matthias; PANDYA, Dyuti; SHARMA, Vanika. EU export of regulatory overreach: The case of the Digital Markets Act (DMA). ECIPE Policy Brief, 2025.

designated agent designated agent, requiring greater action from the latter.[166] However, those documents, such as Bill 4,675, do not explicitly provide for a procedure or instrument for adjusting conduct, which demonstrates an insensitive importation of the experience and practices developed within CADE.

As seen, the express negotiation mechanism allows for the adoption of consensual solutions in a more efficient manner and reduces the risk of litigation due to their mutual adoption by the parties, as observed in the history of negotiated solutions by CADE. Furthermore, in the absence of an explicit mandate for negotiation, any opening for regulatory dialogue is left to the discretion of the authority. In this case, the dialogue ends up incorporating an adversarial character, in which the designated agent tends to seek strict compliance with the literal meaning of the special obligations. This ultimately leads to a potentially suboptimal solution, as obligations designed without effective cooperation may not produce the expected competitive effects. In such cases, the authority, faced with results falling short of the regulatory objective, may be led to initiate sanctioning processes for alleged non-compliance, even when the agent has observed the literal wording of the imposed provisions.[167] This highlights that the absence of structured mechanisms for negotiation and continuous adjustment can culminate in a flawed regulatory framework, marked by legal uncertainty, a high degree of litigation, and the risk of excessive enforcement in contexts where the authority itself faces limitations in expertise to anticipate, on its own, the complex effects of the imposed obligations.

The absence of formal instruments for negotiated commitments can further hinder the effectiveness of interventions in highly complex markets, as they depend on iterative cycles of experimentation, monitoring, and adjustment. The greater the uncertainty about the effects of an obligation in complex markets, the more reasonable it is that defined obligations can be calibrated in light of new information, rather than relying on rigid solutions with little room for revision[168]. Thus, negotiated agreements can incorporate mechanisms for review and ongoing dialogue to revise and adjust obligations, allowing for the calibration of instruments.

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[166] Oles Andriychuk, 'Comparing the incomparable: Analysing UK Digital Markets, Competition and Consumers Bill through the prism of the DMA', 2023 Concurrences No. 3, para. 17.

[167] BUEREN, Eckart; ZOBER, Marcel. Efficiency considerations in DMA procedures. Journal of Antitrust Enforcement, p. jnaf010, 2025.

[168] CIERI, Filippo; PEREIRA NETO, Caio Mario S. Op. Cit.

In this context, the Brazilian Bill's choice to delegate the definition of special obligations to CADE, without providing, in parallel, a structured negotiation procedure, seems to make little use of the experience accumulated by the antitrust authority itself in negotiated solutions. Currently, CADE has a collaborative, iterative, and legally stable approach to building solutions, which should not be disregarded by the new regulation.

Therefore, with regard to this item, the following is recommended for Bill 4675:

Incorporate explicit mechanisms for negotiation and adjustment of conduct, with their own procedure, in parallel to the procedure for specifying obligations, with the opportunity for the designated agent to have (i) transparent knowledge of CADE's, of concerns regarding the service, the intended intervention, and its purpose, and, (ii) the opportunity to propose an alternative configuration of conduct or obligation capable of mitigating the concerns. The willingness to settle by the designated agent should not imply recognition of the concerns or the need for intervention by CADE.

4.8. Decoupling from specific anti-competitive practices and opening up for development interventions

Conceptually, Bill 4,675 differentiates between classic ex post antitrust enforcement and the new ex ante regime[169] to be applied to economic agents of systemic relevance in digital markets. The coordinated conduct typical of Art. 36, §3, I and II, as well as the control of structures, remain under the responsibility of the General Superintendency, which continues to analyze mergers even when they involve systemically relevant agents (Art. 14-B, §3). The new Digital Markets Superintendency is responsible for permanently monitoring the practices of agents operating in digital markets, initiating designation processes and imposing special obligations, overseeing their compliance, and adopting administrative measures to ensure the effectiveness of these obligations (Art. 14-B, II).

First, the constitutional compatibility of the proposed regime with the legal nature of CADE is questioned. The Federal Constitution, Art. 173, §4, assigns to the law the role of suppressing the abuse of economic power aimed at

[169] For a discussion on the nature of the new *ex ante* digital market regulations, see MORENO BELLOSO, Natalia; PETIT, Nicolas. Op. Cit.

dominating markets, eliminating competition, and arbitrarily increasing profits. The constitutional orientation is therefore essentially repressive and aimed at curbing concrete abuses, not at structurally promoting competition as an autonomous public policy. CADE, as the adjudicating body (Art. 4 of Law 12,529/2011) was designed and structured to perform this repressive function, operating through processes that end in disapprovals, dismissals, or the signing of agreements linked to the cessation of illicit conduct. Bill 4,675, by expanding the powers of CADE beyond its constitutional mandate without altering its legal nature as a judicial body, creates a structural imbalance, as it assigns to the competition defense body the function of a regulatory agency to encourage competition without the necessary legal and institutional transformation that such a function would require.

In this sense, for ex ante regulatory processes, Bill 4,675 decouples its application from concrete anti-competitive practices and opens up possibilities for interventions to encourage competition, such as special transparency obligations regarding terms of use and ranking criteria, and a broad set of obligations regarding data portability, interoperability, access to metrics, changes to default settings, and handling of complaints – as listed in Art. 47-E II and III. This signals an opening for interventions that are not limited to suppressing the abuse of market power, but seek, to some extent, to induce operating patterns considered desirable by the regulator, with features of sectoral promotion and regulation policies[170].

In practice, the Bill institutionalizes a set of instruments to promote contestability, in line with international trends that seek to address structural problems related to digital markets, such as lock-in and switching costs, through a set of ex ante obligations. The model is similar to the European DMA and the British DMCC regime, which, instead of focusing on the investigation of market power abuse, impose obligations on agents, more aligned with the British legislation. In the DMA, the identification of gatekeepers triggers a set of uniform

[170] ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT. *Ex ante regulation and competition in digital markets*. Paris: OECD, 2021. Available at: https://www.oecd.org/content/dam/oecd/en/publications/reports/2021/12/*ex ante*-regulation-and-competition-in-digital-markets_834e11f8/c83e178d-en.pdf. Accessed on: 12 jan. 2026.
VAN DEN BOOM, J. *Existing regulatory paradigms: EU, UK, and Germany*. In: *Regulating competition in the digital network industry*. Global Competition Law and Economics Policy. Cambridge: Cambridge University Press, 2025. p. 185–213.

obligations[171], with no need to prove prior illicit conduct, with the objective of correcting practices considered intrinsically capable of limiting contestability or producing "unfair" results, such as certain forms of self-preferencing, interoperability restrictions, and use of data from corporate user.[172] In turn, similar to what is established in Bill 4,675, the DMMC allows the CMA to adopt special obligations for systemically relevant agents, including obligations of transparency, interoperability, and handling of user complaints, among others.[173]

This decoupling from specific anti-competitive practices, combined with broad objectives and a catalog of obligations that covers transparency, data governance, interoperability, interface design, and even internal complaint handling mechanisms, shifts the focus of CADE's actions from suppressing the abuse of economic power to designing the architecture of digital markets. The very wording of the catalog of obligations – which covers topics such as information security, data protection, handling of consumer complaints, and the technical architecture of interfaces – brings the regime closer to a cross-cutting economic regulation model, with a strong component of consumer and data policy and not just competition defense. In the absence of more accurate criteria regarding when and how special obligations should be used in place of or in addition to ex post instruments, there is a risk of overlap with the actions of authorities such as ANPD, BACEN, ANATEL, and consumer protection agencies, as well as litigation regarding CADE's competence to impose certain obligations as a competition defense body.

In turn, comparing the model proposed by the Bill to the available legal framework, from a procedural point of view, the procedure established in Arts. 87-A to 87-H is structured as an antitrust investigation that results in an individual rule aimed at support without any actual punishment, not even the application of a pecuniary sanction. Therefore, this is an investigation that does not result in a disapproval, but rather in the production of an individualized rule of conduct applicable exclusively to the designated agent.

This gives rise to a poorly designed hybrid legal process that constitutes a weakness in the Bill. Considering its format, the procedure resembles an investigation conducted by a judicial body. Considering its content, however, the

[171] DMA, Articles 5, 6 and 7.
[172] KUBARIC, Ondrej. Contours of Contestability: A Comparative Analysis of EU and UK Digital Markets Regulation. NEL Rev., v. 10, p. 11, 2024.
[173] DMCC, Section 20.

result is not a disapproval due to antitrust violations, but rather a prospective rule of conduct, structural in nature and with a scope that goes beyond a cease-and-desist order, potentially encompassing the very technical and commercial architecture of the designated agent's services. The result is of a hybrid nature; it is neither entirely a sanction, since it does not require an illegal act, nor entirely a regulation, since it affects a specific agent rather than a category of services or economic sector.

This hybrid nature, coupled with the maintenance of CADE's adjudicative character, generates a certain complexity and legal uncertainty, since it is not possible to determine in advance the justifications and limits of its intervention (e.g., abuse of economic power or market failures) and the legal mandate attributed to CADE.

Furthermore, Bill 4,675 brings together, under the same regime, obligations of a heterogeneous nature, diluting the criteria for justification, duration, and control that should be distinct according to the type of intervention adopted. Prohibitions that approach the classic core of competition law — such as discrimination, tying, bundling, self-preferencing, or access restrictions — are traditionally justified by the prevention or cessation of identifiable abuses of economic power and require clear standards of attribution, causal link, and proportionality. Obligations aimed at promoting competition, such as data portability, interoperability, or open interfaces, are structural and prospective in nature, requiring continuous assessments of their effects, implementation costs, impacts on innovation, and specific monitoring and adjustment mechanisms over time. By treating these categories as if they were functionally equivalent and subjecting them to the same decision-making procedure, the Bill grants CADE overly broad permissions to combine, extend, and maintain obligations without an adequate analytical framework, increasing the risk of excessive or poorly calibrated interventions.

Section 2 of Art. 47-E authorizes CADE, when determining special obligations, to consider not only information security and compliance with legal and regulatory obligations, but also "aspects of products and services that improve the core functionality of the designated agent's digital ecosystems." Instead of recognizing that distinct obligations require different normative standards, time horizons, and review instruments, the project consolidates a single, open catalog that reinforces regulatory indeterminacy and shifts to the

authority the discretion to define, on a case-by-case basis, the scope and intensity of measures that go beyond traditional competition enforcement.[174]

This institutional middle ground tends to combine the disadvantages of both regimes it seeks to synthesize without reaping the advantages of either. From the ex post regime, it inherits the individualized character of the intervention, which makes it sub-inclusive in relation to agents who practice similar conduct in the same market or in analogous markets but who have not been designated — generating regulatory asymmetry and potential competitive distortion. From the ex ante regime, it inherits the ambition to shape structural and prospective behaviors, but without the temporal efficiency that this model presupposes. Unlike the enforcement of conduct previously prohibited by law or regulation, the Bill imposes a designation cycle followed by individualized evidentiary stage before any obligation takes effect, which implies an inadequate timeframe when compared to simply enforcing previously prohibited conduct.

Regarding this point, the recommendation is:

To limit the imposition of obligations to practices that have already been disapproved or are analogous to, and in markets similar to, those practices that have been previously disapproved by CADE. A prior disapproval should be a necessary, but not sufficient, condition for establishing obligations. The imposition of duties must have a causal link to an identifiable conduct or risk, demonstrating the adequacy, necessity, and proportionality of the remedy in relation to the problem. This approach aligns with evidence-based antitrust principles and reduces the risk of prohibiting effective conduct or imposing disproportionate compliance burdens, bearing in mind that the application of obligations must consider the economic effects of the conduct.

5. CONCLUSIONS AND RECOMMENDATIONS

The analysis of Bill No. 4,675/2025 reveals important design choices that deserve careful consideration in light of international experience and the specificities of digital markets in Brazil. The framework seeks to introduce *ex ante* regulation for agents of systemic relevance in digital markets, inspired by the

[174] RAGAZZO, Carlos; CATALDO, Bruna. Digital Economy: Should the DMA be the Model for Competition Regulation?. SSRN, 2024.

paradigm of the European DMA and the British DMCC, while trying to adapt them to the Brazilian institutional context. However, several aspects of the proposed design raise concerns as to its adequacy.

Observed experiences indicate that enforcement models of *ex ante* obligations can have negative impacts on local businesses and consumers, with high compliance costs, reduced functionality and unintended effects on innovation. On the other hand, artificial intelligence has been a source of strong competitive pressures in digital markets, reducing barriers to entry and challenging established positions of large platforms. In this context of transformation and in view of the lack of consensus in international experience on the adequacy or the best form of *ex ante approach*, the adoption of a new competitive regulatory regime may result in poorly calibrated interventions, which may affect the competitiveness of the Brazilian digital ecosystem.

Transposing the British model to Brazil, without observing the implementation experience and mature evaluation of its results, may bring setbacks in relation to the protection of competition. The Brazilian digital services markets have important peculiarities, which distinguish them from the British or European experience, such as the leadership of local companies in some segments, the rich and competitive fintech environment and the advancement of Chinese companies, being particularly impacted by the transformations brought about by artificial intelligence, which requires an effort to adapt with measures aimed at specific markets, without cross-cutting solutions.

On the other hand, CADE has recently used tools available at LDC for a quick and effective action in relation to conducts in digital services markets, in particular the combination of priority rites, preventive measures with conduct adjustment agreements. The tools used by CADE can be reinforced to provide greater speed and specialization for digital services, such as the preparation of studies by the DEE, identifying agents with systemic relevance. In addition, CADE's Tribunal may make use of precedents that establish presumptions of unlawfulness for certain practices by *gatekeepers* in digital markets, with reversal of the burden of proof and curb practices through cease and desist orders and non-pecuniary penalties, with an effect similar to the imposition of temporary obligations for a certain agent. With these reinforcements, which are independent of legislation and can be implemented by institutional improvements, the national enforcement regime would be very close to the *German ex ante* approach , which

employs a milder model of intervention, through the reinforcement of the *Bundeskartellamt*.

The central note of this contribution is the recommendation to start from CADE's own experience, reinforcing the successful aspects and filling gaps or limitations. Although institutional improvement seems the most appropriate for this purpose, if the legislative path is followed, through PL 4675, it is important to reformulate its content so that the text reflects and incorporates these successful elements of CADE's experience, which does not seem to be the case in different aspects.

First, because the Bill duplicates CADE's structure by creating a superintendence with competences not only for *ex ante* obligations, but also for *ex post proceedings*, which not only entails costs, but can also bring conflicts of jurisdiction in the face of the growing digitalization of products, services and markets, generating legal uncertainty and potential judicialization. Second, because it adopts alternative (non-cumulative), ambiguous and vague criteria for the characterization of systemic relevance, which can lead to very broad interpretations of the range of designated agents, granting broad discretion to CADE for such determination, which brings legal uncertainty and aggravates the potential for institutional conflict. Third, because it designs a procedure for specifying obligations for a specific agent, even without conduct practiced in the market, which is very similar to the administrative proceeding currently existing with a cease and desist order, but with tight deadlines with no room for extension for the exercise of the adversarial procedure. Fourth, because it does not explicitly provide for a negotiation mechanism for conduct adjustment, an instrument that is part of CADE's successful experience, including in digital markets. Fifthly, because it does not link the imposition of obligations to the existence of prior convictions by CADE, not even in relation to analogous conducts or in similar markets, which can lead to regulations and speculative interventions to foster competition, without evidence and analysis of concrete effects. In addition to this limitation, the text does not admit the consideration of economic justifications or potential efficiencies and benefits to the consumer in the specification of obligations and corresponding restrictions on the conduct and commercial practices of designated agents. Finally, the Bill introduces a surprisingly long term

for designating agents with systemic relevance, up to 10 years, incompatible with the dynamics of digital markets.

In this context, two paths are proposed for the effective implementation or revision of the Competition Law for the so-called "digital markets":

Alternative 1: Institutional strengthening of CADE for *competitive enforcement* in Digital Markets

Such a path is independent of the Law, and can be implemented both by legislative means and by means of Resolutions and Guides issued by CADE itself, as indicated in this Report, consisting of:

(1) adopt procedural measures to give priority and speed to the rite of cases involving digital services, considering its accentuated dynamics

(2) reinforce the role of CADE's Department of Economic Studies, with the specification of a center dedicated to digital markets, responsible for identifying agents with systemic relevance, through studies. Although non-binding, such prior studies would create a strong presumption of systemic relevance, reversing *the burden of evidence*, in addition to reducing the time of analysis in relation to the market power of investigated agents or in mergers.

(3) use preventive measures to suspend practices and immediately contain potentially deleterious effects in the context of administrative proceedings

(4) combine preventive measures with the opening of an opportunity for negotiation, in an adversarial manner, aiming at the signing of Cease and Desist Agreements

(5) use statements or precedents in case law on conducts considered illegal in relation to digital services, with a presumption of illegality, signaling to the market a high risk in the adoption of such practices

With the exception of items 1 and 2, which deal with the priority and studies of systemic relevance by DEE/CADE, the measures proposed above should be encouraged by CADE in all markets and not only in relation to digital services, due to their efficiency in conflict resolution.

Alternative 2. Reformulation of PL 4675 based on CADE's experience

The second alternative consists of changes to the text of the Bill to incorporate practices already consolidated and successful at CADE, including:

(1) make the designation criteria cumulative, in addition to promoting a review to reduce vagueness and indeterminacy, in order to provide legal certainty;

(2) establish as a necessary, but not sufficient, condition for impositions of *ex ante* conduct, that its content has already been condemned by CADE (regulation based on experience and evidence of antitrust offense), and its application must observe economic justifications, as per recommendation 4;

(3) extend the adversarial deadlines in the process of designating and specifying obligations;

(4) insert in the process of specification of obligations the opportunity and duty to consider economic justifications and efficiencies in terms of benefits of the practice to the market, innovation and final consumers;

(5) introduce a mechanism for adjusting conduct, with negotiation between CADE and the agent designated as systemically relevant;

(6) reduce the time to designation from up to 10 years to up to 2 years (with the possibility of extension justified by an additional 1 year)

(7) organize a unit specialized in digital markets within the scope of CADE's Superintendence or within the scope of the DEE, with competence only for ex ante procedure for the imposition of obligations without the need for duplication of the *enforcement structure;*

In view of the complexity of the intervention contained in PL 4675 and its potential impacts, combined with the disagreement on the adequacy of the competitive ex ante approach for Brazil and the various points of possible improvement of the legislative text, caution and promotion of a broad public debate in the processing of the PL are recommended, so that it is possible to reach a greater consensus on the best way to reinforce CADE's performance in relation to digital services.

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ANNEX I – DMA OBLIGATIONS AND THEIR PRECEDENTS

DMA	REGULATED CONDUCT	PRECEDENTS
ARTICLE 5(2)	It prohibits the gatekeeper from combining or cross-using personal data from different services (its own or third-party), as well as from linking users to other services for this purpose, unless valid consent under the GDPR.	**Bundeskartellamt v. Meta case (2019):** The German Competition Authority (*Bundeskartellamt*) prohibited Facebook from combining personal data from different services in its ecosystem. The decision was upheld by the Court of Justice of the European Union (CJEU) (C-252/2, 2023).
ARTICLE 5(3)	Prohibits the gatekeeper from preventing business users from offering different conditions outside the platform.	**[1] Apple cases AT.40437 and AT.40716 (App Store – Music Streaming):** The European Commission concluded that Apple abused its dominant position by imposing clauses that prevented developers from informing users about subscription options outside the App Store, imposing a fine of € 1.8 billion (AT.40437). Case AT.40716 concerning the mandatory use of the internal purchasing system was closed after the entry into force of the DMA. **[2] Case AT.40153 – Amazon (E-books and MFN clauses):** The European Commission has made binding commitments made by Amazon to eliminate parity clauses (MFN) that restricted the ability of publishers to offer better terms on competing platforms. **[3] Cases involving OTAs (Booking.com, Expedia) and European national regulators:** The European Commission has reviewed parity clauses in the framework of the e-commerce sector inquiry, concluding that such clauses are not problematic when the parties' shares remain below 30%, requiring individual assessment above this threshold.

ARTICLE 5(4)	Prohibits the gatekeeper from preventing business users from communicating and promoting offers directly to end users.	**[1] Epic Games v. Apple** (Case No. 4:20-cv-05640-YGR, United States District Court Northern District of California, 2021). The United States District Court for the Northern District of California found its clauses that prevented developers from directing users to alternative payment methods outside of the App Store to be anticompetitive. The decision determined that Apple could not prohibit the inclusion of links or information about external payment options, an understanding later confirmed largely by the 9th Circuit, with adjustments regarding the possibility of charging a reasonable commission on transactions carried out outside the platform. **[2] Apple cases AT.40437 and AT.40716 (App Store – Music Streaming):** The European Commission concluded that Apple abused its dominant position by imposing clauses that prevented developers from informing users about subscription options outside the App Store, imposing a fine of €1.8 billion (AT.40437). Case AT.40716 concerning the mandatory use of the internal purchasing system was closed after the entry into force of the DMA.
ARTICLE 5(5)	Prohibits the gatekeeper from preventing end users from purchasing content or services outside the platform.	**Apple cases AT.40437 and AT.40716 (App Store – Music Streaming):** The European Commission concluded that Apple abused its dominant position by imposing clauses that prevented developers from informing users about subscription options outside the App Store, imposing a fine of € 1.8 billion (AT.40437). Case AT.40716 concerning the mandatory use of the internal purchasing system was closed after the entry into force of the DMA.
ARTICLE 5(6)	Prohibits the gatekeeper from preventing or restricting business or end users from bringing to the competent public authorities, including courts, issues related to the gatekeeper's own non-compliance with the applicable law.	**N/A**

ARTICLE 5(7)	Prohibits the gatekeeper from requiring the use of its own identification, browser, payment or technical support services as a condition for the provision of services on its platform.	**Case AT.40684 (Meta):** The European Commission found that Meta abused its dominant position by tying Facebook Marketplace to the social network Facebook (tying) and imposing unfair commercial conditions, including using data from competitors who advertised on the platform for their own benefit. The decision imposed a fine of €797 million.
ARTICLE 5(8)	Prohibits the gatekeeper from requiring business users or end users to sign up, register, or contract with other essential platform services as a condition of accessing, joining, or registering for a particular essential platform service.	**Case AT.40670 (Google Adtech):** The European Commission has concluded that Google has abused its dominant position in the markets for programmatic buying tools for the open web and ad servers for publishers by adopting a series of practices (buy-side and sell-side conduct) designed to favor its own SSP (AdX). Those practices were considered likely to have exclusionary effects and to strengthen Google's position on the market for online display advertising SSPs in the EEA. The decision imposed a fine of approximately €2.95 billion.

ARTICLE 5(9)-(10)	It requires the gatekeeper to provide, free of charge and on a daily basis, advertisers and publishers with information on prices, remuneration and calculation criteria in online advertising services.	**[1] Case AT.40670 (Google Adtech):** The European Commission has concluded that Google has abused its dominant position in the markets for programmatic buying tools for the open web and ad servers for publishers by adopting a series of practices (buy-side and sell-side conduct) designed to favor its own SSP (AdX). Those practices were considered likely to have exclusionary effects and to strengthen Google's position on the market for online display advertising SSPs in the EEA. The decision imposed a fine of approximately €2.95 billion. **[2] Case AT.40684 (Meta):** The European Commission found that Meta abused its dominant position by tying Facebook Marketplace to the social network Facebook (tying) and imposing unfair commercial conditions, including using data from competitors who advertised on the platform for their own benefit. The decision imposed a fine of €797 million.
ARTICLE 6(2)	Prohibits the gatekeeper from using, for competitive purposes, non-public data of business users generated in the context of the use of the platform, including data of its customers.	**[1] Case AT.40462 (Amazon):** The European Commission has expressed concerns that Amazon could use non-public data from independent sellers to favor its own retail activities on the Amazon Store. The lawsuit was settled through binding commitments, whereby Amazon committed not to use non-public data from sellers to compete with them and to apply non-discriminatory conditions in the selection and display of offers. **[2] Case AT.40684 (Meta):** The European Commission found that Meta abused its dominant position by tying Facebook Marketplace to the social network Facebook (tying) and imposing unfair commercial conditions, including using data from competitors

		who advertised on the platform for their own benefit. The decision imposed a fine of €797 million.
ARTICLE 6(3)	It imposes on the gatekeeper to allow the uninstallation of pre-installed applications and assure users of the possibility to easily change the default settings of the operating system, including the choice of search engines, virtual assistants and browsers.	**Case AT.40099 (Google Android):** The European Commission has concluded that Google abused its dominant position by requiring the pre-installation of Google Search and the Google Chrome browser as a condition for licensing the Play Store (tying), by imposing agreements that restricted the marketing of devices with alternative versions of Android (anti-fragmentation) and by granting financial incentives conditional on the exclusivity of Google Search. The decision imposed a fine of approximately €4.34 billion.

ARTICLE 6(4)	It requires the gatekeeper to allow the installation, use, and default definition of third-party applications and application stores, including by alternative means, with only strictly necessary and proportionate technical restrictions allowed.	**[1] Epic Games v. Apple** (Case No. 4:20-cv-05640-YGR, United States District Court Northern District of California, 2021)The United States District Court for the Northern District of California found anticompetitive its clauses that prevented developers from directing users to alternative payment methods outside of the App Store. The decision determined that Apple could not prohibit the inclusion of links or information about external payment options, an understanding later confirmed largely by the 9th Circuit, with adjustments regarding the possibility of charging a reasonable commission on transactions carried out outside the platform. **[2] Apple cases AT.40437 and AT.40716** (App Store – Music Streaming)The European Commission concluded that Apple abused its dominant position by imposing clauses that prevented developers from informing users about subscription options outside the App Store, imposing a fine of € 1.8 billion (AT.40437). Case AT.40716 concerning the mandatory use of the internal purchasing system was closed after the entry into force of the DMA.

ARTICLE 6(5)	Prohibits the gatekeeper from treating its own services or products more favorably in ranking, indexing or crawling, and must apply transparent, equitable and non-discriminatory conditions.	**[1] Case AT.39740 (Google Search (Shopping)):** The European Commission has found that Google has abused its dominant position by reducing traffic from its general results page to competing comparison shopping services (CSSs) and by increasing traffic to its own comparison shopping service. Such conduct was considered likely to have anti-competitive effects on those markets and on the corresponding national markets for specialised comparison services. The Commission imposed a fine of €2.4 million**.[2] Case AT.40670 (Google Adtech):** The European Commission concluded that Google abused its dominant position in the markets for programmatic buying tools for the open web and ad servers for publishers by adopting a series of practices (buy-side and sell-side conduct) aimed at favoring its own SSP (AdX). Those practices were considered likely to have exclusionary effects and to strengthen Google's position on the market for online display advertising SSPs in the EEA. The decision imposed a fine of approximately €2.95 billion. **[3] Case AT.40452 (Apple)** The European Commission has expressed concerns that Apple abused its dominant position by refusing to grant access to NFC from iOS devices to competing mobile wallet developers, reserving this functionality for Apple Pay. The process was terminated by binding commitments, whereby Apple committed to allow access to NFC to third parties in the EEA, making such commitments binding. **[4] Apple cases AT.40437 and AT.40716 (App Store – Music Streaming).** The European Commission concluded that Apple abused its dominant position by imposing clauses that prevented developers from informing users about subscription options outside the App Store, imposing a fine of € 1.8 billion (AT.40437). Case AT.40716 concerning the mandatory use of the internal purchasing system was closed after the entry into force of the DMA.

ARTICLE 6(6)	Prohibits the gatekeeper from restricting, through technical or other means, the ability of end users to change or contract with different applications and services that rely on their core platform services.	**Apple cases AT.40437 and AT.40716 (App Store – Music Streaming)** The European Commission concluded that Apple abused its dominant position by imposing clauses that prevented developers from informing users about subscription options outside the App Store, imposing a fine of € 1.8 billion (AT.40437). Case AT.40716 concerning the mandatory use of the internal purchasing system was closed after the entry into force of the DMA.
ARTICLE 6(7)	It requires the gatekeeper to ensure, free of charge and under conditions equivalent to those of its own services, effective interoperability and access to hardware and software functionalities of the operating system or virtual assistant, with only proportionate security restrictions allowed.	**Apple Case AT.40452:** The European Commission has expressed concerns that Apple abused its dominant position by refusing to grant access to NFC from iOS devices to competing mobile wallet developers, reserving this functionality for Apple Pay. The process was terminated by binding commitments, whereby Apple committed to allow access to NFC to third parties in the EEA, making such commitments binding.
ARTICLE 6(8)	Requires the gatekeeper to provide, free of charge, advertisers and publishers with access to the necessary performance measurement tools and data, including aggregated and non-aggregated, for independent verification of inventory and advertising performance.	**Case AT.40670 (Google Adtech):** The European Commission concluded that Google abused its dominant position in the markets for programmatic buying tools for the open web and ad servers for publishers by adopting a series of practices (buy-side and sell-side conduct) aimed at favoring its own SSP (AdX). Those practices were considered likely to have exclusionary effects and to strengthen Google's position on the market for online display advertising SSPs in the EEA. The decision imposed a fine of approximately €2.95 billion.
ARTICLE 6(9)	It requires the gatekeeper to provide, free of charge and at the request of the end user, effective portability of the data provided by him or generated in the use of the platform, including through appropriate tools and continuous and real-time access to such data.	**N/A**

ARTICLE 6(10)	It requires the gatekeeper to provide, free of charge, effective, continuous, real-time and high-quality access and use of aggregated and non-aggregated data generated or provided in the context of the use of the essential platform services by business users and their customers, including personal data when directly related to the business user's services and upon consent of the end users.	**Case AT.40670 (Google Adtech):** The European Commission concluded that Google abused its dominant position in the markets for programmatic buying tools for the open web and ad servers for publishers by adopting a series of practices (buy-side and sell-side conduct) aimed at favoring its own SSP (AdX). Those practices were considered likely to have exclusionary effects and to strengthen Google's position on the market for online display advertising SSPs in the EEA. The decision imposed a fine of approximately €2.95 billion.
ARTICLE 6(11)	It requires the gatekeeper to grant, at the request of competing search engine providers, fair, reasonable and non-discriminatory access to ranking data, searches, clicks and views relating to free and paid searches, ensuring the anonymization of personal data.	**N/A**

ART. 6(12) - (13)	It imposes on the gatekeeper to apply to business users fair, reasonable and non-discriminatory general conditions of access to their app stores, search engines and social networks, as well as to publish them, including with an alternative dispute resolution mechanism, and prohibits the establishment of disproportionate conditions for the termination of the provision of essential platform services, and must ensure that such termination can be exercised without undue difficulties.	**[1] Apple Case AT.40452:** The European Commission has expressed concerns that Apple abused its dominant position by refusing to grant access to NFC from iOS devices to developers of competing mobile wallets, reserving this functionality for Apple Pay. The process was terminated by binding commitments, whereby Apple committed to allow access to NFC to third parties in the EEA, making such commitments binding. **[2] Apple cases AT.40437 and AT.40716 (App Store – Music Streaming).** The European Commission concluded that Apple abused its dominant position by imposing clauses that prevented developers from informing users about subscription options outside the App Store, imposing a fine of € 1.8 billion (AT.40437). Case AT.40716 concerning the mandatory use of the internal purchasing system was closed after the entry into force of the DMA.
ART. 7	It requires the gatekeeper to ensure, free of charge and upon request, the interoperability of the basic functionalities of its number-independent interpersonal communication services with equivalent services from other providers, by means of the necessary technical interfaces or similar solutions.	**N/A**

ANNEX II – COMPARISON BETWEEN BILL NO. 2768 AND BILL NO. 4675

TOPIC	PL 2768/2022	PL 4675/2025
COMPETENT AUTHORITY	The Bill establishes that the National Telecommunications Agency (Anatel) is the competent authority to regulate the operation and operation of digital platforms.	The Bill grants the Administrative Council for Economic Defense (CADE) the power to decide and impose special obligations on economic agents designated as systemically relevant in digital markets.
POWERS AND DUTIES	The National Telecommunications Agency (Anatel) will be responsible for editing rules on the operation of digital platforms that offer services to the Brazilian public, supervising such platforms and imposing sanctions. It will also be responsible, at the administrative level, for deliberating on the interpretation of the legislation applicable to these platforms and filling omissions. In addition, Anatel will administratively resolve conflicts of interest between platform operators and business users, assess violations of users' rights — with regard to digital platforms — and exercise legal powers to control, prevent and repress violations of the economic order, without prejudice to the attributions conferred on the Administrative Council for Economic Defense (CADE).	The Bill establishes a Superintendence of Digital Markets with the authority to monitor the activities and business practices of systemically relevant economic agents. It will be responsible for initiating, conducting, monitoring and submitting to CADE's Tribunal administrative proceedings aimed at (i) designating systemically relevant economic agents, (ii) determining special obligations for such agents, and (iii) imposing sanctions for non-compliance with these obligations.
STATED OBJECTIVES	The regulation of digital platforms that offer services to the Brazilian public aims to promote economic development with broad and fair competition between operators and other affected agents; ensure access to information, knowledge and culture; foster innovation and the wide adoption of new technologies and access models; encourage interoperability through open technological standards that enable communication between applications; and establish mechanisms that ensure data portability.	The protection and promotion of competition in digital markets is guided by reducing barriers to entry, safeguarding the competitive process and promoting freedom of choice for users.

DEFINITION OF "DIGITAL PLATFORM"	"Digital platforms" are internet applications, including, among other modalities, online intermediation services, search engines, social networks, video sharing platforms, interpersonal communications services, operating systems, cloud computing and online advertising services offered by the platform operators themselves. The modalities listed may be expanded by regulations issued by the Executive Branch, based on a proposal prepared by Anatel.	There is no legal definition, but for an economic agent to be designated as systemically relevant, it must operate in at least one multi-sided digital market.
LEGAL MECHANISM	Digital platform operators that have control over essential access must: ensure transparency and provide Anatel with information regarding the provision of their services; ensure equal and non-discriminatory treatment of business users and end users; properly use the data collected in the course of its activities; and not deny business users access to the platform. When imposing such obligations, the following criteria must be observed: technical, isonomic and non-arbitrary criteria; the specification of requirements according to the modality and characteristics of each platform; the proportionality of the intervention to the risks; the assessment of the impacts, costs and benefits of the measures; and the level of competition in the offer of each type of digital platform.	CADE may impose special obligations on economic agents designated as systemically relevant to digital markets, in order to promote and protect competition.
MARKET POWER ASSESSMENT	Digital platform operators will be considered as holders of **power to control essential access** when they earn **annual operating revenue** equal to or greater than **R$ 70 million** for the provision of services to the Brazilian public, as provided for in regulations issued by the National Telecommunications Agency (Anatel).	CADE may designate as a systemically relevant economic agent in digital markets any company whose conduct — considered in a non-cumulative manner — presents characteristics such as presence in multi-sided digital markets; market power arising from network effects; vertical integrations and operations in adjacent markets; strategic position that enables third-party activities; access to large volumes of personal and commercial data; significant base of companies and users; or portfolio composed of multiple digital products and services. This

		designation applies only to business groups with annual worldwide gross revenues of more than R$ 50 billion or annual gross sales in Brazil of more than R$ 5 billion, according to the most recent financial statements available on the date of initiation of the proceeding. The Superintendence of Digital Markets must initiate an administrative proceeding to designate a systemically relevant economic agent. Subsequently, it may initiate proceedings to determine the special obligations applicable to the companies so designated. Both cases must be submitted to CADE's Tribunal for final decision.
OBLIGATIONS IMPOSED BY THE COMPETENT AUTHORITY	In the exercise of its regulatory and supervisory functions, Anatel may impose accounting and functional separation obligations and adopt measures to mitigate abuses of economic power, including requirements related to data portability and interoperability.	CADE may impose special obligations on companies designated as systemically relevant in digital markets, in order to promote and protect competition, such as: (i) submitting merger/concentration transactions to CADE's analysis regardless of the notification criteria; (ii) disclose, in a clear and accessible manner, the terms of use, ranking and display criteria (including search results) and the pricing/fee structure; (iii) communicate changes to the terms of use through the usual channels; and (iv) refrain from anticompetitive practices — for example, limiting the participation or access of competitors to inputs/users; favor own products (including through the use of business user data); impose tying/bundling; restrict access to third-party products or commercially relevant information; make it difficult for business users to reach end users through other channels; or adopt predatory or abusive strategies. It may also require: (a) free data portability/transfer tools for end users; (b) effective and free interoperability mechanisms (including appropriate interfaces) with third-party

		services/infrastructures; (c) permission to install/use third-party applications; (d) access by business and professional users to aggregated and non-aggregated data and performance measurement tools; (e) options to change default settings, including installing/uninstalling applications; (f) adaptation periods for changes to the terms; (g) effective complaint handling and dispute resolution mechanisms; and (h) offering products and services on equal and non-discriminatory terms.
MERGER CONTROL	The (structural) control of mergers remained under the competence of CADE.	The analysis of mergers remains within the scope of the General Superintendence.
SANCTIONS	The applicable sanctions include a warning with a deadline for correction; a fine of up to 2% of the gross revenue of the economic group in Brazil in the previous fiscal year (excluding taxes), considering the economic condition of the offender and proportionality; imposition of obligations to do or not to do; temporary suspension of activities; and prohibition of carrying out the activities.	In case of non-compliance with the special obligations, the same sanctions provided for violations of the economic order apply, such as a fine of up to 20% of the economic group's revenue, publication of the infraction in newspapers and adoption of measures considered necessary to eliminate anticompetitive effects, among others.
OTHER OBLIGATIONS	The inspection fee for digital platforms is due annually by the operators of digital platforms that offer services to the Brazilian public and have the power to control essential access, in an amount equivalent to 2% (two percent) of the gross operating revenue earned.	Systemically relevant companies in digital markets must submit to the Superintendence of Digital Markets a compliance report detailing compliance with the special obligations imposed on them. The periodicity and content of this report will be defined in the process that established the obligations. The Superintendence may require, at the company's expense, an independent auditor to certify the implementation and fulfillment of these obligations. While they are in force, the Superintendence will provide for the public disclosure of the compliance report and any supervision reports, observing legal confidentiality when applicable. In addition, any interested party may submit to CADE statements regarding the fulfillment, by these companies, of the special obligations.