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YELLOW PAPER ON EX ANTE ANTITRUST REGULATION IN BRAZIL: DIVERGENT STRATEGIES AND PATHS TO REFORM

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INTRODUCTION

It is not an overstatement to say that we are witnessing a global regulatory assault on digital platforms. This movement reshapes the broader landscape of economic and political governance, signaling a profound redefinition of how states engage with private power today. Across jurisdictions, governments and institutions are revisiting the terms of accountability for actors whose scale, reach, and control over the digital economy challenge the very foundations of contemporary regulatory frameworks.

Antitrust stands at the center of this transformation. Over the past decades, it had been defined by a lenient approach toward consolidation and business practices, yet it now confronts both economic and political dilemmas brought by the rise of digital players. “Break Up Big Tech” has become the emblem of a dramatic shift in competition governance, pushing enforcement and policy debates into previously unimagined domains. More than a theoretical disruption, this process has triggered lasting transformations in antitrust law and in the policy priorities of competition authorities worldwide.
More recently, these developments have led to a conceptual shift: digital players are increasingly understood through the lens of ecosystems. Unlike traditional constructs such as firms, conglomerates, or platforms, ecosystems capture the dense interconnections among complementary services, data flows, and user dependencies that bind different markets together. In digital environments, these interdependencies intensify—platforms evolve into multi-market networks where data feedback loops and cross-subsidization sustain dominance.

This conceptual evolution has influenced not only enforcement debates but also institutional design. Regulators across multiple jurisdictions have introduced new *ex ante* frameworks to govern digital ecosystems, complementing traditional antitrust law. The European Union, the United Kingdom, Germany, among others, have developed models that combine competition, data, and consumer-protection tools to anticipate rather than react to market failures. These frameworks typically emphasize structural remedies, interoperability, and obligations for gatekeepers, seeking to prevent market foreclosure and data-driven concentration before they occur.

Brazil offers a compelling case study of how these global transformations converge with domestic institutional dynamics. Digital platforms have become central to regulatory experimentation across multiple domains, including data protection, disinformation, and antitrust policy. The Brazilian competition authority (*Conselho Administrativo de Defesa Econômica*, or CADE) has gradually deepened its engagement with digital markets, aligning enforcement and policy priorities with emerging global debates.[1] At the same time, other policy initiatives have advanced *ex ante* instruments of antitrust governance—most notably, two legislative proposals designed to establish an ex ante framework for digital ecosystems: Bill No. 2,768/2022 and Bill No. 4,675/2025.[2] Despite these growing debates and institutional developments, Brazil still lacks a systematic account of how this discussion has evolved and what factors have driven the different regulatory options under consideration. This study seeks to fill that gap by tracing the evolution of the country's approach to digital markets and situating it within the broader global turn toward ex ante regulation, identifying the main vectors shaping this shift. It also provides an overview of the competing regulatory proposals currently under discussion and outlines possible paths for advancing an *ex ante* antitrust framework in Brazil.

The article proceeds in three parts. The first section examines CADE's increasing focus on digital markets and investigates the institutional and political drivers behind this shift. The second analyzes the origins and structure of the two legislative proposals for *ex ante* antitrust regulation currently under discussion, emphasizing their distinct rationales and regulatory ambitions. The third explores potential trajectories for a Brazilian framework, assessing how it might balance global models with domestic constraints while promoting a more coherent and future-oriented approach to the governance of digital ecosystems.

[1] Infra, Section II.

[2] Infra, Section III.

ANTITRUST POLICYMAKING AND THE DIGITAL TURN IN BRAZIL

Antitrust enforcement in digital markets is not new in Brazil. Early cases linked to Microsoft's practices already tested CADE's capacity to interpret emerging forms of market power and coordination in technology-driven sectors. Yet over the past fifteen years, the authority has turned digital markets into a distinct field of institutional engagement and policy experimentation. CADE's trajectory shows not only a growing number of interventions in digital sectors but also a deliberate effort to position itself within global debates on digital competition.

Brazil's enforcement record shows a sharp rise in cases involving digital platforms. Between 1995 and April 2023, the competition authority reviewed 233 merger cases connected to digital platforms; of these, 199—roughly 85%—occurred between 2010 and 2023, and 102, or about 44%, between 2020 and 2023 alone.[3] During the same period, from 2011 to April 2023, authorities initiated twenty-three investigations into antitrust violations in digital markets and delivered fourteen final decisions.[4] This trajectory signals a structural shift: oversight of digital platforms has evolved from sporadic interventions into a sustained regulatory agenda that translates global enforcement trends into Brazil's institutional and legal vocabulary.

Parallel to enforcement, CADE has invested in building the administrative capacity to govern digital markets. It has convened public hearings, published studies, and organized seminars to debate issues of algorithms, data, and platform governance. At the same time, CADE has sought to assert a more prominent role within international and domestic policy networks engaged in this agenda. These initiatives signal an attempt to define digital markets as a long-term policy priority rather than a passing concern.

Frontier debates in digital competition now form part of CADE's institutional lexicon. Among them, discussions on digital ecosystems have become particularly salient. Through the *Stone/Linx* merger, the thematic hearing on *app stores*, and the recent public consultation on Google's reproduction of

[3] CADE, *Cadernos do Cade: Mercados de Plataformas Digitais* (2nd edn, CADE, 2023) 24.

[4] ibid 164.

journalistic content, CADE has advanced an ecosystemic understanding of competition. These efforts underscore the authority's intention to align its analytical framework with the evolving global discourse on digital markets.

Alongside these institutional efforts, civil society also mobilized around the digital agenda. For instance, Brazilian non-governmental organizations focused on data protection and digital rights began engaging directly with CADE. Professional associations of antitrust lawyers expanded their participation through events, position papers, and public comments addressing challenges in digital competition. Academic networks, in turn, helped build a critical mass by creating structured forums for interdisciplinary debate and reflection on Brazil's emerging antitrust approach to digital markets.

Despite the complexity and diversity of factors underlying this shift in Brazil—particularly given the longstanding orthodox rhetoric that has shaped antitrust policymaking since the 1990s—four interrelated drivers help explain its emergence. First, the global turn in antitrust policy reshaped international discussion forums—OECD, ICN, UNCTAD—where new analytical frameworks for digital competition circulate. Brazilian officials have actively participated in these spaces, importing debates on ecosystems, data portability, and self-preferencing that now inform domestic policymaking.

Second, the transnational nature of digital platforms ensures that their conduct produces simultaneous effects across jurisdictions. When the European Commission or the FTC launches an investigation, Brazilian enforcers face immediate pressure to assess parallel harms and maintain consistency with global precedents. Enforcement abroad thus functions as a catalyst for local scrutiny, as seen in cases that mirrored EU proceedings against Google and Apple.

Third, legitimacy dynamics also shaped CADE's priorities. As digital platforms gained political salience, the authority used these cases to reaffirm its relevance and visibility within the national policy ecosystem. By addressing the digital economy, CADE aligned itself with international enforcement trends and with rising public expectations that competition law should confront Big Tech power.

Fourth, the rapid expansion of the platform economy in Brazil and across Latin America generated new frictions among domestic and regional players. As delivery, mobility, and fitness apps consolidated market power, rival firms and

consumer associations increasingly brought complaints before CADE, transforming digital competition into a recurrent enforcement domain.

These drivers operate simultaneously and interact with one another. Together, they produce dynamics that are distinctly Brazilian—rooted in the country's institutional capacity, the political economy of regulation, and the uneven strength of its enforcement institutions. In practice, this configuration gives rise to an antitrust policy shaped by the interplay of domestic and international priorities, both informing and constraining enforcement in ways that are at once complementary and overlapping.

Concrete cases illustrate how these dynamics manifest in practice. The *Google Shopping* investigation, for instance, combined transnational momentum with local claims advanced by smaller digital firms alleging exclusionary treatment on the platform. Yet CADE ultimately closed the case after a deeply divided vote, diverging sharply from the European and U.S. treatment of the same conduct. The outcome revealed structural limits within Brazil's competition regime—its historically cautious stance toward unilateral conduct, constrained institutional resources, and a recurring tendency to moderate enforcement, especially in the face of Big Tech's growing political influence.

By contrast, CADE's approach in cases such as *iFood* and *Gympass* reflected a different trajectory. In *iFood*, the authority examined exclusivity clauses with restaurants and delivery partners, signaling a greater willingness to challenge dominant domestic platforms when market foreclosure became evident. The *Gympass* case followed a similar logic, addressing contractual practices that restricted competition among corporate fitness-benefit platforms. In both instances, CADE adopted a notably more assertive stance, imposing preventive measures to halt ongoing harm and concluding the investigations through negotiated settlements. Taken together, these proceedings suggest that CADE tends to be more responsive to cases with pronounced domestic resonance—perhaps reflecting a strategic calculation about the effectiveness and visibility of its enforcement. The iFood case, in particular, captured growing public concern with the gig economy and the broader implications of platform power in local markets.

Taken together, these developments reveal how Brazil's engagement with digital markets has evolved from isolated enforcement actions into a broader reconfiguration of competition governance. CADE's growing attention to platform power has gradually embedded digital regulation into the country's institutional agenda. Yet this process also exposed the limitations of traditional

antitrust mechanisms and remains unfolding, as the inadequacy of existing tools has pushed policymakers toward deeper and more comprehensive reforms.

LEGISLATIVE PROPOSALS FOR EX ANTE ANTITRUST REGULATION IN BRAZIL

Over time, Brazil's engagement with digital markets moved beyond CADE's enforcement and policy initiatives, reshaping the country's antitrust legislation itself. This new chapter emerged from the convergence of global and domestic pressures. Internationally, the rapid diffusion of ex ante regulatory models across jurisdictions reshaped antitrust debates in global policy networks, inspiring domestic reform efforts. The globalized nature of digital markets also signaled that national enforcement would need new tools to address competition concerns that traditional antitrust frameworks could no longer capture. Within Brazil, organized civil-society groups began invoking the European DMA as a reference point for local debates, while policymakers—sensitive to legitimacy dynamics—sought to frame digital regulation as an institutional achievement.

The Brazilian Telecommunications Agency (*Agência Nacional de Telecomunicações*, or ANATEL) offered one of the clearest examples, as it sought to lead the development of a national ex ante framework for digital markets. Meanwhile, domestic players in the digital economy increasingly advocated such reforms as an additional safeguard against market power abuses. These converging forces crystallized into two major legislative proposals for *ex ante* antitrust regulation in Brazil. The first, introduced in 2022 during the final months of the Bolsonaro Administration, was Bill No. 2,768/2022.[5] The second, presented under the Lula Administration, is Bill No. 4,675/2025. While the Brazilian Congress has neither adopted nor dismissed

[5] Projeto de Lei No. 2,768/2022 (Brazil), https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=2214237&filename=PL%202768/2022.

either proposal—the latter now shaping ongoing legislative debates—they outline distinct regulatory pathways for *ex ante* competition governance in Brazil, each pursuing different goals and relying on different institutional tools.

A. Bill No. 2,768/2022

Bill No. 2,768/2022 aims to create a framework to regulate the organization, operation, and oversight of digital platforms offering services to the Brazilian public. It expands ANATEL's powers, granting it authority over platforms deemed to hold "essential access control power." The bill grounds this choice in its own diagnosis of the digital economy, attributing market concentration and structural influence to Big Tech firms and identifying their ability to extend dominance from core markets into adjacent ones through vertical integration and self-preferencing as sources of competitive distortion. It also assumes that ANATEL's prior experience with interconnection obligations in telecommunications provides a relevant precedent for requiring dominant platforms to ensure fair access to their infrastructures and data interfaces.

To operationalize the framework, the bill adds Article 19-A to Law No. 9,472/1997, granting ANATEL authority to issue rules, supervise and sanction platforms, interpret and apply legislation, settle disputes between operators and professional users, and act preventively against violations of the economic order, while maintaining CADE's jurisdiction over competition matters. The proposal lists activities that qualify "digital platforms", mirroring DMA's categories of "core platforms" but without defining them. It covers online intermediation services, search engines, social networks, video-sharing sites, messaging apps, operating systems, cloud computing, and online advertising. The Executive Branch may also expand the scope of regulated services upon proposals drafted by ANATEL and reviewed by the Brazilian Internet Steering Committee (Comitê Gestor da Internet no Brasil, or CGI.br). Under the bill, platforms reache essential access control power once their annual revenue from services offered to the Brazilian users equals or exceeds BRL 70 million —a threshold far lower than the European equivalent and one that brings more than 200 companies under the new regulatory obligations.

The bill requires operators with essential access control power to comply with a set of mandatory obligations established by law. These operators must act transparently, provide ANATEL with relevant information, guarantee equal treatment for professional and end-users, use collected data appropriately, and avoid unjustified refusals of access. The text authorizes ANATEL to impose

additional obligations and settle disputes between economic operators in its supervisory and regulatory role. It allows the agency to demand functional or accounting separation and to adopt measures that prevent abuses of economic power, especially those affecting interoperability and data portability. When assigning such measures, the bill directs ANATEL to apply criteria of proportionality and isonomy, adjust obligations to the characteristics of each platform, and evaluate their costs, benefits, and competitive effects.

To fund these new functions, the bill created the Digital Platform Inspection Fund (Fundo de Fiscalização das Plataformas Digitais, or FisDigi). The fund draws resources from budget allocations, credit operations, donations, and a new Digital Platform Inspection Fee. Platforms holding "essential access control power" must pay this annual fee, set at two percent of their gross operational revenue in Brazil. The bill also authorizes the Executive Branch to allocate part of these funds to guarantee mechanisms supporting innovative digital products and services. While expanding ANATEL's economic oversight, the bill keeps merger and acquisition review under CADE's authority. Violations trigger sanctions based on a "responsive regulation" model, where penalty severity reflects the nature of the conduct and the firm's cooperation. Sanctions range from warnings and corrective orders to fines, suspensions, and even prohibitions from operating.

The bill grounds the regulatory framework in a set of legal principles, including free enterprise, competition, consumer protection, reduction of regional and social inequalities, and the repression of abuses of economic power. It also shows a clear concern for an inclusive regulatory process by explicitly adding the expansion of social participation in discussions of public interest. Moreover, it recognizes the need for coherence with existing legislation, particularly Law No. 12,965/2014—the Brazilian Civil Rights Framework for the Internet—and Law No. 13,709/2018—the Brazilian Data Protection Law. In this legal architecture, the bill sets out overarching objectives: promoting economic development through fair and open competition, ensuring access to information and culture, fostering innovation and technological diffusion, and encouraging interoperability through open standards and effective data portability mechanisms.

The proposal marked a turning point in Brazilian antitrust policymaking but triggered immediate backlash. Commentators on Bill No. 2,768/2022 criticized its fragile conceptual basis, lack of clarity, and deficient legislative process. They described it as premature—introduced without impact assessments or

consultations—and lacking defined goals or coherent policy direction. Critics argued that the bill leaves unclear whether its constitutional principles should guide platform regulation within the consumer-welfare rhetoric that has shaped Brazilian antitrust debates or move beyond it. They also questioned its analytical premise: by adopting an essential-facility model that treats digital platforms as public utilities, the bill allegedly misreads the source of their power. In their view, platform dominance results from deliberate design choices that exploit network effects rather than from inherent scarcity, and this framing risks producing misguided remedies. Many also warn that assigning enforcement to ANATEL, rather than CADE, conflates distinct regulatory domains, potentially generating overlaps and inefficiencies.

Critics further challenge the bill's operational design, especially its designation criteria and enforcement framework. They argue that the revenue threshold of BRL 70 million used to identify platforms with "essential access control power" is arbitrary and excessively low, as it excludes qualitative assessment and offers no mechanism for firms to contest their designation. Tying regulation solely to size, they contend, risks overreach and may discourage innovation. The non-exhaustive list of duties in Article 10, coupled with the broad discretion granted to ANATEL, also raises concerns about legal uncertainty and incoherent enforcement. Commentators describe this open-ended approach as a missed opportunity to confront issues such as self-preferencing and data misuse through targeted non-discrimination rules. Finally, they note that—unlike international counterparts—the bill offers no statutory basis for efficiency defenses or objective justifications, which they view as a critical omission for ensuring regulatory balance and predictability.

B. Bill No. 4,675/2025

Unsurprisingly, legislative discussions around the proposal stalled for the remainder of the Bolsonaro Administration. Debate resumed only under President Lula, this time led by the Ministry of Finance. In May 2024, the Ministry launched a public consultation to gather input for a study on the ex ante antitrust regulation of digital markets, receiving more than fifty submissions from academics, industry representatives, public officials, individuals, and organized civil society. Importantly, CADE pushed back against ANATEL's attempt to lead ex ante antitrust regulation and, in its submission, called for a framework that addresses functional and distributive failures in digital ecosystems. It defended a flexible regulatory model with

mechanisms for ongoing adjustment, monitoring, and continuous dialogue with platforms to promote compliance and enable adaptive enforcement. Institutionally, CADE proposed housing these functions in a dedicated digital-markets unit within the authority, arguing that its cross-sector experience places it in a stronger position than an agency with a different primary mandate.

A few months later, in October, it released the report Digital Platforms: Competition Aspects and Regulatory Recommendations for Brazil. The report underscores the growing significance of the digital economy as a driver of productivity and growth in a country long constrained by stagnant total factor productivity. It recognizes that the distinct economics of digital platforms—marked by strong network effects, multi-sided markets, and complex ecosystems—limit the ability of traditional antitrust tools to detect and remedy concentrated market power in time. Drawing from international experience, which shows that jurisdictions worldwide are experimenting with diverse models beyond the DMA, the report identified an emerging convergence toward hybrid regulatory frameworks situated between antitrust enforcement and sectoral regulation. To address Brazil's institutional misalignment, it proposed two complementary sets of measures.

First, the legislative reforms introduce a hybrid, pro-competitive instrument that amends Law No. 12,529/2011—the Brazilian Antitrust Act—to empower CADE to designate "systemically relevant platforms" based on qualitative factors such as network effects, vertical integration, and strategic intermediation, alongside quantitative turnover thresholds. Once designated, these platforms become subject to tailored ex ante obligations, both positive and negative, designed to promote contestability and accountability in markets where structural competition remains weak. The report also calls for expanding CADE's authority to conduct market studies and gather information beyond specific investigations, coupled with the creation of a specialized unit within the agency to implement this mechanism.

Second, the administrative and procedural reforms emphasize non-legislative adjustments to the enforcement of the Brazilian Antitrust Act. They propose incorporating network and ecosystem analysis into CADE's analytical frameworks, revising merger notification forms to capture digital-market data, adopting ordinary review procedures for mergers involving large platforms, and invoking residual jurisdiction (Article 88, §7) to review non-notifiable transactions that may raise competitive concerns. The report further recommends establishing an inter-institutional coordination forum among

CADE, ANATEL, the Brazilian data protection authority (Agência Nacional de Proteção de Dados, or ANPD), and Brazilian consumer protection authority (Secretaria Nacional do Consumidor, or SENACON) to ensure timely and coherent responses to cross-cutting regulatory challenges.

Building on this process, the Presidency submitted Bill No. 4,675/2025, which closely reflects the legislative reforms proposed by the Ministry of Finance to amend the Brazilian Antitrust Act. The bill creates two new types of administrative proceedings—the designation of systemically relevant economic agents and the determination of special obligations for such agents—and establishes the Superintendence of Digital Markets (Superintendência de Mercados Digitais, or SMD), a specialized unit within CADE responsible for ensuring compliance, monitoring market conduct, and requesting information under confidentiality. The SMD initiates, investigates, and submits to CADE's Tribunal three core procedures: designation, imposition of obligations, and sanctions for non-compliance. CADE's General Superintendence, however, retains jurisdiction over merger control and coordinated conduct investigations, even when they involve designated agents.

The designation process serves as the system's entry point, identifying digital platforms whose market power and systemic position may distort competition across sectors—a prerequisite for imposing special obligations. The SMD may initiate proceedings on its own or upon a reasoned petition from any interested party, while formal requests from CADE's Tribunal, its General Superintendence, the Secretariat for Economic Monitoring, or other federal agencies automatically trigger initiation. The bill sets out qualitative and quantitative criteria: qualitative factors include participation in multi-sided markets, network effects, vertical integration, strategic intermediation roles, access to extensive data, and a broad user base or product ecosystem; quantitative thresholds require annual global revenue above BRL 50 billion or domestic revenue above BRL 5 billion. Once CADE's Tribunal confirms a designation, it applies to the entire economic group for up to ten years, renewable through a new proceeding.

Following designation, the determination of special obligations seeks to curb abuses of economic power and secure fair competition and access to digital markets. CADE's Tribunal must ground each measure in an explicit economic rationale and tailor it to the risks posed by the designated agent. In doing so, the Tribunal evaluates how the platform handles information security, meets its legal and regulatory duties, and develops features that strengthen its core

ecosystem. These duties may apply jointly or individually and include, among others, submitting all merger transactions to CADE review regardless of notification thresholds, ensuring transparency in terms of use, ranking criteria, and pricing policies, and maintaining a local office with updated contact information—this last obligation applying automatically to all designated agents. The failure to comply incurs daily fines.

The behavioral obligations outlined in the bill aim to curb exclusionary conduct and guarantee open market access. They prohibit practices that restrict rivals' participation or access to essential inputs, including self-preferencing, the use of business-user data to privilege own products, tying, and restrictions on business users' ability to reach end-users through alternative channels. Conversely, they require designated agents to ensure data portability and interoperability, allow third-party application installation, grant business users access to relevant data and performance indicators, and offer products and services under non-discriminatory terms. Each decision by CADE's Tribunal must define the scope of the obligations, set implementation deadlines, and determine both fixed and daily fines for non-compliance.

The procedural design prioritizes transparency and accountability. The SMD may conduct the designation and obligation proceedings simultaneously, ensuring procedural efficiency. After receiving initial submissions, it may gather supplementary evidence and issue a preliminary, reasoned opinion. The bill requires publication of this opinion, followed by a public hearing and a fifteen-day period for contributions. Once finalized, the SMD submits its opinion to CADE's Tribunal. Within forty-eight hours, CADE's Tribunal assigns the case to a Reporting Commissioner, who must issue a decision within 120 days. Oversight continues beyond adjudication: the SMD monitors compliance with CADE's Tribunal decisions, while designated agents must file periodic reports demonstrating adherence to their obligations. Confirmed violations trigger administrative sanctions equivalent to those applied for infringements of the economic order.

Despite their shared ambition to modernize Brazil's antitrust regime, the two bills differ sharply in institutional design and regulatory philosophy. Bill No. 2,768/2022 anchors its approach in a sectoral logic, expanding ANATEL's mandate and framing platform regulation through analogies with telecommunications. It treats market power as a problem of access and interconnection, emphasizing transparency and interoperability, but offers limited analytical depth and weak coordination with existing antitrust

policymaking bodies. Bill No. 4,675/2025, by contrast, centralizes authority within CADE and corrects several of these shortcomings. It replaces the essential-facility analogy with an economic rationale grounded in systemic relevance; it couples ex ante obligations with procedural safeguards; and introduces clear criteria for designation, public consultation, and accountability. Whereas the former borrows from public-utility regulation, the latter builds on antitrust law's preventive rationale, seeking to institutionalize oversight through specialized expertise, legal coherence, and closer alignment with global enforcement trends.

Brazil now stands at a crossroads. The coexistence of these proposals underscores both the country's regulatory ambition and its institutional fragmentation. As Brazil navigates between these initiatives, the challenge is to transform dispersed experimentation into a coherent and forward-looking framework—one capable of aligning antitrust policy with the broader project of digital governance. The next section explores how such a framework might emerge, outlining the principles and institutional design choices needed to consolidate Brazil's shift toward ex ante antitrust regulation.

C. The Path for a Brazilian Framework for Ex Ante Antitrust Regulation

Regulation of digital markets constitutes an essential exercise of economic and political governance. For too long, policy debates have assumed that technological disruption naturally yields social progress and that any regulatory intervention risks stifling innovation. Policymakers must move beyond this narrow vision and treat regulation as a means to shape both the direction and the substance of technological change. In environments increasingly dominated by private intermediaries that structure exchange, information, and participation, regulatory choices define whose interests innovation will advance. Coherent and forward-looking rules enable the state to channel technological development toward public value—expanding inclusion, sustaining fair competition, and reinforcing accountability—rather than allowing innovation to evolve as an unchecked engine of concentration and control.

Similarly, critics often claim that ex ante antitrust regulation stifles innovation and locks digital markets into rigid designs. The evidence suggests otherwise. Markets shielded from rivalry tend to stagnate, while competition pushes firms

to innovate—especially when they operate near the technological frontier. Today, the growing centralization of commerce allows dominant platforms to control the two levers that drive innovation: imitation and diffusion. With this power, they can capture not only the returns from their own R&D, but also those generated across the ecosystem. Ex ante regulation responds to concentrated innovative capacity by tackling structural risks and gatekeeper power before they harden. Instead of slowing discovery, it broadens participation, limits entrenchment, and accelerates the flow of knowledge—especially through mechanisms like vertical interoperability, which supports innovation and opens pathways for disruptive entrants. Well-designed frameworks do more than preserve innovation; they shape its trajectory. By embedding fairness, transparency, and contestability into digital architecture, they set the terms under which innovation occurs. The question, then, is not whether regulation limits creativity, but how institutional design channels it toward public value rather than concentrated private power.

In Brazil, advancing an ex ante agenda for antitrust policymaking requires abandoning the false dilemma between regulatory ambition and technological progress. Regulation must operate as a strategic instrument of economic policy, capable of guiding innovation, reducing asymmetries, and strengthening accountability in markets dominated by powerful digital intermediaries. Policymakers should approach this process as an opportunity for institutional learning and adaptation, drawing on Brazil's distinct legal architecture rather than reproducing external templates.

The two proposals now on the table—Bill No. 2,768/2022 and Bill No. 4,675/2025—capture the ongoing tension between imported templates and domestic realities. Although they differ in scope and design, both acknowledge that competition enforcement alone cannot address the structural challenges of digital markets, especially ecosystems. The debate surrounding these bills marks Brazil's gradual shift from reactive enforcement to proactive governance and signals a broader institutional reorientation toward ex ante regulatory tools. Building on this process requires clear principles for a coherent national framework.

Although not entirely clear, Bill No. 2,768/2022 sought to inject into antitrust a broad set of goals and guiding principles, some of them heterodox, and aimed to translate more directly into ex ante antitrust regulation the constitutional economic premises of Article 170. Even as Brazilian Antitrust Act gradually sidelined those principles, despite referencing them in Article 1, this

constitutional turn can signal a starting point for a wider legal-economic agenda. By contrast, Bill No. 4,675/2025 narrows objectives and adopts three guiding principles—reducing entry barriers, protecting the competitive process, and promoting freedom of choice—terms familiar to CADE, though without definitions that clarify whether interpretation should maintain or move beyond the current more orthodox approach. Clear benchmarks for fairness and choice would strengthen legitimacy and predictability, and the same need for clarity applies to special-obligation criteria, since information security and compliance describe themselves, while "improvement of core functionality" invites efficiency arguments rejected elsewhere; explicit goals would guide enforcement more clearly and help agents design credible compliance strategies.

Beyond a charter of principles, concrete materials also deserve discussion. Brazilian officials should treat the framework as a continuous learning cycle that links diagnostic tools to procedures that identify key ecosystem actors and impose tailored duties, supported by sunset clauses and flexible designs that adjust obligations in form and duration through self-compliance commitments, transversal remedies, and review clauses that keep regulation adaptable and predictable as technology and business models shift. The absence of policy cycles and procedural rules, combined with the option of 10-year obligations—an eternity in digital markets—risks freezing competitive conditions without justification. Notably, unlike other jurisdictions, the framework still offers a safeguard: the Ministry of Finance's Secretariat for Economic Monitoring and other federal bodies may request impact assessments on obligations, which could ground administrative or disciplinary action against the authority and the civil servants involved.

Second, the framework must define its enforcement priorities with precision and transparency. Regulators should establish objective criteria for identifying and designating regulated ecosystems, ensuring both predictability and legitimacy. These criteria should emerge through an open, participatory process that brings together industry, officials and civil society, reflecting the diversity of Brazil's digital economy and the democratic character of its governance. This dialogue gains force through broader participatory channels, including public hearings before any designation decision, before the imposition of special obligations, and before CADE issues regulations affecting those decisions. Officials may also call hearings to clarify disputes inside CADE's Tribunal, including revisions to the criteria used to implement the Bill No. 4,675/2025.

This structure offers a more agile path for institutional adjustment than ex ante regimes in other jurisdictions.

Third, regulators must institutionalize civil-society participation throughout the regulatory cycle—from setting priorities and designing obligations to monitoring and reviewing outcomes. Active participation strengthens accountability, reinforces the legitimacy of decisions, and creates channels for social oversight in markets where private power often escapes public scrutiny. However, participation demands knowledge of the issues at stake, which rarely develops without access to information. CADE could support this by requiring designated agents to appoint an officer who receives and answers requests related to compliance with special obligations, and by allowing obligations that grant qualified researchers access to data. Research projects aimed at detecting non-compliance could gain support through submissions to the Fund for the Defense of Collective Rights, strengthened by a share of resources similar to the Digital Platform Inspection Fund proposed in Bill 2,768/2022. CADE's advocacy role could also expand general understanding of the digital economy and circulate the vocabulary and tools needed for effective participation in designation and special-obligation proceedings.

Fourth, CADE must secure enough staff and resources to meet inquiry deadlines. This requires not only allocating a sufficient number of officials dedicated to digital-market analysis without draining ex post enforcement capacity, but also developing the technical skills needed to address the complexity of digital ecosystems. This effort does not always demand new hires; authorities can draw on internal reallocation, cooperation with other government bodies, or external consultants, much like the appointment of trustees to monitor remedies in ex post cases. Yet the institution must also guard against illegitimate partisanship by enforcing strong conflict-of-interest rules and ensuring multipolar stakeholder participation to maintain balance.

Fifth, officials must acknowledge limits in their knowledge and treat much of the work as exploratory rather than expecting clear, immediate answers. Market studies, for instance, can function both as elements of the policy cycle and as capacity-building tools, enabling officials to analyse digital markets in depth—before and after designation—to understand broader competitive dynamics. Officials also need instruments to tackle systemic problems that weaken ecosystem functioning; when competitive failures spread across many actors in a segment, the power to issue systemic orders following market investigations offers a complementary way to address both market and

ecosystem distortions. Studies that identify these failures and develop metrics and benchmarks for proportionate remedies can guide ex ante antitrust regulation moving forward.

Together, these elements outline a model of ex ante antitrust regulation grounded in continuous learning rather than reactive correction or prescriptive control. By integrating them, Brazil can build a framework that engages constructively with international developments and evolving global enforcement trends while remaining responsive to its own institutional capacities and domestic policy priorities. If properly implemented, such a system could position Brazil not merely as a regulatory follower, but as a jurisdiction capable of shaping digital-market governance through evidence-based, adaptive, and democratically accountable intervention.

CONCLUSION

Brazil's debate over *ex ante* antitrust regulation exposes a broader choice about how the country will govern digital power. The contrast between Bills No. 2,768/2022 and 4,675/2025 reveals both the risks of fragmented, sector-based responses and the promise of a CADE-centered framework that treats digital ecosystems as a structural feature of contemporary markets rather than a passing technological anomaly. If lawmakers consolidate the more coherent elements of the latter proposal—systemic-relevance criteria, procedural safeguards, regulatory cycles, and channels for civil-society participation—while anchoring them in Brazil's constitutional economic order, *ex ante* antitrust regulation can move beyond crisis-driven experimentation. It can become a stable part of the country's economic constitution, capable of steering innovation, disciplining gatekeepers, and deepening democratic accountability over private digital infrastructures.