Instituto de Tecnologia & Sociedade do Rio

DECODING COMPETITION

Foundations and Influences of the Digital Markets Regulation in Brazil

Executive Summary

What is the appropriate model for regulating digital markets in Brazil? What kinds of interventions can mitigate market failures without undermining economic dynamism? And to what extent should the European and British experience guide and inform Brazil's institutional design?

This first report of the **"Decoding Competition"** project addresses these questions through a critical analysis of **Bill No. 4.675/2025**, which proposes the creation of a preventive competition regime targeting systemically relevant actors in digital markets.

Digital tools have become one of the country's central engines of growth and innovation, reshaping entire sectors and exposing the limits of traditional competition policy tools. The idea has gained traction that a preventive (ex ante) regime is needed to address perceived structural asymmetries in markets characterized by strong network effects, ecosystem integration, and intensive data use, that the traditional ex-post instruments of the Competition Defense Law fail to resolve.

It is in this context that Bill No. 4.675/2025 emerges as a proposal that seeks to reposition the role of the Administrative Council for Economic Defense (CADE) in relation to major platforms and that draws inspiration from two international models: the European **Digital Markets Act (DMA)** and the British **Digital Markets, Competition and Consumers Act (DMCCA).**

However, this development is unfolding within an international debate that is still far from settled. Neither the DMA nor the DMCCA constitutes a consensus model: **both have been the subject of intense academic disagreement and institutional uncertainty regarding the actual insufficiency of the traditional antitrust regime and the effects that preventive frameworks may have on innovation, investment, and legal certainty.**

To situate this debate, the report begins by examining how these models were designed, what problems they seek to address, and why they continue to face significant controversies. Building on this, it reconstructs the trajectory of Bill No. 4.675/2025 in Brazil, showing how the Ministry of Finance structured the proposal around three pillars: the prior designation of systemically relevant actors, the imposition of special obligations, and the creation of a new superintendence within CADE. It then analyzes whether these choices are consistent with the available empirical evidence, the functioning of digital markets, and Brazil's regulatory framework.

The report concludes that Bill No. 4.675/2025 still lacks sufficient maturation and foundation, insofar as the ex-ante regimes that inspired it remain under intense scrutiny and continue to be contested in terms of their effects, thereby calling for a more careful debate. Substantively, the bill adopts designation criteria that can be modified by secondary regulation, excessively expands merger-notification requirements, fails to define key user categories, and establishes a designation timeline that is incompatible with the dynamics of digital markets. Structurally, it creates a new superintendence within CADE without a clear technical justification and without mandatory coordination with sectoral regulators.

In addition, the Bill relies on a broad and undefined notion of "digital markets", using a technological label that lacks clear legal and economic boundaries and risks expanding administrative discretion and legal uncertainty.

These problems are compounded by the absence of a Regulatory Impact Assessment (RIA) tailored to the proposed model. Although the Ministry of Finance has made progress in diagnosing the economic dynamics of digital markets, there is no systematic evaluation of the costs and benefits of the suggested institutional architecture – an especially important step in preventive regimes grounded in broad administrative discretion.

It is recommended that the legislative debate move forward gradually, inclusively, and in an evidence-based manner, while establishing clear channels for inter-institutional coordination. Only then will it be possible to build a regime capable of fostering contestability and innovation in digital markets, while preserving legal certainty, competitiveness, and democratic legitimacy.

Highlights

- **Brazil risks designing a preventive regime on still-unstable international foundations, importing solutions while their outcomes are still unraveling.** This scenario underscores the need for time, caution, and institutional maturation, avoiding rushed legislative choices in a field marked by conceptual uncertainties, academic controversy, and regulatory approaches that remain largely experimental and yielding controversial early results for innovators and investment;
- Although the economic diagnosis conducted by the Ministry of Finance represents an important step toward understanding the dynamics of digital markets, **drafting legislation requires an additional step: translating economic evidence into stable legal criteria that are compatible with the existing institutional framework and capable of ensuring legal certainty.** The report shows that this normative translation—which involves clear definitions, systemic coherence, and coordination among sectoral authorities—has not yet been fully achieved in Bill No. 4.675/2025; and
- **There is no clear or consensual diagnosis that justifies the adoption of a far-reaching preventive regime.** Fundamental doubts persist regarding the actual insufficiency of traditional antitrust tools, the magnitude of the market failures that such a regime aims to correct, and, above all, how an ex ante framework would affect innovation and the productive structure of the national digital economy.

1. Preliminary Points

This report consistently uses the term “digital markets” in a macro and descriptive sense, as it appears in public debate and in Bill No. 4,675/2025. The report does not adopt a closed or technical definition of the term. Instead, it starts from the premise that identifying what counts as a “digital market” – and what does not – is itself a central challenge for the legislative debate.

1.1. What does “digital markets” mean?

Although widely used in contemporary regulatory debates, the term “digital markets” is rarely defined with precision. Digital technologies today permeate virtually all economic sectors: retail, banking, transportation, media, and even traditional manufacturing increasingly operate through digital interfaces and data-driven models. Treating “digital” as a distinct and self-contained market category therefore risks obscuring how competition actually takes place.

As the antitrust literature has emphasized, technological labels cannot replace functional economic analysis[1]. From a competitive perspective, the relevant question is not whether a service is “digital”, but whether it constrains or is constrained by economically viable alternatives. A food delivery app, for instance, may compete not only with other apps, but also with restaurants’ own delivery services or offline consumption options.

For this reason, anchoring regulation in a broad notion of “digital markets”, rather than in concrete economic roles and competitive relationships, expands regulatory discretion and weakens legal certainty. Against this backdrop, this report adopts the term “digital markets” as a macro category. It does not seek to provide a closed definition of the term, but rather to highlight the analytical and institutional risks of using a technological label as a regulatory trigger – an issue later addressed as a key point of attention in Chapter 5.

1.2. What digital markets have we seen — and what they are not?

In regulatory and policy discussions, the term “digital markets” has come to denote a specific and recurring set of market contexts, rather than a comprehensive category of economic activity. Its use reflects a shared understanding about which types of markets are considered relevant for regulatory attention, even in the absence of a formal definition.

[1]HOVENKAMP, Herbert. *Antitrust and eMarkets.* Stanford Law & Policy Review, v. 36, 2025. Available at: https://scholarship.law.upenn.edu/faculty_articles/590/. Accessed on: January 7, 2026.

In practice, this understanding tends to revolve around platform-mediated environments, app-centered ecosystems, digital advertising, and data-driven services operating at scale. These contexts are repeatedly invoked in debates about market power, dependency, and competitive asymmetries, and they implicitly shape the scope of regulatory concern associated with “digital markets”.

At the same time, this linguistic and regulatory convention is selective. Major sectors of the Brazilian economy, and firms of central economic relevance such as Vale and Petrobras, are not typically captured by the expression “digital markets”, despite the increasing role of digital technologies in their operations. This indicates that the term does not track digitalization as such, but rather particular competitive settings.

The limits of this convention become even clearer when considering activities that enable digital markets without fitting neatly within them. Services such as cloud computing, data storage, and digital infrastructure often function as inputs or enabling layers across multiple industries. Whether these activities are treated as “digital markets” depends on context, scale, and perceived dependency, rather than on any stable conceptual criterion.

1.3. Why do the boundaries of “digital markets” matter for the legislative debate?

The absence of clear boundaries around the notion of “digital markets” has direct implications for legislative design. A regulatory framework built upon an undelimited category necessarily leaves substantial discretion to authorities in determining its scope of application, and this is a problem highlighted in Chapter 5.

This challenge is compounded by the dynamic nature of digital economic activity. Many of the market configurations that inform current debates emerged over the last ten years, while future markets may exhibit different structures, roles, and competitive dynamics. Legislative choices made today will therefore shape how new forms of economic organization are interpreted and regulated over time.

In this context, defining “digital markets” too broadly risks extending regulatory intervention beyond its intended scope, while defining it too narrowly risks rendering the framework obsolete as markets evolve. Recognizing this tension at the outset is essential for assessing the coherence, proportionality, and institutional implications of Bill No. 4,675/2025.

2. Introduction

The wide range of economic and commercial activities that rely on digital technologies and electronic communications accounts[2] for **6.5% of Brazil's Gross Domestic Product (GDP) and 3.8% of all formal jobs as of 2024**[3]. This reflects the rapid transformation of Brazil's digital economy, driven by the extensive digitalization of society: **89.1% of the population aged ten or older now has Internet access**[4]. This landscape is also evident in the composition of the innovation ecosystem: a substantial share of Brazilian unicorns operate precisely in digital markets, underscoring the centrality of this segment for the country's competitiveness.

Figure 1 - Latin American unicorns by investment volume (in millions of USD) and investment rounds

Source: DISTRITO, 2025.

The rapid growth of this economic sector has sparked legitimate debates about competition in digital markets. From a regulatory standpoint, the Competition Defense Law (LDC) remains the primary instrument for addressing market conduct and structure in Brazil, operating predominantly in a repressive – i.e., ex post – manner. This approach, typical of traditional antitrust law, **presumes state intervention only after a potentially harmful conduct has taken place and therefore depends on identifying a concrete harm to competition before authorities can intervene.**

In practice, this model has been used to address issues related to digital markets, such as ecosystem integration, the strategic use of data, platforms' preferential treatment of certain products or services, and mergers involving emerging companies[5]. Even so, it remains a structure built upon the classical logic of competition law – guided by precedents, effects-based analysis, and complex investigations that may take years to reach a final decision.

Although the Administrative Council for Economic Defense (CADE) notes that *"[traditional] competition law and the legislation applied in this area are highly adaptable and can therefore be applied to a wide variety of business practices"*[6], a global governance trend has pointed toward the need to update competition tools[7], prompting a shift toward a preventive (ex ante) regime. The ex ante logic seeks to intervene before harm materializes by imposing special obligations or predefined conduct requirements on firms with significant market power.

In this context, a preventive regulatory intervention is attempted to be justified on the basis of four economic elements that underscore the competitive dynamic of digital platforms: **(i)** strong direct and indirect network effects, which reinforce a winner-takes-all logic; **(ii)** the presence of multi-sided markets; **(iii)** the massive collection of data; and **(iv)** the formation of digital ecosystems strengthened by economies of scope and scale.

It is precisely within this space of tension – between the traditional model and the demand for more agile responses – that the contemporary debate emerges on the need to complement the LDC with ex ante instruments. In Brazil, this discussion takes concrete form in Bill No. 4.675/2025.

Explained:

"Network effects" occur when the value perceived by a network participant (node) is influenced by the presence of other participants. Thus, the value of the network is tied to the interactions it enables. The greater the number of participants and their technologies, the higher the platform's potential value, making "being large" a key factor and giving rise to economies of scale and scope.

"*Winner takes all*" occurs when the characteristics of a market allow a single economic agent to capture most (or nearly all) of the market, leaving little room for viable competitors. This happens because certain markets generate increasing advantages as a firm grows, creating a reinforcing cycle that favors the leading company in that market.

"Multi-sided markets" are characterized by the presence of a digital technology that serves two or more distinct user groups that mutually attract one another (e.g., consumers and advertisers). The existence of multiple sides makes platform management more complex, requiring the identification of "profit centers" (sides that subsidize the system) and "loss leaders" (subsidized sides) in order to maximize positive network effects.

[2]LEI, X.; BAGHAIE, S.; SAJADI, S. M. *The digital economy: challenges and opportunities in the new era of technology and electronic communications.* Ain Shams Engineering Journal, v. 15, n. 2, 2024. Available at: https://www.sciencedirect.com/science/article/pii/S2090447923003003. Accessed on: Oct. 29, 2025..

[3]ASSOCIAÇÃO DAS EMPRESAS DE TECNOLOGIA DA INFORMAÇÃO E COMUNICAÇÃO E DE TECNOLOGIAS DIGITAIS (BRASSCOM). *Relatório inédito da Brasscom aponta crescimento do setor de TIC, que representa 6,5% do PIB brasileiro.* São Paulo: BRASSCOM, Aug. 5, 2025. Available at: https://brasscom.org.br/relatorio-inedito-da-brasscom-aponta-crescimento-do-setor-de-tic-que-representa-65-do-pib-brasileiro/. Accessed on: Oct. 29, 2025.

[4]BRAZIL. Instituto Brasileiro de Geografia e Estatística (IBGE). *Pela primeira vez, mais da metade da população acessa a internet pela TV.* Agência de Notícias IBGE, July 24, 2025. Available at: https://www.agenciadenoticias.ibge.gov.br/agencia-noticias/2012-agencia-de-noticias/noticias/44033-pela-primeira-vez-mais-da-metade-da-populacao-acessa-a-internet-pela-tv. Accessed on: Oct. 30, 2025.

[5]BRAZIL. Administrative Council for Economic Defense (CADE). *Cadernos do CADE: Mercados de Plataformas Digitais.* Revised and updated edition on Aug. 29, 2023. Brasília: CADE, 2023. Available at: https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos-do-cade/Caderno_Plataformas-Digitais_Atualizado_29.08.pdf. Accessed on: Nov. 17, 2025.

[6]Ibid., p. 246.

[7]In this regard, the European Digital Markets Act (DMA), the UK Digital Markets, Competition and Consumers Act (DMCCA), the 10th amendment to Germany's GWB Digitalization Act, South Korea's Platform Fairness Act and Telecommunications Business Act, among others, stand out.

Bill No. 4,675/2025 is characterized primarily by its attempt to establish preventive oversight of the conduct of digital platforms. In broad terms, the proposal combines three core pillars, which will be examined throughout this report: **(i)** the prior designation of systemically relevant actors, based on qualitative and quantitative criteria; **(ii)** the imposition of special obligations on those actors, focusing on transparency, portability, interoperability, and restrictions on conduct considered potentially anti-competitive; and **(iii)** the creation of a Digital Markets Superintendence (SMD) within CADE, responsible for initiating, conducting, and monitoring proceedings linked to this new ex ante regime.

In this context, the Brazilian legislative proposal engages with two recent international experiences: the European Union's **Digital Markets Act (DMA)** and the United Kingdom's **Digital Markets, Competition and Consumers Act (DMCCA).**

Accordingly, to understand the inspirations and foundations of the Bill, this report examines how the European and British experiences were constructed **(Chapter 3).** Building on that diagnosis, it presents the structure of Bill No. 4.675/2025 and the substance of its main obligations, showing how the legislative proposal seeks to adapt to the national legal framework the ex ante logic currently being tested abroad, whose outcomes remain contested and not yet conclusively established **(Chapter 4).** Finally, the report highlights preliminary issues that require greater attention and more careful debate within the legislative process, in order to ensure a regulatory framework capable of reducing legal uncertainty and promoting competition and innovation in digital markets **(Chapter 5).**

Explained:

By operating as digital intermediaries, platforms collect large volumes and a wide variety of data on users and transactions. The larger the platform, the more data it gathers, generating a potential competitive advantage. This creates a feedback loop through which the strongest market participants become even stronger. This combination of data, collected across different segments, facilitates the leveraging of network effects into adjacent markets.

Platforms' competitive strategy involves offering complementary products or services to an already established user base in order to increase loyalty and reduce switching costs. This dynamic leads to the formation of complex ecosystems that integrate products, services, and digital infrastructures that would otherwise operate independently. These ecosystems intensify "economies of scope" by allowing the same technological, data, and governance structure to be used to produce multiple goods and services more efficiently and at lower marginal costs. At the same time, they expand "economies of scale", as high fixed costs (such as computing infrastructure, data collection and processing, or AI models) can be spread across a growing base of users and services, thereby strengthening platforms' competitive advantage.

3 The Roots of Digital Markets Regulation in Brazil

Three-point summary:

- **The European DMA establishes a rigid and standardized regulatory framework built around the designation of gatekeepers, based on quantitative criteria supplemented by a qualitative assessment.** Once designated, platforms become subject to a uniform set of ex ante obligations, which apply immediately;
- **The UK's DMCCA adopts a more flexible and discretionary regulatory architecture, structured around the concept of Strategic Market Status (SMS)**, which covers firms with substantial market power and the strategic ability to influence market behavior. Instead of predefined and automatic obligations, the DMCCA provides for tailored remedies developed on a case-by-case basis, formulated after formal investigations conducted by the Competition and Markets Authority (CMA);
- Both regimes face significant controversies, albeit for different reasons: while the DMA is criticized for the rigidity of its standardized obligations, the risk of regulatory overload, and the possibility of reducing incentives for innovation, the DMCCA is questioned for the breadth of the powers granted to the CMA.

Understanding the roots of digital market regulation in Brazil requires close attention to the international experiences that have shaped the contemporary debate. Among these, the models developed in the European Union and the United Kingdom stand out. Although they stem from similar diagnoses, the DMA and the DMCCA adopt distinct regulatory architectures, providing complementary lenses through which to assess different regulatory design choices and the associated risks that should be carefully weighed in the Brazilian context.

3.1. *Digital Markets Act* (DMA)

3.1.1. History

The DMA emerged in the European Parliament as the result of a process of reflection led by the European Commission and other European jurisdictions on the role of major digital platforms in the competitive dynamics of contemporary economies. To support this diagnosis, the Commission conducted public consultations, gathering more than 3,000 contributions from key actors around the EU[8].

Based on the evidence collected and the institutional assessment conducted by the European Commission, the DMA was formally presented at the end of 2020. The text was debated and approved in mid-2022, entering into force in November of the same year[9].

3.1.2. Designation, Duties and Supervision

At the core of the DMA is the regulation of digital markets in which so-called **gatekeepers** operate. These gatekeepers are systemically relevant companies that: **(i)** have a significant impact on the internal market; **(ii)** operate an essential platform service (e.g., marketplaces, app stores, search engines, cloud storage services, social networks, etc.); and **(iii)** hold a consolidated and durable market position.

The designation process combines quantitative and qualitative criteria. Quantitatively, a company is presumed to be a gatekeeper when, over the past three fiscal years, it has recorded at least €7.5 billion in annual turnover in the European Union or holds a market valuation of €75 billion, offers at least one essential platform service in three or more Member States, and reaches more than 45 million monthly active end users and 10,000 yearly active business users in the EU.

Once these requirements are met, the company must notify the European Commission, which then has 45 working days to confirm the designation. Even when these thresholds are not reached, the Commission may still designate a company as a gatekeeper on the basis of qualitative criteria, such as control over a digital ecosystem, an entrenched presence in multi-sided markets, the existence of strong network effects, and the ability to impose asymmetric commercial conditions on business and end users[10].

[8]EUROPEAN COMMISSION. *Europe fit for the Digital Age: Commission proposes new rules for digital platforms* (Press Release IP/20/2347, Dec. 15, 2020). Brussels: European Commission, 2020. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2347. Accessed on: Nov. 18, 2025.

[9]EUROPEAN COMMISSION. *About the Digital Markets Act (DMA).* Brussels: European Commission, [2024]. Available at: https://digital-markets-act.ec.europa.eu/about-dma_en. Accessed on: Nov. 5, 2025.

Once a gatekeeper is designated, the obligations established under the DMA apply directly, uniformly, and are self-executing, without the need to prove a specific abuse in each individual case.

The DMA establishes a set of obligations directly related to the handling of data. First, it prohibits the combination of personal data collected across different services within the same corporate group or obtained from third parties, except when the user has expressed a specific choice and provided valid consent in accordance with data protection law. It also imposes limits on the use of non-public data from business users when such use could favor the gatekeeper's own services in competing markets.

In addition, the European regulation prohibits the practice of self-preferencing, understood as the favoring of the gatekeeper's own products and services in search results, ranking systems, and recommendation interfaces. Other relevant obligations concern interoperability and enhanced data portability, near real-time access for business users to the data they generate on the platform, the prohibition of rules that prevent or hinder the redirection of users to external offers, and restrictions on tying practices between essential services and other services offered by the same corporate group.

The monitoring and enforcement of these rules are centralized in the European Commission, which serves as the authority responsible for overseeing the DMA. It is the Commission's role to continuously monitor gatekeepers' conduct, periodically review whether they continue to meet the designation criteria, and verify whether they are complying with the obligations established in the regulation.

3.1.3. Controversies

The development of the DMA was marked by intense disagreement over the actual insufficiency of traditional competition law. Studies such as those conducted by the Centre on Regulation in Europe (CERRE) showed that there was no consensus regarding the anti-competitive effects of platforms or the effectiveness of preventive measures[11].

In this regard, the report *The Future of European Competitiveness*, prepared under the coordination of Mario Draghi, former Prime Minister of Italy, approaches the DMA from an ambivalent perspective, recognizing its pioneering value while issuing strong warnings about the risks associated with its complex implementation.

[10] EUROPEAN UNION. *Regulation (EU) 2022/1925 of the European Parliament and of the Council, of September 14, 2022, on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act). Official Journal of the European Union*, L 265, Oct. 12, 2022, pp. 1–66. Available at: https://eur-lex.europa.eu/eli/reg/2022/1925/oj/eng. Accessed on: Nov. 3, 2025.

[11] DE STREEL, Alexandre (coord.). *Digital Markets Act: Making economic regulation of platforms fit for the digital age.* Brussels: Centre on Regulation in Europe (CERRE), 2020. Available at: https://cerre.eu/wp-content/uploads/2020/11/CERRE_DMA_Making-economic-regulation-of-platforms-fit-for-the-digital-age_Full-report_December2020.pdf. Accessed on: Nov. 4, 2025.

On the one hand, the report acknowledges the underlying purpose of the DMA as a regulatory intervention within the European Union, developed to ensure digital competition and fairer practices. According to the report, the main justification for this legislation was the perceived need, as identified by policymakers, to establish ex ante rules to foster competition in digital markets characterized by strong network effects and entry barriers that hinder competition and innovation[12].

On the other hand, Draghi warns that the mere introduction of an ex ante regime is not a "magic remedy". **The report stresses that the DMA, although well-intentioned, may generate regulatory overload and high compliance costs, particularly for innovative firms operating in dynamic technological ecosystems**[13]. There is concern that the rigidity of certain obligations – especially those related to interoperability and portability – may reduce incentives for innovation and create uncertainty regarding the scope of the restrictions imposed.

These challenges are compounded by the complexity of enforcement: if the DMA, which is in force but still in implementation, is structured and implemented in an ineffective or incoherent manner, it could undermine the EU's credibility as a regulator and cause economic harm by delaying the deployment of new technologies. Draghi also highlights the risk of regulatory fragmentation, noting that the DMA allows Member States to impose additional national obligations on gatekeepers, thereby increasing legal uncertainty and threatening to fracture the EU's digital landscape.

An analogy helps clarify this concern. The DMA can be understood as a new and complex set of traffic rules governing a shared digital highway. While such rules are intended to prevent "giant trucks" (dominant platforms) from forcing smaller cars (smaller firms and entrants) off the road, Draghi warns that if enforcement becomes overly complex or fragmented the highway may become confusing and inefficient. In that scenario, newer and faster vehicles (innovative technologies and business models) may slow down or avoid the route altogether, not because regulation exists, but because it operates in an unpredictable and uncertain manner.

Moreover, the European Commission presented the DMA as a framework designed to promote fairer competition, expand opportunities for innovators and startups, and deliver more choice, better services, and fairer prices for consumers, while preserving gatekeepers' ability to innovate. Recent evidence, however, suggests that the effects of the DMA have been more ambiguous and, in some respects, different from what was initially expected.

Rather than uniformly expanding access, innovation, and efficiency, DMA's early implementation has been associated with delayed rollouts of new technologies, de-integration of platform services, increased intermediation, and measurable impacts

[12] EUROPEAN COMMISSION. *The future of European competitiveness: in-depth analysis and recommendations (Part B).* Luxembourg: Publications Office of the European Union, 2024. p. 302. Available at: https://commission.europa.eu/topics/eu-competitiveness/draghi-report_en#paragraph_47059. Accessed on: Nov. 5, 2025.

[13] Ibid., p. 79.

on user experience and business costs. Table 1 summarizes some of these emerging market effects, contrasting the DMA's stated objectives with observed outcomes in the EU digital ecosystem.

Table 1 - DMA effects on the EU market

DMA intended impact	Observed outcomes
More opportunities for innovators and technology startups to compete and innovate	Rather than expanding opportunities for innovation, DMA-related compliance uncertainty has delayed or limited the rollout of new digital and AI tools in the EU. Meta has not released Llama 4 in Europe[14], and the EU version of Meta AI is limited to text-based features[15]. Google's AI-powered search (AI Overview) entered the EU market with an estimated 9-month delay[16]. These delays reduce SMEs' access to enabling technologies and impose measurable costs from delayed and downgraded AI launches. Survey evidence from EU and U.K. small technology firms, conducted by an industry association representing app developers, suggests that regulatory uncertainty and compliance-related delays may have tangible economic effects. Nearly 60% of respondents report a minor or significant delayed access to AI tools compared to other regions, around half indicate slower innovation and product development, and 45% report higher costs associated with delayed or restricted access to advanced AI technologies. The survey further indicates that approximately half of respondents perceive regulation as having a moderate or significant impact on AI adoption[17].
Fairer business environment for business users	Instead of resulting in a fairer business environment, DMA-related changes to search and platform integration have reduced visibility and access for European businesses. The DMA's ban on self-preferencing has required major changes to Google Search, including the removal of Google Flights and hotel comparison tools and their replacement with links to third-party aggregators[18]. These changes have led to reduced traffic to European travel businesses, with hotels and airlines reportedly losing up to 30% of visitors from Google[19]. Direct hotel bookings reportedly dropped by 36%, with traffic diverted to large intermediaries, increasing intermediation and potentially raising costs and prices[20]. Users now require up to 50% more time on searches to find relevant results[21]. Additionally, LinkedIn removed job recommendation features such as "jobs you might be interested in".[22] These changes reduce service integration, limit platform-driven discovery, and weaken direct visibility for European businesses.

[14]DAVIES, Pascale. *From a political shift to a more powerful AI: Everything to know about Meta's Llama 4 models.* Euronews, Apr. 8, 2025. Available at: https://www.euronews.com/next/2025/04/08/from-a-political-shift-to-a-more-powerful-ai-everything-to-know-about-metas-llama-4-models. Accessed on: Jan. 28, 2026. See also: META. *Restriction on Llama Multimodal Models in the EU.* Available at: https://www.llama.com/faq/#Restriction%20on%20Llama%20Multimodal%20Models%20in%20the%20EU. Accessed on: Jan. 28, 2026.

[15]WEATHERBED, Jess. *Meta AI is rolling out in Europe after all.* The Verge, Mar. 20, 2025. Available at: https://www.theverge.com/news/632876/meta-ai-europe-whatsapp-facebook-instagram-rollout. Accessed on: Jan. 28, 2026.

[16]KROET, Cynthia. *Google's AI feature on hold in most EU member states due to 'strict rules'.* Euronews, Apr. 1, 2025. Available at: https://www.euronews.com/next/2025/04/01/googles-ai-feature-on-hold-in-most-eu-member-states-due-to-strict-rules. Accessed on: Jan. 28, 2026.

[17]ACT THE APP ASSOCIATION. *The hidden cost of AI regulations: A survey of EU, UK, and U.S. companies.* Washington, DC: ACT The App Association, 2025. Available at: https://actonline.org/the-hidden-cost-of-ai-regulations-a-survey-of-eu-uk-and-u-s-companies/. Accessed on: Jan. 28, 2026.

[18]CHEE, Foo Yun. *Airlines, hotels warn Google changes may benefit large intermediaries.* Reuters, Mar. 6, 2024. Available at: https://www.reuters.com/technology/airlines-hotels-warn-google-changes-may-benefit-large-intermediaries-2024-03-06/. Accessed on: Jan. 28, 2026.

[19]GOOGLE. *New competition rules come with trade-offs.* Google Blog, Apr. 5, 2024. Available at: https://blog.google/company-news/inside-google/around-the-globe/google-europe/new-competition-rules-come-with-trade-offs/. Accessed on: Jan. 28, 2026.

[20]DELGADO, Javier. *DMA implementation sinks 30% of clicks and bookings on Google Hotel Ads.* Mirai Blog, May 7, 2024. Available at: https://www.mirai.com/blog/dma-implementation-sinks-30-of-clicks-and-bookings-on-google-hotel-ads/. Accessed on: Jan. 28, 2026.

[21]COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION EUROPE (CCIA EUROPE). *Most Europeans find online experience worse under DMA, consumer survey reveals.* Brussels: CCIA Europe, 2025. Available at: https://ccianet.org/news/2025/09/most-europeans-find-online-experience-worse-under-dma-consumer-survey-reveals/. Accessed on: Jan. 28, 2026.

[22]RIBERA MARTÍNEZ, Alba. *Microsoft's DMA Compliance Workshop – The Power of No: The (Odd) New Kid on the Block.* Kluwer Competition Law Blog, Mar. 27, 2024. Available at: https://legalblogs.wolterskluwer.com/competition-blog/microsofts-dma-compliance-workshop-the-power-of-no-the-odd-new-kid-on-the-block/. Accessed on: Jan. 28, 2026.

Preserved incentives for gatekeepers to innovate and offer new services	Contrary to the expectation that gatekeepers would retain full incentives to innovate, DMA interoperability and sideloading obligations have affected feature availability and platform safeguards. Apple initially delayed the rollout of Apple Intelligence in the EU compared to other markets, citing compliance and security concerns, while iPhone Mirroring and SharePlay Screen Sharing enhancements have not been rolled out in the EU to date[23]. The DMA also requires sideloading and third-party app stores. Over 95% of malicious Android apps are associated with sideloading, increasing exposure to malware, phishing, and fraud[24]. Third-party app marketplaces and alternative payment flows may weaken centralized consumer protections and increase exposure to fraud and scams[25].
Better outcomes for consumers, including more choice, easier switching, and fairer prices	Instead of improving consumer outcomes, evidence suggests that users face less efficient search experiences and increased friction. Survey indicates that 62% of Europeans face longer search times, and 42% of frequent travelers find flight and hotel search results less helpful following service de-integration. Consumers report a strong preference for pre-DMA functionalities and express willingness to pay over €100 to restore the prior user experience, suggesting reduced consumer surplus and a deterioration in perceived service quality[26].

[23]CHEE, Foo Yun. *Apple to delay launch of AI-powered features in Europe, blames EU tech rules.* Reuters, June 21, 2024. Available at: https://www.reuters.com/technology/artificial-intelligence/apple-delay-launch-ai-powered-features-europe-blames-eu-tech-rules-2024-06-21/. Accessed on: Jan. 28, 2026.

[24]BAUER, Matthias; PANDYA, Dyuti. *Cybersecurity at risk: How the EU's Digital Markets Act could undermine security across mobile operating systems.* Brussels: European Centre for International Political Economy (ECIPE), Feb. 2025. Available at: https://ecipe.org/publications/eu-dma-undermine-security-mobile-operating-systems/. Accessed on: Jan. 28, 2026.

[25]*Ibid.*

[26]MISHRA, Aman; PORTUESE, Aurelien. *Early insights from the DMA: How is the EU's ex-ante law faring?* ET LegalWorld, Oct. 17, 2024. Available at: https://legal.economictimes.indiatimes.com/news/opinions/early-insights-from-the-dma-how-is-the-eus-ex-ante-law-faring/114319191. Accessed on: Nov. 19, 2025.

3.2. *Digital Markets, Competition and Consumers Act (DMCCA)*

3.2.1. History

The DMCCA emerged after the British government identified, through studies and public consultations, that certain economic activities carried out by a small number of companies operating in digital services could create obstacles to innovation and economic growth[27].

This initiative began in 2018, when the government established the Digital Competition Expert Panel to examine competition in digital markets. The Panel concluded its work in 2019 with the recommendation that specific tools and regulation be created for digital markets.[28]

Based on the analyses conducted by the experts, concerns were raised that existing antitrust and consumer-protection laws might not adequately address some challenges in the digital markets. In this context, the British government undertook institutional reforms and clarified the policies to be applied in a public consultation held between July and October 2021. The consultation received 105 submissions.

Thus, the public debate on how to regulate consumer protection and safeguard competition in digital markets was lengthy and procedurally structured, culminating in the proposal of the DMCCA in April 2023 and its approval in May 2024[29].

3.2.2. Designation, Duties and Supervision

The DMCCA, although influenced by the DMA, restructures its regulatory pillars by adopting an approach more centered on individualized assessments. Instead of the gatekeeper category, the British framework introduces the notion of Strategic Market Status (SMS). The SMS applies to companies that hold substantial and entrenched market power and that occupy a strategic position with respect to a specific digital activity.

[27]UNITED KINGDOM. *Explanatory Notes: Digital Markets, Competition and Consumers Act 2024* (chapter 13). London: The Stationery Office, 2024, p. 5. Available at: https://www.legislation.gov.uk/ukpga/2024/13/pdfs/ukpgaen_20240013_en.pdf.

[28]UNITED KINGDOM. *Digital Competition Expert Panel. Unlocking Digital Competition: Report of the Digital Competition Expert Panel.* London: HM Treasury, 2019. Available at: https://assets.publishing.service.gov.uk/media/5c88150ee5274a230219c35f/unlocking_digital_competition_furman_review_web.pdf. Accessed on: Nov. 5, 2025.

[29]UNITED KINGDOM. *Digital Markets Unit and the Digital Markets Competition Regime.* London: GOV.UK, published on Apr. 7, 2021; last updated on Dec. 19, 2024. Available at: https://www.gov.uk/government/collections/digital-markets-unit. Accessed on: Nov. 5, 2025.

This strategic position is defined by the fact that the company operates a service used by a significant number of other businesses, enabling it to influence market standards and even extend its power into other digital activities. This definition, set out in Article 6 of the DMCCA, reflects a broader regulatory choice: **whereas the DMA identifies a predetermined set of platforms that may be designated, the British model seeks to capture a wider range of situations in which competitive dynamics may be distorted.**

Before designating a company as having SMS or imposing specific obligations, the Competition and Markets Authority (CMA) must open a formal investigation, assess evidence, consult interested stakeholders, and develop a set of conduct requirements tailored to the risks identified in each digital ecosystem. The model therefore establishes a regulatory architecture that allows the CMA, based on a wide discretionary power, to tailor obligations on a case-by-case basis, according to the characteristics of each platform.

However, the power granted to the CMA to calibrate obligations on a case-by-case basis has been criticized for potentially generating regulatory asymmetries, creating a high dependence on the individual judgment of regulators, and producing an enforcement landscape marked by variation and uncertainty over time. Thus, the excessive discretion afforded to the CMA to personalize obligations carries the risk of inconsistent and unpredictable enforcement[30].

In this sense, the UK government recognized the prospective negative impact that such broad authority would have on investment attraction, business certainty, and the nation's pro-growth agenda. Consequently, the UK government issued a new "Strategic Steer" to the CMA[31], explicitly instructing the regulator to prioritize economic growth and international competitiveness in its decision-making, thereby demonstrating the UK's openness to global companies. This policy reorientation was accompanied by changes in the leadership of the CMA, with the replacement of its Chair by an interim appointee associated with a more pro-growth and business-oriented approach[32].

3.2.3. Controversies

Similar to the debate in the EU, the British regulatory framework has also sparked controversy regarding the appropriate scope of state intervention in digital markets.

[30]MARINOVA, Miroslava. *The UK's Digital Market Regulation: The Need for a Proportionality Principle in the CMA's New Framework.* Washington, DC: GW Competition & Innovation Lab - Working Paper Series No. 2024/181, jul. 2024. Available at: https://competitionlab.gwu.edu/sites/g/files/zaxdzs6711/files/2024-07/dmcc.pdf. Acessed on: 4 nov. 2025.

[31]UNITED KINGDOM. UK Government. *Strategic steer to the Competition and Markets Authority.* 2025. Available at: https://www.gov.uk/government/publications/strategic-steer-to-the-competition-and-markets-authority/strategic-steer-to-the-competition-and-markets-authority. Accessed on: Dec. 8, 2025.

[32]BBC News. *Government ousts UK competition watchdog chair.* BBC, January 21, 2025. Available at: https://www.bbc.com/news/articles/c2d3e6zklxgo. Accessed on: Jan. 21, 2026.

The main concern has centered on the broad powers granted to the CMA to intervene preemptively and impose conduct requirements on designated companies. For critics, this regulatory architecture brings the United Kingdom closer to a "Brussels-style" model and rests on a questionable diagnosis – namely, that market power is structurally "entrenched" in sectors marked by high technological dynamism, thus justifying ex ante remedies[33].

The literature reinforces this skepticism by noting that the DMCCA has effectively transformed the CMA into a kind of *"legislator, investigator, and enforcer"*, endowing it with highly discretionary regulatory powers. This concentration of competencies, grounded in economic premises that some authors consider weak, is identified as a source of legal uncertainty.

In this context, the possibility that companies will face rules that are *"complex, unclear, and subject to constant change"* is seen as a significant obstacle to investment and innovation[34]. Thus, the concentration of powers in the CMA, combined with the limited avenues for appeal, tends to increase regulatory uncertainty and the instability of remedies, which may discourage the development and launch of new products.

Furthermore, studies estimate that the DMCCA may generate significant costs for consumers and businesses, reduce investment in digital services, and make the UK environment less attractive to innovation[35]. **Although the British model seeks more agile responses to dynamic markets, its breadth and discretionary nature may produce counterproductive effects on competition and innovation in the digital market.**

Explained:

"Entrenched" refers to a company that is so firmly established and protected in a dominant position that it becomes extremely difficult for new competitors to enter the market or displace the incumbent firm. In digital markets, this protection stems from factors such as network effects, large volumes of data, integrated ecosystems, and high switching costs, all of which continuously reinforce the leader's advantage and render its position virtually impenetrable.

[33]BROADBENT, Meredith. *UK Digital Markets, Competition and Consumers Bill: Extraterritorial Regulation Affecting the Tech Investment Climate*. Washington, D.C.: Center for Strategic and International Studies, 2024. Available at: https://www.csis.org/analysis/uk-digital-markets-competition-and-consumers-bill-extraterritorial-regulation-affecting. Accessed on: Nov. 17, 2025.

[34]Ibidem.

[35]COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION UK. *Proposed UK tech regulations under DMCC could cost consumers up to £160 billion, new research finds.* Washington: CCIA UK, Jan. 26, 2024. Available at: https://ccianet.org/news/2024/01/proposed-uk-tech-regulations-under-dmcc-could-cost-consumers-up-to-160-billion-new-research-finds/. Accessed on: Nov. 19, 2025.

4 The Foundations of Bill No. 4.675/2025

Three-point summary:

- The discussions initiated by CADE, the call for contributions, and the studies produced by the Ministry of Finance helped to build a more detailed diagnosis of the competitive challenges in Brazil's markets. This process, still limited to a relatively small group of actors, supported the view that the characteristics of digital markets strain the limits of traditional antitrust tools, thereby motivating the proposal of an ex ante regime;
- The architecture of the Bill is organized around three central pillars that define how Brazil intends to regulate platforms with structural power. These pillars combine qualitative and quantitative criteria to identify systemically relevant actors, establish a broad set of obligations aimed at promoting competition, and create an institutional structure responsible for implementing and overseeing this new regime;
- **The regulatory challenges identified, along with the prospective analysis, reveal significant uncertainties, as the international frameworks are still in the process of consolidation and their impacts remain controversial.** In Brazil, issues such as the actual scope of the regulation, its effects on innovation, the absence of a Regulatory Impact Assessment, and the risks of institutional overlap call for caution.

The formulation of Bill No. 4.675/2025 is structured around **three pillars that organize its regulatory logic and express the way Brazil intends to adapt, combine, and reinterpret elements of the European and British models.** These pillars summarize the Ministry of Finance's institutional strategy for addressing the structural power of large platforms. Understanding how each of them was designed, and which normative and institutional choices underpin them, is essential for assessing both the internal coherence of the proposal and its potentially controversial effects on competition.

4.1. *History*

Discussions on the regulation of digital markets in Brazil began even before the European proposal of the Digital Markets Act (DMA) in 2020. One of the milestones in the national debate was the conference organized by CADE in 2019, which sought to understand how to adapt Brazil's competition policy to digital markets[36]. In the years that followed, the Council became a leading actor in this debate, mapping the global state of the art[37] and publicizing its administrative actions in cases involving merger control and conduct oversight in digital markets[38].

Nevertheless, after extensive criticism of the unsuccessful Bill No. 2,768/2022 – which sought to regulate the operation of digital platforms holding "essential access control power"[39] – the Ministry of Finance moved to centralize the discussion on competition in the digital economy.

To that end, the Ministry of Finance launched Public Consultation No. 01/2024 on the economic and competition regulation of digital platforms[40], which received 301 submissions from 72 participants. In addition, the Ministry published its technical report providing input to the Secretariat for Economic Reforms regarding the competition regulation of digital platforms in Brazil[41].

Given this scenario, in the view of the Ministry of Finance, a more robust regulatory intervention would be justified on the basis of economic foundations that reveal the

[36] BRAZIL. Administrative Council for Economic Defense (CADE). *Desafios do mercado digital para a defesa da concorrência marcam primeiro dia de conferência internacional promovida pelo Cade.* Brasília: CADE, 2019. Available at: https://www.gov.br/cade/pt-br/assuntos/noticias/desafios-do-mercado-digital-para-a-defesa-da-concorrencia-marcam-primeiro-dia-de-conferencia-internacional-promovida-pelo-cade. Accessed on: Oct. 29, 2025.

[37] BRAZIL. Administrative Council for Economic Defense (CADE). *Documento de Trabalho nº 005/2020. Concorrência em mercados digitais: uma revisão dos relatórios especializados.* Brasília: CADE, 2020. Available at: https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/documentos-de-trabalho/2020/documento-de-trabalho-n05-2020-concorrencia-em-mercados-digitais-uma-revisao-dos-relatorios-especializados.pdf. Accessed on: Oct. 29, 2025.

[38] BRAZIL. Administrative Council for Economic Defense (CADE). *Cadernos do CADE: Mercados de Plataformas Digitais.* Revised and updated edition on Aug. 29, 2023. Brasília: CADE, 2023. Available at: https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos-do-cade/Caderno_Plataformas-Digitais_Atualizado_29.08.pdf. Accessed on: Oct. 29, 2025.

[39] BRAZIL. Câmara dos Deputados. *Projeto de Lei n. 2.768, de 2022*. Brasília: Câmara dos Deputados, Nov. 10, 2022. Available at: https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2337417. Accessed on: Oct. 29, 2025.

[40] BRAZIL. Plataforma Participa + Brasil. *Tomada de subsídios sobre regulação econômica e concorrencial de plataformas digitais.* Brasília: Governo Federal, Jan. 19, 2024. Available at: https://www.gov.br/participamaisbrasil/concorrencia-plataformas-digitais. Accessed on: Oct. 29, 2025.

[41] BRAZIL. Ministério da Fazenda. Secretaria de Reformas Econômicas. *Plataformas digitais no Brasil: fundamentos econômicos, dinâmicas de mercado e promoção de concorrência.* Brasília: Ministério da Fazenda, 2024. Available at: https://www.gov.br/fazenda/pt-br/central-de-conteudo/publicacoes/relatorios/sre/relatorio-economico_plataformas_publicacao_rev.pdf. Accessed on: Oct. 30, 2025.

competitive dynamics of digital platforms, as previously discussed[42].

These factors make the digital market particularly susceptible to market failures and limit the effectiveness of traditional antitrust tools, which is why the adoption of a regulatory framework aimed at updating classical competition instruments and ensuring swift ex ante intervention would be justified.

Based on this diagnosis, the Executive Branch submitted to the House of Representatives, on September 18, 2025, Bill No. 4.675/2025, which proposes amendments to the Competition Defense Law with the aim of adapting mechanisms for controlling market structures and conduct to an ex ante regulatory framework for digital platforms[43].

Currently, the Bill is moving forward in the House of Representatives at a fast pace. Two procedural requests may either expand or restrict the time for debate: one proposes creating a Special Committee, allowing for broader participation; the other requests an urgent procedure, reducing steps and limiting the contributions of different stakeholders. While similar initiatives in the EU and the UK took more than two years of discussion before being approved, Brazil may decide on this matter in just a few months. The question is: are we heading in the right direction?

Although the Bill is part of an international movement to update competition laws in light of the specificities of digital markets, it is important to emphasize that rushed discussions on this matter may lead to undesirable consequences. **This is particularly relevant given that the ex ante regimes that appear to inspire the Brazilian legislator are recent, and that evidence regarding their potential effects on "digital markets" is only beginning to emerge.**

Explained:

"Market failures" are situations in which the free interaction between supply and demand does not produce economically or socially efficient outcomes. In other words, even when each economic agent acts rationally in their own self-interest, the market fails to generate the optimal quantity of goods and services, allocate resources efficiently, or account for negative effects that are not internalized by market participants.

[42]BRAZIL. Ministério da Fazenda. Secretaria de Reformas Econômicas. *Plataformas digitais no Brasil: fundamentos econômicos, dinâmicas de mercado e promoção de concorrência.* Brasília: Ministério da Fazenda, 2024. Available at: https://www.gov.br/fazenda/pt-br/central-de-conteudo/publicacoes/relatorios/sre/relatorio-economico_plataformas_publicacao_rev.pdf. Accessed on: Oct. 30, 2025.

[43]BRAZIL. Câmara dos Deputados. Projeto de Lei n. 4675, de 2025. *Altera a Lei n. 12.529, de 30 de novembro de 2011, dispõe sobre os processos de designação de agentes econômicos de relevância sistêmica em mercados digitais e de determinação de obrigações especiais a agentes econômicos de relevância sistêmica e cria a Superintendência de Mercados Digitais no âmbito do Conselho Administrativo de Defesa Econômica.* Brasília: Câmara dos Deputados, 2025. Available at: https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2562481. Accessed on: Oct. 30, 2025.

Explained:

"Ex officio" means that the regulatory authority initiates the proceeding on its own initiative; "upon complaint" means that the process begins following a formal request submitted by interested third parties.

A "concentration act" is any transaction that alters the structure of a market by combining companies or bringing their activities closer together. It includes, for example, mergers, acquisitions of control or equity stakes, joint ventures, associations between competitors, long-term agreements that create meaningful integration, and even asset acquisitions when they may affect competition.

"Tying" (or "tying arrangements") occurs when a supplier makes the purchase of one product or service conditional upon the acquisition of another, limiting consumer choice and potentially harming competition.

"Portability" is the user's right to transfer their data, information, or service from one provider to another in a simple and secure manner, without losing content or essential functionalities.

"Interoperability" is the ability of different systems, platforms, or services to communicate with one another, allowing them to operate in an integrated manner.

4.2. *Thematic Pillars of the Bill*

4.2.1. Designation of Systemically Relevant Actors

Regarding the designation of systemically relevant actors, the Bill establishes that prior identification is a necessary condition for imposing special obligations. **The legislative proposal combines qualitative criteria – such as network effects and access to relevant data – with a minimum quantitative criteria, namely, global gross revenue exceeding R$ 50 billion or domestic revenue above R$ 5 billion.** These thresholds may be adjusted through a secondary joint act issued by the Ministry of Finance and the Ministry of Justice and Public Security.

The decision to designate a systemically relevant actor must follow an administrative procedure before CADE, conducted by the SMD, which may initiate the process ex officio or upon a formal complaint. Once the initial phase is concluded, the SMD will forward a reasoned preliminary opinion to the Administrative Tribunal for Economic Defense for a final decision. The Tribunal's final decision will apply to the entire economic group of the designated actor and will remain valid for ten years, with the possibility of renewal through a new administrative proceeding. Once designated, the actor must maintain an office in Brazil.

4.2.2. Special Obligations

With respect to the imposition of special obligations, the bill authorizes CADE to determine which measures will be applied to designated actors. The obligations outlined in the proposal are intended to reduce barriers to entry, safeguard the competitive process in the market, and promote freedom of choice for users and market participants.

In this context, CADE may require systemically relevant actors to **(i)** submit all concentration act – such as the acquisition of other companies – to prior review; **(ii)** adopt transparency measures concerning terms of use, ranking and display criteria, pricing structures, remuneration, and fees; **(iii)** refrain from conduct that restricts competition, favors their own offerings (self-preferencing), imposes tied selling, or limits access to essential inputs; **(iv)** implement free portability and interoperability tools, including allowing the installation of third-party applications; **(v)** ensure access to data and performance metrics for their products and services; **(vi)** allow changes to default settings, including the installation and uninstallation of applications; and **(vii)** establish effective mechanisms

for handling complaints and disputes, among other measures.

The obligations will follow the same procedure established for the designation of systemically relevant actors and may be imposed either concurrently or individually through a final decision of the Administrative Tribunal for Economic Defense. In addition, compliance oversight will fall to the SMD, based on the submission of conformity reports prepared either by the economic agent itself or by an independent auditor.

4.2.3. Digital Markets Superintendence

Finally, the creation of the Digital Markets Superintendence (SMD) provides a dedicated institutional arrangement for the ex ante policy within CADE, with the structure and competencies defined by Bill No. 4.675/2025. Headed by a Superintendent appointed by the President of the Republic and approved by the Federal Senate, the SMD will be responsible for initiating, conducting, monitoring, and sanctioning proceedings, as well as submitting to CADE's Tribunal both the designation processes and the imposition of special obligations on systemically relevant actors.

In addition, the Bill provides that the analysis of coordinated conduct (such as cartels) and merger operations involving systemically relevant actors will remain under the authority of CADE's General Superintendence.

Explained:

"Coordinated conduct" refers to practices in which two or more companies begin to act in alignment, even without a formal agreement, thereby reducing or eliminating competition between them. This includes situations such as price fixing, market or customer allocation, arrangements to limit output, the exchange of competitively sensitive information, or the alignment of strategies that should otherwise remain independent. Such conduct is unlawful because it causes competitors to behave as if they were a single entity, harming consumers and the competitive process.

4.3. *Brazil's Regulatory Challenges*

As in the European Union and the United Kingdom, **the diagnosis that traditional competition law is insufficient to address the challenges posed by digital markets remains controversial in Brazil.**

For example, CADE has stated that *"[traditional] competition law and the legislation applied in this area are highly adaptable and can therefore be applied to a wide variety of business practices"* in relation to digital markets[44]. Moreover, CADE's recent actions in digital markets show

[44]BRAZIL. Administrative Council for Economic Defense (CADE). *Cadernos do CADE: Mercados de Plataformas Digitais.* Revised and updated edition on Aug. 29, 2023. Brasília: CADE, 2023. p. 246. Available at: https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos-do-cade/Caderno_Plataformas-Digitais_Atualizado_29.08.pdf. Accessed on: Oct. 29, 2025.

that traditional competition tools have been used adequately and speedily. In the past few years, its Tribunal **(i)** closed the Google Shopping investigation after finding no evidence of harm[45]; **(ii)** reached a settlement with iFood to halt exclusivity practices[46]; **(iii)** opened investigations into Apple[47], including proceedings that resulted in both a precautionary order later contested in court[48] and, more recently, the approval of a settlement agreement (TCC) concerning alleged anticompetitive practices in the iOS ecosystem[49]; and **(iv)** opened an inquiry against Meta and imposed a precautionary measure suspending the implementation of new WhatsApp terms due to the use of AI tools (other than MetaAI) on its platform[50].

Together, these cases illustrate that CADE already has fast-acting instruments, such as interim measures and negotiated settlements, which allow it to intervene in digital markets, even within an ex post framework. This does not settle the debate on whether additional ex ante tools may be useful, but it does show that any legislative reform should proceed carefully and be grounded in a well-supported diagnosis before reshaping Brazil's institutional model.

The Apple case is particularly illustrative in this regard. **CADE imposed behavioral obligations that closely resemble some of the duties proposed in the Bill, including restrictions on discriminatory practices and limitations on tying within the iOS ecosystem.** Although adopted within an ex post enforcement framework, these measures had clear prospective effects and aimed at preventing future harm, rather than merely addressing past conduct. This suggests that, at least in some complex "digital markets", CADE has already demonstrated the capacity to deploy remedies functionally similar to those envisioned under an ex ante regime.

The Meta case offers a complementary example. CADE's General Superintendence opened an administrative inquiry to investigate suspected abuse of dominance arising

[45]BRAZIL. Administrative Council for Economic Defense (CADE). *Voto do Relator Conselheiro Mauricio Oscar Bandeira Maia.* Disponível em: https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_documento_consulta_externa.php?DZ2uWeaYicbuRZEFhBt-n3BfPLIu9u7akQAh8mpB9yPHUhYhwVr_Fy5GjGeoicanFI5jnfj6G1JbwffnEXRm88aaHv2JhZaXQxKL1AtlzCVpeLrcA8lvKyuEfYnt1gH-. Acesso em: 8 dez. 2025.

[46]BRAZIL. Administrative Council for Economic Defense (CADE). *Cade celebra acordo com iFood em investigação de exclusividade no mercado de marketplaces de delivery on-line de comida.* CADE, Feb. 8, 2023. Available at: https://www.gov.br/cade/pt-br/assuntos/noticias/cade-celebra-acordo-com-ifood-em-investigacao-de-exclusividade-no-mercado-de-marketplaces-de-delivery-on-line-de-comida. Accessed on: Dec. 8, 2025.

[47]BRAZIL. Administrative Council for Economic Defense (CADE). *SG determina aplicação de medida preventiva contra a Apple.* CADE, 25 nov. 2024. Disponível em: https://www.gov.br/cade/pt-br/assuntos/noticias/sg-determina-aplicacao-de-medida-preventiva-contra-a-apple. Acesso em: 8 dez. 2025.

[48]ALMEIDA, Bruno. *Exclusivo: TRF-1 suspende liminar e mantém medida preventiva do CADE contra a Apple.* Valor Econômico, São Paulo, Mar. 6, 2025. Available at: https://valor.globo.com/empresas/noticia/2025/03/06/exclusivo-trf-1-suspende-liminar-e-mantem-medida-preventiva-do-cade-contra-a-apple.ghtml. Accessed on: Dec. 8, 2025.

[49]BRAZIL. Administrative Council for Economic Defense (CADE). *Cade homologa TCC em investigação sobre práticas da Apple no iOS.* CADE, December 23, 2025. Available at: https://www.gov.br/cade/pt-br/assuntos/noticias/cade-forma-maioria-pela-homologacao-de-tcc-em-investigacao-sobre-praticas-da-apple-no-ios. Access on: January 7, 2026.

[50]BRAZIL. Administrative Council for Economic Defense (CADE). *Cade abre inquérito contra Meta e aplica medida preventiva suspendendo Novos Termos do WhatsApp sobre IA.* CADE, January 12, 2026. Available at: https://www.gov.br/cade/pt-br/assuntos/noticias/cade-abre-inquerito-contra-meta-e-aplica-medida-preventiva-suspendendo-novos-termos-do-whatsapp-sobre-ia. Access on: January 21, 2026.

from new WhatsApp Business Solution Terms governing the access of AI tool providers to the platform. As a precautionary measure, CADE suspended the implementation of the new terms in order to preserve existing competitive conditions while assessing whether the changes could foreclose markets, exclude competitors, or unduly favor Meta's proprietary AI tool. Although adopted within an ex post enforcement framework, the measure temporarily constrained platform conduct on a preventive basis, including the application of a type of intervention expressly contemplated in Bill No. 4,675/2025.

Those cases raise a broader question as to whether, given CADE's existing ability to adopt effective precautionary measures without legislative reform, the creation of a new ex ante regulatory regime is strictly necessary to achieve the objectives pursued by the Bill.

This view suggests that concerns about the exhaustion of ex post enforcement should be approached with caution, and that any identified shortcomings could potentially be addressed through incremental improvements, rather than through the immediate adoption of a structurally distinct regime centered on preventive ex ante obligations.

It is in this context of theoretical uncertainty and economic risk that the absence of a Regulatory Impact Assessment (RIA) reveals an unavoidable shortcoming of Bill No. 4.675/2025. The RIA is an essential tool for good regulation, designed to assess in advance the costs, benefits, and potential side effects of state intervention, serving as the primary instrument to inform the regulator's decision-making process[51].

The seriousness of this omission is amplified by the regulatory model chosen by Brazil. As examined above, Bill No. 4.675/2025 aligns itself with the British model, which grants the authority broad discretion to define and calibrate obligations in a case-by-case and proportionate manner. As the President of CADE himself warned when referring to the CADE's new powers, *"the downside is that this can lead to overreach"*[52]. The United Kingdom, however, legitimized this choice through a prior impact assessment that justified the intervention and its objectives within its specific context[53].

It is important to note that the studies conducted by the Ministry of Finance are commendable for advancing the debate in Brazil. However, their scope is limited to mapping market dynamics and does not include quantifying compliance costs or assessing the prospective benefits of the specific intervention proposed in the Bill. There is not even a comprehensive view of which companies in the country would, in practice, be affected by the measure.

Lastly, perhaps the greatest risk associated with Bill No. 4,675/2025 concerns the timeline and the need for regulatory maturation. As noted above, robust international experiences require time: the European Union spent more than four years between the initial proposal and the full applicability of the DMA (2020–2024)[54], and the United Kingdom began its process in 2021, approving the DMCCA only in 2024, after extensive multisector consultations.

Although the efforts undertaken by the Ministry of Finance represent valuable and technically sound initiatives, it is important to recognize that these contributions are not directly tied to the content of Bill No. 4.675/2025. In fact, these studies are limited to offering a general overview of the regulatory debate in Brazil and abroad, without examining the Bill's specific provisions or assessing how they will affect the national digital ecosystem or interact with the existing normative and institutional framework.

4.4. *A Critical Look Toward the Future*

International experience shows that both the European DMA and the British DMCCA are regulatory regimes still in the early stages of implementation. While some early analyses have raised concerns about potential effects on growth, innovation, and startups, the overall economic and competitive impacts remain inconclusive. The specialized literature indicates that, although there are widespread calls for more agile responses to address the structural power of large platforms, there is no clarity regarding the effectiveness of these tools, nor about their potential adverse effects on innovation, which should serve as an alert for any future regulatory undertaking.

These are, therefore, regulatory models that are still being tested, evaluated, and adjusted. **This instability calls for caution on the part of the Brazilian legislature, which is now debating a legislative proposal at a moment when the very countries that serve as reference points are still learning from their own regulatory experiences.**

Foundational questions must be addressed before the country consolidates a new regime: *Which companies would, in practice, fall under the regulation? Are these companies predominantly domestic or foreign? How will this regulation affect adjacent sectors, startups that rely on M&A operations, data ecosystems, and innovation chains?* **Clear answers to these questions are essential to ensuring that competition policy stimulates – rather than restricts – the competitiveness of Brazil's economy.**

[51] BLANCHET, Luiz A.; BUBNIAK, Priscila L. T. *Análise de impacto regulatório: uma ferramenta e um procedimento para a melhoria da regulação.* Revista de Ciências Jurídicas – Pensar, Fortaleza, v. 6, no. 2, pp. 83–97, 2017. Available at: https://ojs.unifor.br/rpen/article/view/4219. Accessed on: Nov. 5, 2025.

[52] FOLHA DE SÃO PAULO. *Cade terá fala mansa e porrete na mão com big techs americanas, diz presidente.* Folha de S.Paulo, 16 Jan. 2026. Available at: https://www1.folha.uol.com.br/mercado/2026/01/cade-tera-fala-mansa-e-porrete-na-mao-com-big-techs-americanas-diz-presidente.shtml. Accessed on: Jan. 21, 2026.

[53] UNITED KINGDOM. *Impact Assessment: A new pro-competition regime for digital markets – Annex 1.* London: Department for Business and Trade, 2023. Available at: https://publications.parliament.uk/pa/bills/cbill/58-03/0294/ImpactAssessmentAnnex1.pdf. Accessed on: Nov. 5, 2025.

[54] EUROPEAN COMMISSION. *About the Digital Markets Act (DMA).* Brussels: European Commission, [2024]. Available at: https://digital-markets-act.ec.europa.eu/about-dma_en. Accessed on: Nov. 5, 2025.

At the same time, the institutional design proposed in the Bill contains sensitive elements that require multisector debate and democratic maturation. The designation criteria, the degree of discretion granted to the regulatory authority, the absence of key definitions, and the designation timeline are only a few examples of issues that may generate legal uncertainty and unintended systemic effects.

These elements demonstrate that the debate on Bill No. 4.675/2025 cannot be confined to the text of the proposal, but instead requires a broader reflection on the role of the State in regulating rapidly evolving digital ecosystems. **For this reason, the next chapter delves into the issues that warrant greater attention from lawmakers, bringing together key points for a qualified debate and for the construction of a regime that preserves proportionality, legal certainty, and the innovative dynamism of Brazil's digital economy.**

5 Key Points of Attention for the Brazilian Regulation

Based on the foregoing, we present below a preliminary and non-exhaustive set of points of attention within Bill No. 4.675/2025 that justify the need for a deeper debate on this topic in the country.

Table 2 - Systematization of the Material and Structural Key Points of Attention in Bill No. 4,675/2025

Material Aspects

1. Why allow eligibility criteria to be modified through infralegal acts?

Description

The Bill sets a threshold of R$ 5 billion in domestic revenue or R$ 50 billion in global revenue to characterize systemically relevant actors, with the possibility of adjusting these amounts through a joint act issued by the Ministry of Finance and the Ministry of Justice.

Rationale

The administrative authority to change the law's entry criteria (who is or is not a systemic actor) through infralegal acts creates a regulatory "moving target."

The literature on ex ante regulation highlights predictability as a key benefit[55]. Expanded regulatory discretion introduces legal uncertainty, which is itself a cost that may discourage investment and innovation, affecting the market as a whole.

Thus, the power granted is not merely the power to designate systemically relevant actors, but the power to alter the very scope of application of the law through infralegal measures.

Possible Solution

A more technically robust alternative would be to subject any change to the quantitative designation criteria to a formal review procedure, with explicit legal parameters and meaningful public participation, thereby preventing the scope of the law from being redefined through a simple infralegal act.

[55]BAUER, Matthias; PANDYA, Dyuti; SHARMA, Vanika. *EU Export of Regulatory Overreach: The Case of the Digital Markets Act (DMA).* Brussels: European Centre for International Political Economy (ECIPE), Apr. 2025. Available at: https://ecipe.org/wp-content/uploads/2025/04/ECI_25_PolicyBrief_08-2025_LY03.pdf. Accessed on: Nov. 5, 2025.

Explained:

"Killer acquisitions" refer to the purchase of early-stage, innovative companies by large corporations with the aim of eliminating a future competitor rather than developing the innovation. The primary concern is that such acquisitions may harm competition and innovation by suppressing the potential of an emerging rival.

2. Is it proportionate and efficient to require notification of every merger transaction?

Description

The Bill provides that all merger and acquisition operations involving systemic actors must be submitted to CADE, regardless of the usual criteria established under the Competition Defense Law (LDC).

Rationale

Embora Although the provision seeks to offer a direct response to the theory of killer acquisitions, this broad and unrestricted obligation has the potential to overload CADE's review system and delay transactions of limited economic relevance, without generating proportional gains for competition.

This criticism is reinforced by recommendations from the Organisation for Economic Co-operation and Development (OECD), which warn of the additional administrative burden and disproportionate costs associated with notifying transactions of limited economic relevance[56]. Moreover, requiring that every merger operation be submitted in advance to CADE may produce negative effects, especially given the continuous increase in the number of notifications received by the authority. In 2024 alone, 712 filings were recorded, representing an increase of approximately 20% compared to the previous year[57].

Additionally, the increase in regulatory uncertainty and costs surrounding the acquisition of startups by large platforms functions as an implicit "M&A tax," threatening the principal monetization mechanism of the innovation ecosystem. Very often, acquisition by a major company is the exit pathway for firms backed by venture capital. This mechanism is critical for inducing risk-capital investment and enabling startups to enter technology markets..

Possible Solution

A more proportionate alternative would be to replace universal notification with a tiered model based on objective criteria related to competitive risk. This would involve adopting specific triggers for notification (such as the relevance of the assets involved), expanding the fast-track procedure for transactions of low materiality (i.e., a summary review), and, where appropriate, allowing ex post notifications for small-scale acquisitions carried out by major platforms..

[56]ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD). *Start-ups, killer acquisitions and merger control.* Paris: OECD Publishing, 2020. Available at: https://www.oecd.org/content/dam/oecd/en/publications/reports/2020/05/start-ups-killer-acquisitions-and-merger-control_201583e4/dac52a99-en.pdf. Accessed on: Nov. 5, 2025.

[57]BRAZIL. Administrative Council for Economic Defense (CADE). *Cade bate recorde de notificação de atos de concentração em 2024.* Brasília, Jan. 23, 2025. Available at: https://www.gov.br/cade/pt-br/assuntos/noticias/cade-bate-recorde-de-notificacao-de-atos-de-concentracao-em-2024. Accessed on: Nov. 5, 2025.

3. How can obligations be applied without clear definitions?

Description

The Bill refers to “end user,” “professional user,” and “business user” without providing clear definitions for these terms.

Rationale

The absence of definitions is not a trivial ambiguity; it renders the ex ante obligations (such as interoperability, portability, and data access) potentially unenforceable. These obligations fundamentally depend on the legal relationship between the systemically relevant actor, the “business user,” the “professional user,” and the “end user.”

Criticism of missing or vague definitions was one of the main reasons previous legislative proposals in Brazil failed, such as Bill No. 2,768/2022[58]. By not defining its most basic terms, Bill No. 4,675/2025 repeats this fundamental mistake.

In the case of the DMA, this distinction is not merely theoretical; it is precisely what makes the obligations operational. For example, the DMA sets out rigorous definitions of “business user” (Art. 2(21)) and “end user” (Art. 2(20)), which are necessary to articulate obligations such as portability for end users (Art. 6(9)).

Possible Solution

A consistent solution would be to incorporate into the Bill clear and operational legal definitions for “end user”, “professional user”, and “business user”. Below is a suggested formulation, focused on operational clarity and enforceability:

> **“End user”** means a natural person using a digital service for personal purposes, a notion that aligns with the concept of final consumer under the Consumer Protection Code (CDC);
>
> **“Business user”** means any natural or legal person using a digital service to offer goods or services to end users, which corresponds functionally to the definition of provider in the CDC; and
>
> **“Professional user”** means any natural or legal person that uses a digital service for professional or commercial purposes, without offering goods or services to end users through that service.

Such terminological standardization is essential to making obligations such as interoperability, portability, and data access enforceable, as these depend on the nature of the relationship between each type of user and the systemic actor.

[58]PARISI, Rafael Rossini. *The regulation of competition in Brazil: comments on the Digital Markets Law Bill (PL 2768/2022).* GW Competition & Innovation Lab Working Paper Series, no. 2024/1, Washington, DC, 2024. Available at: https://competitionlab.gwu.edu/sites/g/files/zaxdzs6711/files/2024-03/wp-2024_1.pdf. Accessed on: Nov. 5, 2025.

4. Do digital markets change over ten years or ten months?

Description

Once designated, a systemically relevant actor remains in that status for up to ten years, renewable under the terms set out in the Bill.

Rationale

Given the speed of technological change and evolving business models in the digital sector, a ten-year period may be seen as incompatible with market dynamics.

By comparison, the DMA adopts a shorter and more dynamic timeline, requiring the European Commission to review gatekeeper designations every three years (Art. 4(2)), which allows for a timely reassessment of market conditions. Similarly, the DMCCA provides that SMS designation lasts for up to five years and allows the designated company to petition for removal of its designation before the end of the term if there has been a material change in the circumstances that originally justified it[59].

This possibility of periodic review ensures dynamic adaptation, preventing both the undue perpetuation of obsolete obligations and the emergence of regulatory gaps in the face of new practices. Without provisions for periodic reassessment over a ten-year horizon, the Brazilian regime risks becoming detached from technological reality, potentially maintaining obligations even after significant market shifts. The institutional design proposed, therefore, lacks dynamic updating mechanisms—something the literature identifies as a critical feature of effective ex ante regulation[60].

Possible Solution

A balanced solution would be to replace the fixed ten-year term with a designation model that includes mandatory periodic reviews. Reviews every three or five years, combined with the possibility of early reassessment when there are material changes in the market, would allow the classification of actors to keep pace with the speed characteristic of digital markets.

Structural Aspects

5. What does the Bill mean by “digital markets”?

Description

The Bill repeatedly uses the expression “digital markets” without providing a legal definition, even though the term is central to determining the scope of the regulation. Yet digitalization now permeates nearly all economic sectors, making it unclear where a

[59]UNITED KINGDOM. Competition and Markets Authority (CMA). *Digital markets competition regime guidance.* London: CMA, 2024. p. 42. Available at: https://assets.publishing.service.gov.uk/media/6762f4f6cdb5e64b69e307de/Digital_Markets_Competition_Regime_Guidance.pdf. Accessed on: Nov. 6, 2025.

[60]SIMONE, Cristina; LAUDANDO, Antonio. *Principles and obligations of the Digital Markets Act in regulating the economic power of gatekeepers: positive, negative or trade-off effects? Electronic Markets*, v. 35, no. 1, pp. 1–27, 2025. Available at: https://link.springer.com/article/10.1007/s12525-025-00788-6. Accessed on: Nov. 6, 2025.

"digital market" begins or ends in practice.

Rationale

Given the pervasive digitalization of economic activity, treating "digital markets" as a distinct category risks transforming an originally targeted framework into a horizontally expansive regulatory regime.

The absence of a definition undermines normative clarity and increases the risk of broad or inconsistent interpretations. By treating "digital" and "non-digital" as distinct categories, the Bill introduces an artificial separation that does not reflect economic reality: traditionally offline firms now operate with significant digital layers, while digital platforms frequently compete in hybrid or cross-channel environments. This mismatch may generate legal uncertainty regarding which firms fall under the regulation, lead to unequal treatment of companies performing similar functions, and give authorities wide discretion to retroactively shape the scope of the law.

International debates have raised similar concerns. Conceptual vagueness around 'digital markets' has been criticized not only for complicating the application of ex ante obligations, but also for enabling regulatory expansion without clear functional thresholds. The issue is not recognizing that certain platforms hold structural power, but rather tying the regulatory scope to a broad technological label instead of to the economic role actually performed by the actors.

Possible Solution

Maintain the term as used in the Bill, so as not to break with the legislative terminology, but introduce minimal, open-ended parameters clarifying when regulatory obligations may be triggered in contexts involving digital intermediation. These parameters should be grounded in economic functions, patterns of user and business dependence, substitutability, and structural features of market power, rather than in the mere technological or online nature of the service. This approach would reduce ambiguity, enhance legal certainty, and support a more coherent and proportionate regulatory framework.

6. Is high discretion compatible with regulatory predictability?

Description

Like the British DMCCA, the legislative proposal grants the SMD broad discretion to determine which actors are systemically relevant – especially on the basis of qualitative criteria – and to impose special obligations.

Rationale

The discretion granted to the SMD should be approached with caution. Although flexibility is a desirable feature in regimes designed for dynamic markets, it requires clear parameters for action and justification. Without consistent normative boundaries, the authority's margin of interpretation may expand beyond what is necessary for the effectiveness of competition policy, particularly given the political dimensions involved in this field[61].

Moreover, the comparative literature – particularly the British experience under the DMCCA – shows that tailoring obligations on a case-by-case basis increases the risk of inconsistent decision-making and reduces the predictability of the regulatory regime[62].

In the Brazilian context, this problem is heightened by the judiciary's deference to technical decisions issued by administrative bodies with specific expertise, especially when such decisions involve technical knowledge or discretionary judgment. A study published by the National Council of Justice (CNJ) shows that the Brazilian judiciary upholds the majority of acts issued by regulatory authorities[63], effectively making the administrative process the final instance in practice.

This limits substantive oversight of regulatory choices. Without political or analytical counterbalances, the regime risks turning discretion into a driver of regulatory asymmetry and legal instability. For this reason, the issue deserves broad, cross-cutting attention from Brazilian society, supported by democratic participation and institutional maturation.

Possible Solution

A structural alternative to reduce discretionary decision-making would be to codify, in the law itself, maximum limits on intervention, thereby narrowing the SMD's interpretive space. Rather than allowing the authority to extract broad and open-ended criteria from the statutory text, the legislature could define specific typologies of competitive risk and link each obligation to an objective, previously established diagnostic condition, thus reducing the scope for customization without binding reference points.

7. Why create a new Superintendency?

Description

Bill No. 4.675/2025 provides for the creation of the Digital Markets Superintendence. This new body would be headed by a superintendent appointed by the President of the Republic, following the same model currently used for CADE's General Superintendence (SG).

Rationale

The proposal to create the SMD introduces an unprecedented institutional arrangement

[61] ZANOBIA, Luana. *Entre minerais críticos e big techs: o que está na mesa de negociações entre Brasil e EUA.* VEJA, Sept. 24, 2025. Available at: https://veja.abril.com.br/economia/entre-minerais-criticos-e-big-techs-o-que-esta-na-mesa-de-negociacoes-entre-brasil-e-eua/. Accessed on: Nov. 6, 2025.

[62] MARINOVA, Miroslava. *The UK's Digital Market Regulation: The Need for a Proportionality Principle in the CMA's New Framework.* Washington, DC: GW Competition & Innovation Lab – Working Paper Series, No. 2024/181, July 2024. Available at: https://competitionlab.gwu.edu/sites/g/files/zaxdzs6711/files/2024-07/dmcc.pdf. Accessed on: Nov. 4, 2025.

[63] MARANHÃO, Juliano S. A. *A revisão judicial de decisões das agências regulatórias: jurisdição exclusiva?* In: *O judiciário e o Estado regulador brasileiro.* São Paulo: FGV Direito SP, 2016. Available at: https://repositorio.fgv.br/server/api/core/bitstreams/0c3a679f-deae-40a9-a9e2-7126d773b2d4/content. Accessed on: Nov. 4, 2025.

within CADE's current structure, which consists of (i) the Administrative Tribunal for Economic Defense; (ii) the General Superintendence (SG); and (iii) the Department of Economic Studies. Although the SMD would be positioned hierarchically at the same level as the SG, its mandate would be narrower: it would not handle merger review or coordinated conduct in digital markets – competences that would remain with the SG. Its role would be limited to the new regulatory function proposed in the bill, namely, the application of ex ante instruments to digital platforms deemed systemically relevant.

The central point of concern lies in the fact that the Ministry of Finance, in its technical reports and in the supporting materials for the legislative proposal, did not present clear technical justifications for creating a new, independent superintendence within CADE. The only explicit reference to the future institutional structure is a generic mention of a "specialized unit" within CADE responsible for implementing the new regulatory regime[64].

This level of abstraction does not appear sufficient, from an administrative or budgetary standpoint, to justify the need for an autonomous superintendence. It is worth recalling that, to date, the SG itself has carried out important analyses in digital markets – whether in merger review or in investigations of unilateral and coordinated conduct – with technical support from the Department of Economic Studies[65]. This is, therefore, an already established structure with accumulated expertise. As the head of the SG has pointed out, the more appropriate path would be the creation of a "specialized technical unit"[66], which, in our view, could be implemented, for example, through the establishment of a 12th General Coordination for Antitrust Analysis within the SG[67].

In this context, the creation of the SMD requires stronger institutional justification; otherwise, it risks constituting a departure from sound administrative reasoning and contributing to the fragmentation of CADE's internal functions. The absence of robust arguments for its functional and administrative autonomy casts doubt on whether the proposed arrangement is the most efficient and proportionate means of strengthening competition oversight in digital markets.

Additionally, the creation of a new superintendency with broad discretionary powers and a politically appointed leadership heightens the risk of regulatory capture. In highly concentrated and fast-moving markets, a regulatory unit that operates with a newly created mandate, sits outside CADE's established internal routines, and exercises broad discretionary powers, particularly under the leadership of someone appointed by the government, may face increased exposure to influence from regulated entities or political actors. Institutional arrangements characterized by high discretion, limited accountability, and weakly consolidated organizational structures may significantly increase the risk of regulatory capture, both by industry and by political actors, especially when new regulatory bodies are created[68].

Possible Solution

A more proportionate alternative would be to avoid creating a new autonomous superintendence and instead establish a specialized technical unit within the SG itself, such as a 12th General Coordination for Antitrust Analysis dedicated exclusively to the ex ante regulation of digital markets. This model preserves the expertise already accumulated by the SG, avoids internal fragmentation, reduces administrative costs, mitigates political capture risks, and maintains coherence in CADE's decision-making flow.

Source: ITS Rio, 2025.

[64]BRAZIL. Ministério da Fazenda. Secretaria de Reformas Econômicas. *Plataformas Digitais: aspectos econômicos e concorrenciais e recomendações para aprimoramentos regulatórios no Brasil.* Brasília: Ministério da Fazenda, Oct. 10, 2024. Available at: https://www.gov.br/fazenda/pt-br/central-de-conteudo/publicacoes/apresentacoes/2024/outubro/arquivo/plataformas-digitais-concorrencia_10102024-pptx-1.pdf. Accessed on: Nov. 6, 2025.

[65]BRAZIL. Administrative Council for Economic Defense (CADE). *Cadernos do CADE: Mercados de Plataformas Digitais.* Revised and updated edition on Aug. 29, 2023. Brasília: CADE, 2023. Available at: https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos-do-cade/Caderno_Plataformas-Digitais_Atualizado_29.08.pdf. Accessed on: Oct. 29, 2025.

[66]LEÃO NOGUEIRA, Diego. *Veja os planos do Administrative Council for Economic Defense (CADE) para cuidar das big techs.* Valor Econômico, June 24, 2025. Available at: https://valor.globo.com/brasil/noticia/2025/06/24/veja-os-planos-do-cade-para-cuidar-das-big-techs.ghtml. Accessed on: Nov. 6, 2025

[67]BRAZIL. Administrative Council for Economic Defense (CADE). *Coordenações-Gerais de Análise Antitruste.* Brasília: CADE, [n.d.]. Available at: https://www.gov.br/cade/pt-br/acesso-a-informacao/institucional/competencias/coordenacoes-gerais-de-analise-antitruste. Accessed on: Nov. 6, 2025.

[68]DAL BÓ, Ernesto. Regulatory Capture: A Review. *Oxford Review of Economic Policy,* v. 22, no. 2, pp. 203–225, 2006. Available at: https://scispace.com/pdf/regulatory-capture-a-review-4bihdp9pz3.pdf. Accessed on: Dec. 8, 2025.

6. Conclusion

Based on the arguments detailed throughout this study, **Bill No. 4,675/2025 raises relevant legal and economic questions that warrant further technical refinement and institutional maturation within the legislative process.** While the proposal reflects legitimate concerns regarding the challenges posed by "digital markets", several of its core assumptions and design choices would benefit from deeper empirical grounding and clearer normative calibration.

This report has identified that the transition to an ex ante model in Brazil – although inspired by internationally debated limitations of traditional antitrust tools – is being carried out in a hurried manner. The legislative proposal adopts a model of broad discretion, drawing closer to the British DMCCA, but does so without the corresponding safeguard of a Regulatory Impact Assessment capable of informing the scope, proportionality, and expected effects of such a shift.

Moreover, uncertainties and economic risks – already identified in international experiences such as the DMA and the DMCCA – are further amplified by structural shortcomings in the text of the Bill. Critical points of attention were identified, ranging from the instability of quantitative criteria, which may be altered by infralegal acts, to the repetition of fundamental errors seen in previous legislative proposals, such as the absence of clear definitions that render core obligations difficult to implement or overly dependent on administrative discretion.

In this context, the debate on platform regulation should unfold in a participatory, gradual, and evidence-based manner, taking into account international lessons and the specificities of the Brazilian market. It is essential that the House of Representatives resist legislative haste and prioritize the construction of a solid model that balances innovation, competition, and legal certainty.

Ultimately, only through a carefully informed and responsible debate will it be possible to develop a regime that promotes contestability in digital markets while preserving innovation, legal certainty, and the broader competitiveness of the Brazilian economy.

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