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Green Paper on ex-ante antitrust regulation of Digital Ecosystems in Brazil: Enforcing the Digital Competition Act

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Green Paper on ex-ante antitrust regulation of Digital Ecosystems in Brazil: Enforcing the Digital Competition Act [1]

Introduction

For several years, Brazil has been grappling with the question of how to regulate the economic power of digital platforms. As in other jurisdictions, concerns over the ability of large digital ecosystems to control interconnected markets have prompted a reconsideration of the traditional enforcement tools available to competition authorities. In November 2022, these concerns found legislative expression in Bill No. 2,768/2022, which drew inspiration from the European Union's Digital Markets Act (DMA). Its introduction marked the beginning of a broader debate over the need for ex ante antitrust regulation in Brazil and, more importantly, the institutional and substantive features that such a framework should adopt.

In previous policy papers, we traced some of these developments.[2] We examined the growing engagement of the Brazilian competition authority (*Conselho Administrativo de Defesa Econômica*, or CADE) with digital markets, the political and institutional dynamics behind competing legislative proposals, and the principles that should guide the development of a Brazilian regulatory framework. Among other things, we advocated an approach grounded in institutional learning, combining market studies, tailored regulatory obligations,

1 This policy paper was elaborated by Nicolo Zingales and Arthur Sadami and presented during the 5th BRICS+ Digital Competition Forum.

2 See Arthur Sadami & Nicolo Zingales, White Paper: A Proposal on Ex-Ante Regulation of Digital Ecosystems in Brazil (FGV Direito Rio, Center for Technology & Society, Nov. 2024), https://cyberbrics.info/wp-content/uploads/2024/11/WHITE-PAPER-A-PROPOSAL-ON-EX-ANTE-REGULATION-OF-ECOSYSTEMS-; Nicolo Zingales & Arthur Sadami, Yellow Paper on Ex Ante Antitrust Regulation in Brazil: Divergent Strategies and Paths to Reform (FGV Direito Rio, Center for Technology & Society, Policy Paper No. 005/2025, Nov. 28, 2025), https://cyberbrics.info/wp-content/uploads/2025/11/ex-ante_merged.pdf. See also Nicolo Zingales & Arthur Sadami, Brazil: Ex Ante Regulation of Ecosystems, the Clash of Different Approaches and Paths Forward, CeCo (Jan. 1, 2025), https://centrocompetencia.com/brazil-ex-ante-regulation-of-ecosystems-the-clash-of-different-approaches-and-paths-forward/.

mechanisms for continuous adaptation, and meaningful participation by civil society throughout the regulatory process. One year later, Brazil appears considerably closer to establishing such a framework. Bill No. 4,675/2025, originally submitted by the Executive Branch in September 2025 and subsequently revised during congressional deliberations, stands a reasonable chance of becoming law over the coming months. Its latest version resonates with several of the mechanisms we advocated in our previous policy paper. These include a more structured regulatory cycle, instruments for market analysis, mechanisms for reviewing regulatory decisions, and broader opportunities for stakeholder participation.

The legislative battle, however, is far from over. Efforts to establish a regulatory framework for digital markets continue to face considerable political resistance, particularly from companies whose business practices may fall within its scope. Yet, despite the uncertainties surrounding the legislative process, there is already considerable value in anticipating the challenges that will arise from the implementation of the new framework. Indeed, the adoption of a regulatory instrument is only one step in the broader transformation of competition governance. The effectiveness of the Brazilian framework will depend on how CADE organizes its activities, exercises its new powers, develops the necessary technical capabilities, and engages with the various actors operating within digital ecosystems. These challenges are particularly important in Brazil, where the proposed framework grants the competition authority substantial responsibility for defining the scope and substance of regulatory intervention through administrative proceedings. Many of the most consequential regulatory choices will therefore take place after the legislative process has concluded.

This policy paper seeks to contribute to that next stage of the debate. It examines how Brazil can translate its proposed legislative framework into an effective regulatory practice. This paper unfolds in two Parts. Part I describes the main institutional, substantive, and procedural features of Bill No. 4,675/2025. Part II discusses the challenges associated with its implementation and advances recommendations for the enforcement of the new framework.

1. The Brazilian framework for digital competition

Bill No. 4,675/2025 amends the Brazilian Competition Act (Law No. 12,529/2011) to establish an *ex ante* competition regime for digital markets. A defining feature of the Brazilian proposal is that it does not attach a predetermined set of statutory obligations to firms that meet certain criteria. Instead, it establishes a regulatory process through which CADE identifies firms of systemic relevance, examines the competition concerns that their activities raise, and develops obligations tailored to those concerns. The Bill thus places administrative proceedings at the center of digital competition regulation. It establishes distinct procedures for studying markets, designating firms, and imposing obligations, as well as mechanisms for monitoring compliance and revisiting regulatory decisions. This Part examines the institutional architecture that supports this model and the different stages of the regulatory process.

1.1. Institutional Architecture and the Allocation of Regulatory Powers

The Bill retains CADE as the central authority for competition policy in digital markets but creates a specialized body within its institutional structure: the Special Superintendence for Systemic Relevance, Free Competition, and Consumer Protection in Digital Markets (*Superintendência Especial de Relevância Sistêmica, Livre Concorrência e Defesa do Consumidor em Mercados Digitais*). Under Article 18-A, the President of the Republic appoints the Special Superintendent, subject to Senate approval, for a two-year term, with the possibility of one reappointment. The Bill requires the Superintendent to possess legal or economic expertise and to devote their professional activities exclusively to the position. The institutional design preserves the division between investigative and adjudicative functions that characterizes the Brazilian competition system. The Special Superintendence monitors digital markets, gathers evidence, conducts administrative proceedings, and submits recommendations to CADE's Administrative Tribunal (Article 18-B). The Tribunal, in turn, holds the authority to designate firms of systemic relevance, impose special obligations, and sanction noncompliance (Article 9, Items XVIII to XXIV).

The creation of a specialized superintendence raises an important question about the allocation of responsibilities within CADE. The Bill addresses this question by reserving certain functions to the General Superintendence (*Superintendência-Geral*). The General Superintendence retains exclusive jurisdiction over mandatory merger review, including transactions involving designated firms, as well as investigations into cartels under Article 36, Paragraph 3, Items I and II (Article 18-B, Paragraphs 2 and 3). The Bill takes a different approach to investigations into unilateral conduct. Once the Tribunal designates a firm as systemically relevant, the General Superintendence must transfer pending investigations involving that firm to the Special Superintendence, unless it has already issued its final investigative report (Article 18-B, Paragraphs 1 and 4). Should disagreements arise between the two superintendences over the allocation of responsibilities, the Tribunal must resolve them within thirty days (Article 18-B, Paragraph 5). Finally, the Bill authorizes CADE to establish an Advisory Council on Digital Markets Competition (*Conselho Consultivo de Concorrência em Mercados Digitais*). Nonprofit civil society organizations, consumer groups, and academic institutions must collectively occupy at least half of the Council's unremunerated seats (Articles 87-L and 87-M).

1.2. Studying Digital Markets

The Bill equips CADE with a mechanism for developing knowledge about digital markets outside the context of individual designation, regulatory, or enforcement proceedings. Under Article 87-K, the Special Superintendence may initiate digital market analysis procedures, either on its own initiative or at the direction of the Tribunal. These procedures serve several purposes. They allow CADE to examine developments in digital markets, identify barriers to entry, inform subsequent designation proceedings, develop or revise special obligations, and assess the competitive effects of existing regulatory measures (Article 87-K, Paragraph 2). To conduct these inquiries, the Special Superintendence may request documents, circulate questionnaires, hold public hearings, and conduct public consultations. At the conclusion of each inquiry, it must publish a report detailing its findings and recommendations (Article 87-K, Paragraphs 3 and 4). Importantly, the Bill distinguishes the production of knowledge about markets from the exercise of regulatory and

sanctioning powers. Market analysis procedures do not, in themselves, authorize CADE to designate firms, impose obligations, or levy sanctions. Each of these measures requires a separate administrative proceeding. Conversely, the Bill does not require CADE to conduct a market analysis procedure before initiating a designation or obligation proceeding (Article 87-K, Paragraphs 5 and 6).

1.3. Designating Firms of Systemic Relevance

The first formal stage of regulatory intervention consists of identifying the firms that will fall within the scope of the new regime. Article 87-A establishes a dedicated administrative proceeding through which CADE may designate a firm as an economic agent of systemic relevance in digital markets. The Special Superintendence may initiate designation proceedings on its own initiative or in response to a substantiated request from any interested party. Although the Superintendence may dismiss private requests that lack sufficient grounds, it must open proceedings when CADE's Tribunal, the General Superintendence, the Secretariat for Economic Monitoring (SEAE), or a federal sectoral regulatory agency requests that it do so (Article 87-A, Paragraphs 6 TO 8). The Bill also requires firms subject to designation proceedings to maintain an operational office in Brazil and keep their legal and electronic contact information up to date with CADE. Failure to comply with these requirements may result in daily fines of up to BRL 1 million (Articles 47-D, 43, and 44-A).

Criteria for designation. Article 47-C establishes a two-stage test for determining whether a firm possesses systemic relevance. The test serves the broader statutory objectives of expanding consumer choice, reducing barriers to entry, and protecting the competitive process (Article 47-B). First, the firm must meet a quantitative threshold. Its corporate group must have annual gross revenues exceeding BRL 50 billion worldwide or BRL 5 billion in Brazil, according to its most recent available financial statements. The Special Superintendence must adjust these thresholds annually in accordance with Brazil's official consumer price index (Article 47-C, Paragraphs 1 and 3). Second, CADE must establish that the corporate group meets at least four of six qualitative criteria. These criteria seek to capture different sources and manifestations of systemic power in digital markets: (i) participation in multiple multisided markets; (ii) market

power deriving from network effects; (iii) vertical integration or participation in digital ecosystems; (iv) a strategic position that generates economic dependence among other businesses; (v) the ability to collect and combine large volumes of data across products and services; and (vi) control over access to a digital ecosystem comprising multiple products or services (Article 47-C, Paragraph 2).

Designation proceedings. The Bill structures designation proceedings around successive opportunities for evidence gathering, public participation, and administrative deliberation. Upon initiating a proceeding, the Special Superintendence must notify the firm and grant it thirty days to present its defense, with the possibility of a ten-day extension. At the same time, the Superintendence must open a thirty-day period for interested parties to submit evidence (Article 87-D, Paragraphs 1 and 3). If the Special Superintendence undertakes additional evidence gathering, it must conclude this stage within thirty days. It then has forty-five days to issue a preliminary reasoned opinion, which it must submit to a public hearing and a thirty-day public consultation. After granting the firm a final five-day period to respond, the Superintendence has thirty days to issue its final recommendation (Article 87-E, Paragraphs 1 to 4). The Special Superintendence must conclude its examination and refer the case to the Tribunal within 210 days. The President of the Tribunal then assigns the case by lot to a Reporting Commissioner, who must bring the matter to a vote within sixty days (Articles 87-F and 87-G).

Effects of designation. The Tribunal may designate a corporate group for a period of up to six years (Article 87-A, Paragraphs 1 and 2). Designation does not, however, automatically impose substantive obligations on the firm (Article 47-C, Paragraph 5). Instead, it establishes the basis for subsequent regulatory intervention. In its designation decision, the Tribunal must explain the factual grounds that support its finding of systemic relevance and identify, on a preliminary basis, the digital products or services that warrant designation (Article 87-H, Item I). This preliminary delineation establishes the boundaries within which CADE may subsequently impose special obligations.

Revisiting designation decisions. Article 87-A, Paragraph 4, allows CADE to revisit designation decisions one year after the Tribunal's decision if

significant changes in market conditions materially alter the competitive conditions that justified the designation. To prevent firms from exploiting this mechanism through repeated requests, the Bill establishes a two-year waiting period before a designated firm may submit a new request following a Tribunal decision to close review proceedings or maintain its designation. This restriction also applies to persons or entities acting in the interests of the designated firm (Article 87-A, Paragraph 5).

1.4. Developing and Imposing Special Obligations

Designation establishes which firms fall within the regulatory regime; a separate proceeding determines which obligations those firms must observe. Under Article 87-B, the Special Superintendence initiates an administrative proceeding to develop special obligations for a designated firm. In urgent circumstances, the Bill allows the Superintendence to conduct designation and obligation proceedings simultaneously (Article 87-D, Paragraph 6). The Bill limits the scope of these proceedings to the products, services, or modalities that the Tribunal preliminarily identified in its designation decision. CADE must tailor its intervention to the competition concerns that it identifies within this scope (Article 47-E, Paragraph 1, Item II, and Article 87-B, Paragraphs 2 and 8). These provisions nevertheless allow CADE to move beyond the more compartmentalized approach to relevant markets that characterizes conventional antitrust analysis. The authority may address practices that exploit interdependencies across an ecosystem, even when their actual or potential anticompetitive effects arise in a single market[3].

Regulatory instruments. Article 47-E provides CADE with a range of regulatory instruments that it may deploy individually or in combination. These instruments fall into three broad categories. First, CADE may impose transparency and disclosure obligations. These include requirements that designated firms inform CADE of acquisitions irrespective of the ordinary merger notification thresholds, disclose criteria governing algorithmic rankings and search results, and publish information about their fee structures (Article 47-

3 By way of example: if a conduct involves self-preferencing through a search engine in a specific vertical segment (say, comparison shopping), a special obligation may prohibit the same conduct in other verticals (such as maps, flights, books, etc.)

E, Item I). Second, CADE may require firms to take affirmative steps to address competition concerns. Among other measures, it may require designated firms to provide continuous data portability, ensure technical interoperability through accessible interfaces at no charge, allow users to install third-party software and alternative application stores, provide business users with detailed performance metrics, offer neutral choice screens, and establish transparent dispute resolution mechanisms (Article 47-E, Item II). Third, CADE may prohibit certain practices. These include self-preferencing, anticompetitive tying and bundling, contractual restrictions on business users' ability to communicate with consumers outside the platform, and the use of deceptive interfaces or dark patterns to manipulate user choice (Article 47-E, Item III). The Bill also establishes limits on the exercise of these powers. Article 47-H prohibits CADE from imposing obligations that infringe constitutional guarantees of freedom of expression or interfere with content moderation. The former restriction follows naturally from the supremacy of the Brazilian Constitution. The latter raises more difficult interpretive questions, given the absence of a sufficiently precise delimitation[4]. Articles 47-E and 87-B further require CADE to provide an economic justification for its obligations, considering cybersecurity considerations, other regulatory requirements, the functioning of digital ecosystems, and incentives for innovation, particularly among smaller firms.

Developing regulatory obligations. The Bill creates a mechanism through which designated firms can participate in developing the obligations that they will have to observe. Under Article 87-C, a firm may submit a voluntary proposal detailing how it intends to address the competition concerns that CADE has identified. Such proposals may specify technical solutions,

4 For instance, would a prohibition on self-preferencing in the ranking of commercial content constitute "interference" with content moderation insofar as it requires a designated undertaking to modify the operation of its algorithmic feed? The answer may depend on whether the notion of interference encompasses any regulatory intervention or only unjustified restrictions. Human rights law generally distinguishes between interference with a protected right and a violation of that right. Under the Inter-American human rights framework, restrictions on freedom of expression may be justified where they have a clear and precise legal basis, pursue a compelling objective recognized by the applicable legal framework, and are necessary in a democratic society and strictly proportionate to that objective. See Office of the Special Rapporteur for Freedom of Expression, Inter-Am. Comm'n H.R., Inter-American Legal Framework on the Right to Freedom of Expression: 2025 Update ¶¶ 145–47, OEA/Ser.L/V/II, CIDH/RELE/INF.29/25 (2025), https://www.oas.org/en/iachr/expression/reports/legalframeworkRELE.pdf.

implementation schedules, and metrics for assessing compliance. Although the voluntary proposal does not bind CADE, both the Special Superintendence and the Tribunal must consider it in their deliberations (Article 87-C, Paragraph 2, and Article 87-E, Paragraph 5). The Special Superintendence must conclude its examination and submit its final recommendation to the Tribunal within 240 days of initiating the proceeding. The Reporting Commissioner must then bring the matter to a vote within 120 days (Articles 87-F and 87-G). In its final decision, the Tribunal must specify the obligations that the designated firm must observe, establish daily fines for noncompliance, and set an implementation period that cannot exceed ninety days from the publication of the decision (Article 87-B, Paragraph 3, and Article 87-H, Item II).

Revisiting regulatory obligations. Special obligations remain in force for the duration of the firm's designation. The Bill allows CADE to revisit these obligations two years after the Tribunal's decision if significant changes in market conditions materially alter the competitive conditions that justified their adoption (Article 87-B, Paragraph 4). To prevent firms from exploiting the review mechanism through repeated requests, the Bill also establishes a two-year waiting period before a designated firm may submit a new request following the rejection of a previous one (Article 87-A, Paragraph 5).

1.5. Monitoring Compliance and Enforcing Regulatory Obligations

The imposition of special obligations does not mark the end of the regulatory process. The Bill establishes mechanisms through which CADE can monitor how firms implement their obligations, draw on information from other actors, and sanction noncompliance. Article 87-I requires designated firms to submit periodic reports detailing the technical and operational measures they have undertaken to comply with their obligations. The Special Superintendence must make these reports publicly available, subject to the protection of confidential business information. The Bill also equips the Special Superintendence with an additional mechanism for verifying compliance. It may require a designated firm to retain, at its own expense, an independent technical auditor whom CADE selects or approves (Article 87-I, Paragraph 2).

Third parties also play a role in monitoring the conduct of designated firms. Article 87-J establishes transparency requirements for participation throughout the regulatory process. Among other things, it requires parties that submit complaints or technical contributions to disclose their economic, institutional, and financial relationships with interested market participants (Article 87-J, Paragraph 1). The Bill further recognizes that CADE need not undertake the task of monitoring digital markets alone. Article 47-F provides a basis for cooperation between CADE and other public authorities. It requires SEAE, consumer protection authorities, and federal sectoral regulatory agencies to notify CADE whenever they identify instances of noncompliance. These bodies may also conduct periodic regulatory impact assessments and recommend adjustments to existing obligations.

Finally, the Bill integrates the enforcement of special obligations into Brazil's existing competition law regime. Article 47-G treats noncompliance with a special obligation as an infringement of the Brazilian Competition Act. The Tribunal may therefore draw on the range of sanctions available under Articles 37 to 45 of Law No. 12,529/2011, including structural remedies, restrictions on business activities, and fines of up to twenty percent of the firm's gross revenues (Article 47-G and Article 18-B, Item III).

2. Strengthening the Brazilian framework for digital competition

The enactment of Bill No. 4,675/2025 will initiate a broader transformation in Brazilian competition policy. The Bill establishes the institutional and procedural architecture of a new regulatory regime, much of whose substance will emerge through administrative practice. Its effectiveness will depend on how CADE exercises its discretion, organizes its proceedings, and mobilizes the knowledge and resources of other institutions and market participants. In our previous policy papers, we argued that Brazil should place institutional learning at the center of *ex ante* antitrust regulation.[5] The current legislative proposal provides several mechanisms through which CADE can put this

5 See supra note 2.

approach into practice. The authority now faces the challenge of integrating these mechanisms into a regulatory practice that allows it to learn about markets, experiment with different forms of intervention, and revise its decisions in light of experience. This Part examines five dimensions of this undertaking and offers recommendations for the administration of the new regime.

2.1. Guiding Regulatory Discretion

The Brazilian proposal entrusts CADE with considerable discretion to determine what competition in digital markets requires. Article 47-B identifies three objectives for the new regulatory regime: promoting freedom of choice, reducing barriers to entry, and protecting the competitive process. These objectives resonate with Brazil's competition law tradition, but their application to digital markets raises questions that CADE will need to address. What does freedom of choice entail in markets where platforms can shape users' decisions through the design of digital interfaces? How should CADE understand barriers to entry when firms depend on infrastructure that their rivals control? What does protecting the competitive process require when dominant firms derive their power from their position across an entire ecosystem?[6]

Conventional antitrust analysis offers limited guidance on these questions. A focus on price effects may obscure how platforms exercise power in zero-price markets, exploit users' cognitive biases, and appropriate the returns on innovations that other firms develop within their ecosystems.[7] The new regulatory regime offers CADE an opportunity to develop analytical frameworks that better capture these sources and manifestations of economic power. Still, the breadth of the statutory objectives also presents challenges for administrative decision-making. CADE will need to develop a coherent understanding of these objectives, articulate the grounds for its interventions, and explain how particular obligations advance the purposes of the legislation. We therefore

6 See Michael G. Jacobides & Ioannis Lianos, Ecosystems and Competition Law in Theory and Practice, 30 Indus. & Corp. Change 1199 (2021); Pierre Régibeau & Katharine E. Rockett, Competition Policy for Conglomerates, Platforms, and Eco-Systems, 40 Oxford Rev. Econ. Pol'y 818 (2024); Michele Bisceglia & Jean Tirole, Fair Gatekeeping in Digital Ecosystems (Toulouse Sch. of Econ., Working Paper No. 1452, 2024).

7 See Lina M. Khan, Amazon's Antitrust Paradox, 126 Yale L.J. 710 (2017); John M. Newman, Antitrust in Zero-Price Markets: Foundations, 164 U. Pa. L. Rev. 149 (2015); OECD, Dark Commercial Patterns (2022); Cecilia Rikap, Intellectual Monopolies as a New Pattern of Innovation and Technological Regime, 33 Indus. & Corp. Change 1037 (2024).

recommend that CADE develop regulatory guidelines that elaborate on the meaning and implications of Article 47-B.

Other jurisdictions offer useful examples of how CADE might approach this task. The United Kingdom's Digital Markets, Competition and Consumers Act (DMCCA) organizes conduct requirements around three statutory objectives—fair dealing, open choices, and trust and transparency—and establishes a framework for connecting specific regulatory interventions to the objectives they pursue.[8] CADE could develop a similar framework for the objectives of the Brazilian legislation, refining their meaning and practical implications through administrative experience. Developing such guidelines would also help CADE address the challenges of judicial review. Article 5, Item XXXV, of the Brazilian Constitution guarantees access to the courts, and firms will likely challenge both designation decisions under Article 87-A and special obligations under Article 87-B. Other jurisdictions have anticipated these challenges in designing their regulatory regimes. Germany, for example, concentrates appeals against decisions under Section 19a of its Act against Restraints of Competition (GWB) before the Federal Court of Justice. The DMCCA, in turn, subjects most regulatory decisions to judicial review principles, preserving a degree of latitude for the competition authority to exercise its regulatory judgment.[9]

In Brazil, CADE will exercise its new powers within the existing framework of judicial review of administrative action. The quality of its reasoning and evidentiary record will therefore assume particular importance. Articles 47-E, Paragraph 2, and 87-B, Paragraph 1, require CADE to provide an economic justification for its obligations and consider factors such as cybersecurity, other regulatory requirements, the functioning of digital ecosystems, and incentives for innovation. CADE should develop methodologies that explain how the authority will assess these considerations, connect them to the statutory objectives, and address potential tensions among them. These methodologies would also help CADE meet the requirements of administrative decision-making

8 See Competition & Mkts. Auth., Digital Markets Competition Regime Guidance (2024).
9 See Verity Egerton-Doyle & James Hunter, The UK's New Digital Markets Regime: Unfettered Discretion and Power for the CMA, Kluwer Competition L. Blog (Oct. 7, 2024), https://legalblogs.wolterskluwer.com/competition-blog/the-uks-new-digital-markets-regime-unfettered-discretion-and-power-for-the-cma/.

under the Economic Freedom Act (Law No. 13,874/2019) and the Law of Introduction to the Norms of Brazilian Law (Decree-Law No. 4,657/1942). A coherent framework for exercising regulatory discretion would promote consistency across administrative decisions, provide guidance to market participants, and enable courts and the broader public to scrutinize the grounds for CADE's interventions.

2.2. Building an Adaptive Regulatory Process

One of the central challenges of digital competition regulation is keeping pace with changes in markets. Over the course of an administrative proceeding, firms may reorganize their business models, technologies may evolve, and competitors may exit the market. Changes in these conditions can also undermine the effectiveness of existing regulatory obligations. CADE should organize its regulatory activities around a continuous process of market analysis, intervention, and evaluation. The different stages of this process should inform one another, allowing the authority to incorporate the experience of implementing regulatory obligations into subsequent interventions. Several provisions of the Bill support this approach. Article 87-K allows the Special Superintendence to conduct market studies to identify competition concerns and assess the effects of existing regulatory measures. Articles 87-A, Paragraph 4, and 87-B, Paragraph 4, allow CADE to revisit designation decisions after one year and special obligations after two years when material changes in competitive conditions warrant reconsideration. Article 47-F enables the Secretariat for Economic Monitoring (SEAE) and federal sectoral authorities to conduct regulatory impact assessments and recommend adjustments to existing obligations.

CADE should integrate these instruments into a systematic practice of regulatory evaluation. When developing special obligations, the authority should identify the information and indicators it will need to assess their effectiveness. Subsequent evaluations should examine both firms' compliance with these obligations and their effects on the conditions of competition. The findings should inform decisions about whether to maintain, revise, or discontinue

particular measures.[10] An adaptive approach also requires strategic choices about where to intervene. The range of activities that digital competition regulation encompasses will place considerable demands on CADE's resources. Decisions about which markets to study, which firms to designate, and which competition concerns to prioritize will constitute an important dimension of regulatory policy.[11]

The ongoing reform of CADE's Internal Rules, under Process No. 08700.006264/2026-39, offers an opportunity to institutionalize these choices. Article 18-A of the draft Internal Rules establishes a Committee for Governance and Planning of Competition Policy (*Comitê de Governança e Planejamento da Política Concorrencial*), bringing together the Tribunal, the General Superintendence, and the Department of Economic Studies (*Departamento de Estudos Econômicos*, or DEE). Article 32-A provides for a biennial priority agenda, through which CADE would identify priority sectors, practices, market studies, and regulatory evaluations following a thirty-day public consultation. Paragraph 2 of the same provision requires CADE to establish measurable objectives and align its priorities with its multiannual plan and strategic planning These arrangements could complement the Special Superintendence's responsibility to develop an annual agenda under Article 18-B, Item IX, of the Bill. CADE should use these planning instruments to identify the digital infrastructures and ecosystems on which Brazilian businesses and consumers most depend. The authority should consider the magnitude of existing competition problems, the extent of economic dependence on particular platforms, and the likelihood that developments in certain markets will generate forms of concentration that future interventions may struggle to reverse.

These considerations also underscore the importance of interim measures. In markets that exhibit strong network effects and other tendencies toward concentration, administrative delay may undermine the objectives of regulatory intervention. CADE should develop criteria and procedures for exercising its

10 See OECD, Reference Guide on Ex-Post Evaluation of Competition Agencies' Enforcement Decisions (2016); Filippo Lancieri & Caio Mario S. Pereira Neto, Designing Remedies for Digital Markets: The Interplay Between Antitrust and Regulation, 18 J. Competition L. & Econ. 613, 642–47 (2022).
11 See Or Brook & Katalin J. Cseres, Policy Report: Priority Setting in EU and National Competition Law Enforcement (2021); Or Brook & Katalin Cseres, Competition Law Enforcement at a Crossroad: Setting Enforcement Priorities in the Era of Digital Markets, 56 Int'l Rev. Intell. Prop. & Competition L. 687 (2025).

preventive powers under Article 18-B, Item V, drawing on the expedited mechanisms contemplated in Articles 213 and 215 of the draft Internal Rules.

The voluntary proposal mechanism that Article 87-C establishes offers another means of developing adaptive regulatory practices. Effective obligations often require technical knowledge that platforms possess, and competition authorities need to acquire.[12] An obligation to ensure interoperability, for example, raises questions about technical standards, implementation schedules, security protocols, and the metrics through which CADE can assess compliance. Article 87-C creates a formal mechanism through which firms can contribute to resolving these questions.

The European Commission's specification proceedings under Article 8 of the DMA illustrate the role that administrative engagement with firms can play in translating general regulatory requirements into concrete technical measures. Collaboration with regulated firms nevertheless presents risks. Platforms may exploit their informational advantages to propose technical solutions that formally satisfy regulatory requirements while preserving the underlying sources of their power. CADE should solicit input from other market participants when assessing voluntary proposals, evaluate alternative technical solutions, and exercise its authority under Article 87-B, Paragraph 5, whenever these proposals fall short of the statutory objectives. The voluntary proposal mechanism could thus help CADE acquire technical knowledge, identify workable solutions, and refine its interventions throughout the regulatory process.

2.3. Making Public Participation Meaningful

The case for public participation in digital competition regulation rests on both epistemic and democratic grounds. Competition authorities possess only a fraction of the knowledge necessary to understand how digital ecosystems function. Business users, software developers, workers, consumers, and researchers encounter different dimensions of platform power in their daily activities. Their experiences can reveal forms of exclusion, discrimination, and dependence that escape conventional regulatory analysis. These actors also

12 See Spencer Weber Waller, Access and Information Remedies in High-Tech Antitrust, 8 J. Competition L. & Econ. 575, 577 (2012); Mariana Mazzucato et al., Regulating Big Tech: The Role of Enhanced Disclosures, 39 Oxford Rev. Econ. Pol'y 47, 48 (2023).

have a stake in the choices that competition authorities make. Decisions about interoperability, access to data, ranking systems, and the terms on which businesses participate in digital ecosystems shape the distribution of economic opportunities across markets. Public participation gives the actors whose interests these decisions affect an opportunity to influence their substance.[13] Bill No. 4,675/2025 creates several opportunities for participation throughout the regulatory process. Article 87-D, Paragraph 3, requires the Special Superintendence to open a thirty-day call for evidence when initiating designation proceedings. Article 87-E, Paragraph 3, requires public hearings and a thirty-day public consultation on the Superintendence's preliminary opinions. Articles 87-L and 87-M provide for the establishment of an Advisory Council on Digital Markets Competition, in which academic institutions, research organizations, and nonprofit civil society organizations must collectively occupy at least half of the consultative seats.

The proposed reform of CADE's Internal Rules could further institutionalize public participation. Articles 32-C through 32-S establish a framework for internal consultations, calls for evidence, participatory meetings, public consultations, and public hearings. While CADE has increasingly relied on public consultations and hearings, the introduction of calls for evidence and internal consultations offers additional avenues for developing its competition advocacy and enforcement positions. Internal consultations allow CADE to draw more systematically on the knowledge and experience of its officials, collaborators, and specialized departments. Article 32-I requires public consultations on regulatory acts that affect economic agents and establishes a minimum forty-five-day period for contributions. The draft Internal Rules also address two problems that frequently arise in participatory processes. First, interested firms may exercise influence indirectly through organizations, researchers, and other intermediaries whose financial or institutional relationships remain opaque. Articles 32-D, Paragraph 7, and 32-M, Paragraph 4, require disclosures of these relationships, complementing Article 87-J, Paragraph 1, of the Bill. Second, administrative authorities may solicit public contributions without

13 See Katalin J. Cseres & Laurens C. de Korte, Participation of Third Parties in the Public Enforcement of the Digital Markets Act: Between Democracy and Technocracy, 13 J. Antitrust Enf't 595, 609–11 (2025). See also Arthur Sadami, Tecnocracia e a Antipolítica Concorrencial (2024).

meaningfully engaging with their substance. Article 32-R requires CADE to publish reports explaining its assessment of the contributions it receives.

The incorporation of participatory requirements into the regulatory framework also has implications for judicial review. When CADE imposes obligations through contentious (as opposed to voluntary) proceedings, courts will likely scrutinize more closely whether the authority has adequately safeguarded the right to be heard. The preventive character of the regulatory regime should nevertheless carry considerable weight in the proportionality analysis. Courts are likely to accept CADE's reliance on presumptions of harm insofar as the authority satisfies three conditions. First, these presumptions must serve legitimate policy objectives, such as promoting freedom of choice, reducing barriers to entry, and protecting the competitive process. Second, CADE must ground them in accumulated knowledge and experience, drawing on its own enforcement record—particularly evidence of past antitrust infringements—as well as evidence from the broader public. Third, CADE must afford affected parties meaningful opportunities to exercise their right to be heard throughout the proceedings.[14]. The application of this last requirement should account for the dynamics of digital markets and the costs of administrative delay. Strong network effects and other characteristics of these markets may rapidly consolidate positions of market power and render competitive harm irreversible. CADE should accordingly develop procedures that safeguard the right to be heard while preserving its capacity to intervene before such harm materializes.

The effectiveness of these procedural arrangements will depend on the capacity of different actors to participate. A small business that depends on a digital platform may lack the resources to commission a technical study or the information necessary to identify how the platform's practices affect its operations. Consumer organizations may struggle to monitor changes in digital interfaces. Academic researchers may lack access to the data they need to evaluate regulatory compliance. The firms subject to regulation, meanwhile, command considerable financial, technical, and informational resources. These asymmetries can shape the evidence that participants bring before CADE, the

14 See Nicolò Zingales, Presumptive Reasoning and Right to Be Heard in Public Economic Adjudication: The Case of EU Antitrust Enforcement (2013) (Ph.D. dissertation, Bocconi University).

issues that receive administrative attention, and the range of solutions that the authority considers. Meaningful participation therefore requires measures that expand the capacity of third parties to engage in the regulatory process.

We offer four recommendations in this regard. **First, CADE should use its transparency powers under Article 47-E, Item I, alongside the reporting requirements of Article 87-I, to ensure that designated firms make meaningful information about their compliance publicly available**. The authority should tailor the scope and level of detail of these disclosures to the competition concerns that arise within each ecosystem. Disclosures should enable third parties to assess the implementation of regulatory obligations, identify instances of noncompliance, and evaluate the effects of regulatory measures. **Second, CADE should consider requiring designated firms to establish independent compliance functions, drawing on Article 28 of the DMA**. These functions could provide regular channels of communication between designated firms and business users, consumer organizations, and other stakeholders affected by the implementation of special obligations. CADE could further strengthen its fact-finding capabilities by establishing a secure channel through which employees and contractors of designated firms, including those working within their compliance functions, could anonymously report suspected instances of noncompliance. The European Commission has established a similar whistleblower tool for the enforcement of the DMA, with safeguards for anonymity and data protection under Regulation (EU) 2018/1725.[15] **Third, CADE should develop mechanisms through which qualified researchers can access the data necessary to examine the functioning of digital markets**. Article 47-E, Item II, Subitem 4, of the Bill and Article 51-B, Paragraph 4, of the draft Internal Rules offer possible starting points for developing arrangements that facilitate secure access to relevant commercial, interface, and performance data while protecting privacy and commercially sensitive information**. Fourth, the Brazilian government should explore the use of resources from the Fund for the Defense of Diffuse Rights** (*Fundo de Defesa de Direitos Difusos*, or FDD), governed by Law No. 9,008/1995, **to support independent research on digital markets**. Such resources could help universities and civil society

15 See Sarah Hinck & Jasper van den Boom, Closing Information Gaps in DMA Enforcement—Expectations, Incentives, and the Role of Anonymity for Whistleblowers, 14 J. Antitrust Enf't 268 (2026).

organizations conduct algorithmic audits, examine digital interfaces, and develop empirical studies on the effects of regulatory obligations.

2.4. Building Enforcement Capacity Beyond CADE

The creation of a Special Superintendence represents an important step toward developing institutional expertise in digital markets. Effective regulation will require CADE to acquire capabilities in software architecture, data science, behavioral economics, and other areas that extend beyond the traditional expertise of competition authorities. CADE should pursue this objective through internal investments and cooperation with other institutions. The new regulatory framework provides opportunities to mobilize a broader network of public and private actors, each of whom can contribute different forms of knowledge and enforcement capacity. Article 47-F provides a basis for developing cooperation with other public authorities. CADE should establish regular channels of cooperation with the National Telecommunications Agency (ANATEL), the National Data Protection Authority (ANPD), and the National Consumer Secretariat (SENACON), among other institutions.

These arrangements could include joint technical working groups, mechanisms for exchanging information, and coordinated investigations where platform practices raise concerns under multiple regulatory regimes. International cooperation can serve a similar function. Many of the firms that CADE will regulate operate across jurisdictions, and competition authorities often confront similar technical and institutional challenges. Through the International Competition Network and the OECD Competition Committee, CADE should contribute to the development of shared methodologies for investigating platform practices, designing regulatory interventions, and assessing compliance. Cooperation with foreign authorities would allow CADE to draw on regulatory experiences elsewhere and adapt them to the particularities of Brazilian markets.

The Bill also allows CADE to mobilize technical expertise outside the public sector. Article 87-I, Paragraph 2, authorizes the Special Superintendence to require designated firms to retain independent technical auditors whom CADE selects or approves and the firms remunerate. Competition authorities already employ similar arrangements in merger control. Independent monitoring

trustees help authorities oversee compliance with remedies that require continuous access to information about firms' activities. Technical auditors could perform a comparable function in digital markets, examining the operation of algorithms, data flows, technical interfaces, and other elements of platform infrastructure. The effectiveness of these arrangements will depend on the independence of the auditors and CADE's capacity to supervise their work. The authority should retain control over their selection, define the scope of their activities, establish reporting requirements, and ensure that auditors communicate their findings directly to the Special Superintendence, in accordance with Article 87-I, Paragraph 3.

Judicial enforcement offers another avenue for expanding enforcement capacity. Other jurisdictions have adopted different approaches to the relationship between public and private enforcement. Germany draws on its existing private antitrust enforcement framework in the context of Section 19a. The UK DMCCA provides for private actions, subject to restrictions on collective proceedings. The European Union combines individual enforcement with mechanisms for representative actions, while Japan's Mobile Software Competition Act (MSCA) provides for private injunctive relief. Brazil already possesses a legal infrastructure that could support complementary forms of enforcement. Individual antitrust actions face significant obstacles, including lengthy proceedings, litigation costs, and difficulties in accessing evidence.[16]

The Brazilian system of collective redress offers important possibilities for overcoming some of these obstacles. The Civil Public Action Act (Law No. 7,347/1985) grants standing to the Public Prosecutor's Office, public defenders, and qualifying civil society associations, among other entities, to protect collective and diffuse interests. Article 47-G of the Bill characterizes violations of special obligations as infringements of the economic order, creating a basis for connecting the new regulatory regime to existing mechanisms of judicial enforcement. Article 161, Paragraph 2, of the draft Internal Rules could facilitate these actions by requiring CADE to transmit infringement decisions to the Public Prosecutor's Office and identified victims. CADE should develop cooperation with institutions that possess standing to bring collective actions. Such

16 See Carlos Ragazzo & Isabel Veloso, Ações de Reparação de Danos Concorrenciais no Brasil: Obstáculos e Sugestões (2023).

cooperation could include mechanisms for sharing evidence, identifying patterns of noncompliance, and facilitating access to information that potential claimants would otherwise struggle to obtain. Through preliminary and permanent injunctions, courts could compel the disclosure of relevant information and other data-related remedies[17], prevent or halt violations of regulatory obligations, and require firms to take affirmative steps to remedy their effects.

2.5. Learning Through Market Studies

Effective regulation requires a degree of institutional humility. Regulators operate with incomplete knowledge of the markets they oversee, and their interventions may generate unforeseen effects. These challenges become particularly acute in digital markets, where technological developments and changes in business models can rapidly alter the conditions of competition. Article 87-K offers an important instrument for addressing these limitations. It establishes a market analysis procedure through which the Special Superintendence can investigate the structure and dynamics of digital markets independently of designation, obligation, and enforcement proceedings. CADE should use this instrument to investigate broader questions about the organization and functioning of digital markets. Competition problems may emerge from the interaction of different ecosystems, the widespread adoption of particular technological standards, or forms of commercial dependence that span entire industries. Proceedings under Articles 87-A and 87-B allow CADE to address the role that individual firms play in generating or sustaining these problems. Market studies provide a complementary perspective, allowing the authority to examine the different actors, practices, and institutional arrangements that collectively shape the conditions of competition.[18]

The proposed reform of CADE's Internal Rules also recognizes the value of this approach. Article 212-C incorporates market studies into CADE's competition advocacy framework and assigns the Department of Economic Studies a role in identifying structural barriers to entry, regulatory distortions, and

17 See conselho administrativo de defesa economica, Report on data-related remedies in digital markets (2026). Avaliable at https://cdn.cade.gov.br/portal-ingles/noticias/Report%20Data%20remedies%2025.05.2026%203.pdf.
18 See OECD, Market Studies and Other Market Analysis Tools for Competition Authorities (2025).

technological developments across productive chains and ecosystems. CADE should coordinate this work with the market analysis procedures that the Special Superintendence conducts under Article 87-K. In the United Kingdom, the market investigation regime allows the Competition and Markets Authority (CMA) to examine structural features of markets that adversely affect competition and impose remedies that extend across entire industries. Although Article 87-K confers more limited powers on CADE, the authority could use its findings to develop market-wide regulatory responses through its guidance powers under Article 18-B, Item VII, and its competition advocacy instruments under Articles 212-A through 212-F of the draft Internal Rules.

A market study might, for example, identify the absence of common data portability standards, incompatibilities among application programming interfaces (APIs), or a lack of transparency in ranking practices as obstacles to competition across multiple digital ecosystems. CADE could use these findings to develop common standards, inform the design of obligations across different designated firms, and recommend legislative or regulatory changes where existing powers prove insufficient. Market studies should also inform the evolution of CADE's regulatory practice. Comparing how different firms implement similar obligations, examining the effects of interventions across markets, and identifying problems that existing instruments fail to address can help the authority refine its regulatory toolkit. Over time, these inquiries could provide the empirical foundation for a cumulative body of regulatory knowledge, allowing CADE to deepen its understanding of digital markets and continuously improve its capacity to govern them.

3. Conclusion

Brazil is approaching an important moment in the development of its competition policy. Bill No. 4,675/2025 offers an opportunity to address the limitations of conventional antitrust enforcement in digital markets and to develop new institutional capabilities within CADE. In granting the authority considerable discretion over the scope and substance of regulatory intervention, the Bill also opens up a series of questions about how CADE should exercise its powers. Throughout this policy paper, we have argued for an approach to digital

competition regulation grounded in institutional learning. Developing such an approach will require CADE to articulate the principles that guide its interventions, establish priorities, systematically evaluate the effects of its decisions, and build the technical capabilities necessary to understand and monitor digital ecosystems. It will also require sustained engagement with other public authorities, businesses, consumers, researchers, and civil society organizations. These actors possess knowledge that can inform regulatory decisions and contribute to the oversight of dominant platforms. The ongoing reform of CADE's Internal Rules presents a particularly timely opportunity to lay the foundations for these practices. Much of the institutional groundwork can begin even before Congress enacts the new legislation. Ultimately, the promise of Brazil's digital competition regime lies in its capacity to develop a form of regulation that responds to changing market conditions, draws on knowledge dispersed throughout society, and remains accountable to the public purposes that justify its existence.