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# The Regulation of Competition in Brazil: Comments on the Digital Markets Law Bill (PL 2768/2022)

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# The Regulation of Competition in Brazil:

# Comments on the Digital Markets Law Bill (PL 2768/2022)

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The bill presently under consideration in the Brazilian Congress, referred to as Bill No. 2768/2022 (hereafter "the Bill"), merits a reevaluation due to its potential adverse consequences on competition and innovation in Brazil. This is particularly true due to its potential to diminish the incentives for digital platforms to allocate resources towards the Brazilian economy with the aim of delivering superior products and services to consumers. The following comments to the Bill discuss its specific provisions that necessitate meticulous reconsideration and underscore the unintended consequences that would be associated with such a bill.

The Bill is a legislative proposal that was presented to the House of Representatives of Brazil on November 10, 2022. The purpose of the law is to govern digital platforms that are currently operating in Brazil, particularly those that have a large amount of market power. According to the proposed legislation, "essential access control power holders" are defined as big digital platforms that generate an annual revenue of at least two hundred million Brazilian reals. The platforms in question are subject to various obligations as a result of this categorization, which include requirements for transparency and documentation. They are also obligated to provide their customers with non-discriminatory treatment and to satisfy certain access criteria for business users. In addition, these platforms are required to pay an inspection charge that is equal to two percent of their yearly gross operational revenue. Moreover, the National Telecommunications Agency (ANATEL) has the authority to prohibit some economic activities and impose a punishment of up to two percent of the total national revenue on platforms that violate its regulations.

One of the primary objectives of the bill is to foster greater competition and equity within the digital markets of Brazil. It addresses issues pertaining to fair competition, consumer protection, and the confidentiality of personal information. However, the bill lacks a clearly defined normative foundation for the notion of "fair competition," which is presumed to exist within digital marketplaces.

Governments are increasingly attempting to regulate digital platforms to prevent violations of regulations pertaining to content moderation, competition, and data protection. This legislation is consistent with a worldwide trend. Comparable legislative measures have been enacted or suggested in alternative jurisdictions, including the Digital Markets Act (henceforth "DMA") of the European Union. The present comments contend that not only does the existing regulatory framework for digital platforms in Brazil adequately safeguard competition, but they also propose amendments to the Bill in the event that it is enacted despite the unintended negative repercussions on the Brazilian economy and consumers.

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## I. Introduction

In light of the procompetitive effects that arise from digital platforms, it is imperative to exercise prudence when regulating digital markets in order to mitigate potential concerns. Inadequate regulation could inadvertently discourage innovation. In essence, the utmost caution is necessary. Digital platforms and the markets where they operate are not identical, which demonstrates the need for conducting a case-by-case assessment to determine whether there are concerns with respect to a specific platform or market. For example, due to the absence of substantial entry barriers, the risk of market tipping may be high in some digital markets but low in others.

The Organisation for Economic Co-operation and Development (OECD) organized the Global Forum on Competition in December 2020, and, among other things, it discussed the main types of abuse that might occur in digital markets, the unique traits of these markets, and the strategies used by authorities around the world to address these challenges. Following an extensive examination and consultation with several member organizations, including Brazil, the OECD concluded that "aggressive enforcement lacking economic theories of harm or failing to account for the risk of over-enforcement may ultimately inflict harm upon the very consumers it was intended to safeguard." Moreover, the OECD found that the majority of countries concurred that effects-based analysis should be employed rather than outright prohibitions in the majority of cases and that "actions that discourage innovation should be avoided." The OECD additionally observed that although digital markets exhibit a unique combination of characteristics that may require some modification, the foundational theories that generate competition concerns in these markets are generally consistent with those that have been validated in any other market. As a result, the OECD concluded that "a fundamental reevaluation of abuse of dominance theories" is not required.

Assessing digital markets through the lens of dynamic competition is more crucial than implementing specific regulations pertaining to them; this preference should be given over a static competition approach. Taking into account the effects on innovation and the distinctive attributes of digital markets is consistent with the necessity to adopt a dynamic approach.[2]

## II. Brazil's current antitrust tools

Article 170 of the Federal Constitution of 1988 stipulates that the economic structure of Brazil shall be established on the foundation of "free enterprise" and regulated in accordance with the following principles: (i) national sovereignty; (ii) private property; (iii) the social function of property; (iv) free competition; (v) consumer protection; (vi) environmental defense; (vii) the mitigation of regional and social disparities; (viii) the endeavor to achieve full employment; and (ix) preferential treatment for small enterprises.

[2] *See* Victor Oliveira Fernandes, *Direito Da Concorrência Das Plataformas Digitais: Entre Abuso de Poder Econômico e Inovação*, SÃO PAULO: REVISTA DOS TRIBUNAIS (2022).

By virtue of Law No. 12,529/2011 (codified as the Brazilian Competition Act), the Brazilian System for Competition Defense (SBDC) was instituted. The Conselho Administrativo de Defesa Econômica (CADE) and the Secretariat of Economy Monitoring of the Ministry of Economy constitute the components of this system. In addition, CADE, a federal adjudicative agency associated with the Ministry of Justice, was entrusted with the duty of ensuring adherence to the Constitutional principles that establish a precedent with regard to competition policy and law in Brazil. This function is applicable to markets that are regulated and unregulated. Given the intention of Bill 2768/2022 to regulate the activities of digital platforms regardless of their participation in mergers or acquisitions, the repressive and educational functions of CADE should be prioritized.

The competition authority has undertaken multiple investigations to determine whether anticompetitive practices exist in digital markets (4), with respect to the repressive function. Notable illustrations consist of the following:

- *Google Adwords* (Administrative Proceeding No. 08700.005694/2013-19), closed to the lack of evidence of illegal conduct;
- *Google Shopping* (Administrative Proceeding No. 08012.010483/2011-94), also dismissed for lack of evidence of anticompetitive practices;
- *Bradesco/Guiabolso* (Administrative Proceeding No. 08700.004201/2018-38), which resulted in the execution of a Cease-and-Desist Commitment (TCC) between CADE and the defendant;
- *Online Travel Agencies' MFN clauses* (Administrative Inquiry No. 08700.005679/2016-13), which also resulted with the execution of a TCC;
- *iFood/food delivery exclusivity clauses* (Administrative Inquiry No. 08700.004588/2020-47), also closed after a TCC was executed; and
- *Gympass/fitness gyms platform exclusivity clauses* (Administrative Inquiry No. 08700.004136/2020-65.), which also resulted in a TCC.

It is crucial to emphasize, however, that Brazil does not uphold registries of cases concerning abuse of dominance that led to the abolition of digital platforms. This stands in stark contrast to the situations in other legal systems. Two noteworthy facts can be inferred from this context. Despite the obstacles posed by the existing legal framework in Brazil and the toolkit utilized by CADE, the agency has effectively carried out its lawful mandate to investigate digital markets. Moreover, considering that the adverse effects of digital platforms have not always materialized, this technical opinion contends that the aforementioned positive effects on innovation provide support for the notion that the regulation of digital markets ought to be moderated.

CADE, in accordance with its advocacy obligations, has conducted a number of studies concerning digital markets, provided dissenting opinions on legislative proposals, and coordinated a number of awareness-raising events concerning the relationship between the digital economy and competition policy in Brazil. In this regard, it should be highlighted that CADE's Department of Economic Studies

(DEE) conducted a study[3], whereby it analyzed thoroughly reports elaborated by authorities in other jurisdictions, and included its proposals of regulating digital markets.

Moreover, during the 1990s, the Brazilian Government implemented the Brazilian Privatization Program, an initiative aimed at transferring the management of specific economic sectors, in whole or in part, to the private sector.[4] As a result, the government assumed authority and control over the sectors through the establishment of eleven regulatory agencies (6). The regulatory agencies and CADE have complementary yet distinct jurisdictions, according to the OECD. The Brazilian General Regulatory Agencies Law, Law 13,848/2019, further substantiates the aforementioned lack of jurisdictional conflict. The legislation confers jurisdiction over mergers and grants the antitrust authority the power to initiate and supervise investigations pertaining to antitrust violations in regulated industries. However, it is imperative to acknowledge the critical role of sectoral agencies, regulatory bodies with profound expertise in their specific sectors, in upholding competition legislation and fostering an environment of unrestricted trade.[5]

Furthermore, digital markets are subject to the regulatory oversight of consumer protection organizations, as mandated by Law No. 8,078/1990 (the Brazilian Consumer Protection Code). The operations of the Data Protection Agency (ANPD) are governed by Law No. 13,709/2018 (the Brazilian Data Protection Act).

## III. The Bill 2768/2022 – An Antitrust Assessment

I offer the following comments to the Bill's provisions:

| Original wording of the Bill | Opinion and comment |
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| Art. 1 This Law regulates, supervises and sanctions of digital platforms that offer services to the Brazilian public. | Neutral. New regulation concerning competition policy in digital markets is unnecessary. Given that this is an introductory provision, there would be no objections in the event that a new standard were to emerge. |
| Art. 2 The Federal Government, through the National Telecommunications Agency, is responsible for Agency, and under the terms of the policies established by the Executive and Legislative Executive and Legislative Powers, | Disagree. Should a regulatory framework be implemented for digital markets, the National Telecommunications Agency (ANATEL) does not appear to be a more suitable entity to undertake this task. place. Since the essence of the |

[3] *See* FILIPPO MARIA LANCIERI, CONCORRÊNCIA EM MERCADOS DIGITAIS: UMA REVISÃO DOS RELATÓRIOS ESPECIALIZADOS (Conselho Administrativo de Defesa Econômica, Working Paper No. 5, August 2020), 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.

[4] *See* COMPETITION ENFORCEMENT AND REGULATORY ALTERNATIVES – NOTE BY BRAZIL (Org. for Econ. Co-operation and Dev., Working Paper No. 2 on Competition and Regulation, May 10, 2021), https://one.oecd.org/document/DAF/COMP/WP2/WD(2021)14/en/pdf.

[5] See Ibid.

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| to regulate the functioning and operation of digital platforms that offer services to the Brazilian public.<br>§ Paragraph 1 The organization includes, among other aspects, the control of essential access and supervision of digital platforms that have the power to control essential access. | issues discussed in the bill (as it appears, for instance, in the DMA) pertains to antitrust, it is more appropriate to have a specialized antitrust body (e.g., CADE) handle them. |
| Art. 3 Law No. 9.472, of July 16, 1997, shall come into force added the following article 19-A:<br>"Art. 19-A In addition to the powers provided for in art. 19 of this Law,<br>the National Telecommunications Agency shall<br>I - issue rules on the operation of digital platforms that offer services to the Brazilian public, inspecting and sanctions;<br>II - rule in the administrative sphere on the interpretation of the legislation applicable to digital platforms that offer<br>services to the public, as well as on omitted cases;<br>III - administratively resolve conflicts of interest involving digital platform operators or professional users;<br>IV - repress infringements of users' rights;<br>V - exercise, in relation to digital platforms, the control, prevention and repression of economic repression of violations of the economic order, with the exception of those belonging to the Administrative Council for Economic Defense - CADE." (NR) | Disagree. The existing legal framework in Brazil adequately addresses potential concerns associated with digital markets. Modifications to the norms are unnecessary. Public authorities are equipped with the necessary toolkit. For example, CADE has conducted numerous analyses and investigations pertaining to digital markets and possesses the necessary legal authority to do so. Other public entities, including consumer protection organizations, the National Data Protection Agency (ANPD), and sectoral agencies, may also take action in accordance with their legal authorities. Law No. 13,848/2019 ensures that CADE and sectoral agencies maintain their independence and function as complementary entities. |
| Art. 4 The regulation of digital platforms that offer services to the Brazilian public, especially those that have the power to control of essential access, shall observe, among others, the following principles:<br>I - freedom of initiative;<br>II - free competition;<br>III - consumer protection;<br>IV - reduction of regional and social inequalities;<br>V - repression of the abuse of economic power;<br>VI - broadening social participation in the discussion and<br>VI - broadening social participation in the discussion and conduct of matters of public interest. | Article 170 of the Constitution appears to be the source from which these principles are stated. The objective of regulating digital platforms does not appear to be the reduction of social and regional inequalities or the expansion of social participation. Therefore, evaluating such disparities is not a component of CADE's analysis. It entails alternative forms of government intervention in the economy and alternative public policies. It goes without saying that when the government implements its competition policy, social welfare and consumers both benefit. |

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| Sole paragraph. The fundamentals will also be observed, principles and objectives related to the discipline of Internet use in Brazil, enunciated in Law No. 12.965, of April 23, 2014, as well as those related to the protection of personal data, provided for in Law No. 13,709, of August 14, 2018. | |
| Art. 5 The regulation of digital platforms that offer services to the Brazilian public will have the following objectives:<br>I - economic development with broad and fair competition between operators, as well as between other economic agents affected by their activities;<br>II - access to information, knowledge and culture;<br>III - fostering innovation and the massification of new technologies and access models;<br>IV - encouraging interoperability through open technological standards that allow communication between applications;<br>V - encouraging and defining mechanisms for data portability. | No objections. |
| Art. 6 For the purposes of this Law, the following definitions shall apply definitions:<br>I - digital platform operator: internet application provider that professionally and economically exploits the digital platform modalities set out in item II of this article;<br>II - digital platforms: internet applications, in accordance with VII of art. 5 of Law no. 12.965, of April 23, 2014, executed in the following ways following modalities:<br>a) online intermediation services;<br>b) online search engines;<br>c) online social networks;<br>d) video sharing platforms;<br>e) interpersonal communications services;<br>f) operating systems;<br>g) cloud computing services;<br>h) online advertising services offered by the operator of the<br>h) online advertising services offered by an operator of the digital platforms provided for in sub-paragraphs a) to g) of this item.<br>III - professional user: any individual or legal entity, who, within the scope of their professional or commercial activities, uses the digital platforms for the supply, paid or not, of goods or services to end users; | No objections. |

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| IV - end user: any natural or legal person who uses platforms, whether paid or not, with the exception of professional users.<br>Sole paragraph. The Executive Branch may add new modalities of digital platforms to the list provided for in item II based on in a proposal to expand the list of digital platforms drawn up by the National Telecommunications Agency after the Brazilian Internet of the Internet in Brazil (CGI.br). | |
| Art. 7 Art. 5 of Law No. 12.965, of April 23, 2014, is now come into force with the addition of the following item:<br>"Art. 5<br>.....<br>.<br>.....<br>.....<br>IX - digital platforms: types of internet applications referred to in the specific law governing their organization, functioning and operation." (NR) | No objections. |
| Art. 8 Art. 61 of Law No. 9.472, of July 16, 1997, is now the following paragraphs:<br>"Art. 61<br>.....<br>.....<br>.....<br>§ Paragraph 3 For the purposes of this Law, the internet applications provided for in<br>in item VII of art. 5 of Law no. 12.695, of April 23, 2014,<br>shall be considered a value-added service.<br>§ Paragraph 4 Digital platforms that offer services to the Brazilian public<br>Brazilian public, as referred to in the specific law that regulates their organization, functioning and operation will be considered value-added service and are subject to regulation, supervision and sanction by the National Telecommunications of Telecommunications, under the terms of art. 19-A of this Law". (NR) | No objections. |

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| Art. 9. The operators of the digital platforms referred to in Art. 6, item II, of this Law shall be considered to have the power to essential access control power when they earn annual operating revenue equal to or more than R$70 million from offering services to the Brazilian public, under the terms of the terms of regulation by the National Telecommunications Agency.<br>Sole paragraph. The reference value set out in the caput of this article will be updated annually in accordance with the General Market Price Index (IGP-M) for the fiscal year. | Disagree. This overly simplistic criterion for designating gatekeepers is not reflective of the actual market conditions. It is more simplistic than the one provided in the DMA. The metric of turnover does not adequately represent market power. Moreover, turnover cannot be utilized as a metric to determine whether a company possesses an essential facility. It is necessary to conduct a more exhaustive analysis of the market, including an evaluation of substitute products, entry barriers, and buyer power, among other variables. An additional significant concern is that neither the possibility nor the procedure for contesting a gatekeeper designation, which is specified in the DMA, is mentioned in the Bill. |
| Art. 10. The operators of digital platforms referred to in II of Art. 6 of this Law, who have the power to control essential access shall be subject to the following obligations, among others:<br>I - transparency and provision of information to the Agency on the provision of its services;<br>II - isonomic and non-discriminatory treatment in the provision of professional users and end users;<br>III - appropriate use of the data collected in the exercise of its activities;<br>IV - not refusing to provide access to the digital platform to professional users.<br>Sole Paragraph. The National Telecommunications Agency, in exercise of its regulatory and supervisory activities, may impose obligations of accounting and functional separation, as well as measures to mitigate possible abuse of economic power, including those related to portability and interoperability. | Disagree. The proposed language appears to be overly general. What specific information must be presented? What if such information pertains to trade secrets and/or confidentiality? What would the relationship between the regulator and the company entail, and when would this information be disclosed? Preemptively or upon request?<br>Concerning platform access, it is important to remember that refusal to supply is not in and of itself a prohibition by antitrust authorities around the world, including CADE. Businesses are permitted to select their own commercial partners, and it is only unlawful to refuse supply if certain conditions are met.<br>Segregating the operations of businesses is an extremely radical and extreme scenario. It would only be acceptable following a comprehensive investigation and verification of the actual impact on consumers. |
| Art. 11 In assigning the obligations set out in art. 10 of this Law shall be considered, among others:<br>I - adoption of technical, isonomic and non-arbitrary criteria;<br>II - the imposition of specific obligations for each type of digital platform, according to their characteristics;<br>III - intervention proportional to the existing risk;<br>IV - assessment of the impacts, costs and benefits of the impositions;<br>V - level of competition in the offer of each type of platform. | Disagree. Further clarification is required. Are obligations still enforceable in the absence of an investigation? Should actual harm to consumers or users not be established?<br>In what manner will the potential detriment to innovation be assessed and weighed in comparison to the purported hazards? |

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| - | Neutral. Article No. 12 was omitted from the initial proposal, which proceeds directly to Article No. 13. |
| Art. 13: Acts involving digital platforms that offer services to the Brazilian public that are aimed at any form of economic merger or incorporation of companies, formation of a company to exercise control over companies or any form of corporate grouping, are subject to the controls, procedures and conditions laid down in the general rules for the protection of the economic order.<br>§ Paragraph 1 The acts referred to in the main body of this article shall be submitted to the approval of the Administrative Council for Economic Defense, under the terms of item V of art. 19-A of Law no. 9.472, of July 16, 1997.<br>§ Paragraph 2 The operator of platforms operator who, when entering into contracts for the supply of goods and services services, adopts practices that may limit, distort or, in any way, harm free competition or free enterprise. | Neutral. There are no objections to the provision's intent. Proposed modification to the language: "competition law norms" rather than "economic order protection norms." |
| Art. 14 - The Digital Platforms Supervision Fund - FisDigi - is hereby created, under the terms of specific regulations.<br>§ Paragraph 1 - The Executive Branch may allocate part of the resources of the FisDigi to the funds mentioned in art. 7 of Law 12.087, of November 11, 2009 for exclusive use as a guarantee for the development of innovative digital products and services.<br>§ Paragraph 2 - The specific regulation provided for in the caput shall provide for on the allocation of resources provided for in § 1. | Absence of opposition to the establishment of said fund. See objections to the following provisions, however. |
| Art. 15: The Digital Platforms Supervision Fund is made up of the following sources:<br>I - the digital platforms inspection fee;<br>II - appropriations earmarked in the Union's General Budget, special credits, transfers and on lendings granted to it;<br>III - the proceeds of the credit operations it contracts, at home and abroad, and income from and abroad, and income from financial operations it carries out;<br>IV - fines imposed, donations, legacies, subsidies and other resources allocated to it; | Disagree. In practice, this provision mandates the imposition of an additional tax on digital platforms. There appears to be no causal connection between this taxation and the potential concerns regarding data privacy and competition that the bill raises. Ideally, it ought to be incorporated into an alternative form of public policy. |

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| V - any income.<br>§ Paragraph 1 The digital platform inspection fee is payable by the operators of digital platforms that offer services to the Brazilianpublic, who have the power to control essential access.<br>§ 2 The digital platform inspection fee will be paid, by March 31st each year, and its amounts will be the corresponding to 2% (two percent) of the gross operating revenue earned by the operators of digital platforms that offer services to the Brazilian public, holders of power to control essential access.<br>§ Paragraph 3 Failure to pay the digital platform inspection fee by the platforms, by the date established in this article, will result in default by the entity, which will be subject to the payment of interest of 1% (one percent) calculated on the amount of the debt per month of delay. | |
| Art. 16 Without prejudice to other civil, criminal or administrative sanctions administrative sanctions, violations of the rules set out in this Law shall be subject as the case may be, to the following sanctions, applied individually or cumulative:<br>I - a warning, with a deadline for the adoption of corrective measures;<br>II - a fine of up to 2% (two percent) of the group's turnover in in Brazil in its last financial year, excluding taxes, taking into account the economic condition of the offender and the principle of proportionality between the seriousness of the fault and the intensity of the sanction;<br>III - obligation to do or not to do;<br>IV - temporary suspension of activities;<br>V - prohibition from carrying out activities.<br>§ Paragraph 1 In the case of a foreign company jointly and severally liable for payment of the fine referred to in item II of this article its subsidiary, branch, office or establishment located in the country.<br>§ Paragraph 2 In exercising its sanctioning powers, Anatel will shall aim for responsive regulation, calibrating its rigor according to the behavior of the regulated agent.<br>§ Paragraph 3 The fine mentioned in item II may be levied on the billing for the entire period in which the conduct was practiced, being limited to to one percent (1%) of this amount. | Companies' rights to rebut and defend themselves, as is the case in CADE's proceedings, should be protected alongside due process. |

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| Art. 17 This Law comes into force on the date of its publication. | Neutral, no objections. |

As a result, the regulatory framework currently in place that oversees digital markets is sufficiently robust to handle possible market failures. Irrespective of this, the aforementioned amendments should be executed should Bill 2768/2022 be ratified.

## IV. Conclusion

The significance of digital markets in the contemporary global economy cannot be overstated. To evaluate the need for governmental intervention, it is imperative to have a comprehensive understanding of how businesses operate and interact with customers. Particularly when market failures that result in detrimental consequences for society are identified, government intervention should be approached with caution, as is the case with conventional, physical economies.

Firms have successfully delivered an extensive selection of high-quality products and services to users and consumers in the digital economy, primarily by means of innovation, as was previously mentioned.

Thus, notwithstanding the potential for digital corporations to inflict harm on consumers, such as through anticompetitive behavior, market monopolization and abuse, or infringement of users' data privacy, among other potentialities, it is imperative to acknowledge the numerous contributions of such corporations to social welfare. Therefore, governments must exercise caution regarding the regulation of digital platforms, as inadequate regulation can have detrimental effects on both innovation and consumers, ultimately yielding the opposite outcome intended.[6]

In light of the aforementioned circumstances, while certain jurisdictions are presently implementing digital market-specific regulations (e.g., the Digital Markets Act - DMA and the Digital Services Act - DSA in Europe), the results of these newly enacted standards have yet to be observed, and there is currently no assurance that they will effectively achieve their intended objectives or, more significantly, be advantageous for consumers and society at large. Indeed, a number of academics have identified the potential economic repercussions of the DMA, most notably the possibility that it will stifle innovation in the European Union.[7]

In regard to Brazil, the government is endowed with sufficient authority to address the apprehensions that emerge from digital enterprises with the necessary diligence. Corroborating this view, according to

[6] See Frederic Jenny, Competition Law and Digital Ecosystems: Learning to Walk before We Run, 30 INDUSTRIAL AND CORPORATE CHANGE 1143 (2021).

[7] See Aurélien Portuese, The Digital Markets Act: The Path to Overregulation, COMPETITION POLICY INTERNATIONAL (June 13, 2022), https://www.pymnts.com/cpi_posts/the-digital markets-act-the-path-to-overregulation/.

a BRICS Report on the Digital Economy, CADE has stated that "the current toolkit has been suitable to analyze the cases involving digital markets"[8]:

> *"Despite the challenges posed by the digital economy to competition law and policy enforcement, the Competition Authorities in general, consider that the respective antitrust tools and methods are suitable to analyze digital markets. Brazil, India and South Africa hold that the respective legal framework leaves enough room to adapt the existing concepts and tools, so that the current toolkit has been suitable to analyze the cases involving digital markets. In the words of the CCI, the existing principles and provisions of the competition law are flexible and holistic enough for antitrust assessment of practices emerging in the digital space."*

Likewise, in Brazil's contribution to the OECD's roundtable on abuse of dominance in digital markets, the country mentioned that "[a]t present, the prevailing understanding in Brazil is that there is no need to alter the legislation in place or neglect consumer welfare standards in order to face such challenges."[9]

In this sense, if all jurisdictions were to engage in regulation of digital markets, it could be troublesome since it would not duly consider each country's legal framework specificities and resources at disposal for local authorities. Moreover, the characteristics of each local market need to be taken into account, given that the market structure in each country may be very different from each other. The different perspectives held by national antitrust authorities on comparable investigations, as seen in the aforementioned Google Shopping case, which Brazil shelved after CADE conducted a thorough investigation, serve as evidence of this understanding.

In case Bill 2768/2022 is to be adopted, amending some of its provisions would be important, as highlighted in the previous section of this paper, such as: (i) attributing to CADE the role of regulating the sector; (ii) changing the criteria for gatekeeper designation so that market structures and characteristics are considered; and (iii) enabling companies' right to rebutting gatekeeper designations.

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[8] BRAZIL. THE RUSSIAN FEDERATION, INDIA, CHINA AND SOUTH AFRICA (THE BRICS COUNTRIES), *BRICS in the Digital Economy*, 41, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://cdn.cade.gov.br/Portal/Not%C3%ADcias/2019/Cade%20lan%C3%A7a%20relat%C3%B3rio%20sobre%20economia%20digital%20em%20reuni%C3%A3o%20do%20BRICS__brics_report.pdf.

[9] Org. for Econ. Co-operation and Dev., *ABUSE OF DOMINANCE IN DIGITAL MARKETS*, 5 (Summary of commentaries from the 19th Global Forum on Competition, DAF/COMP/GF/WD(2020)39) (December 8, 2020), https://one.oecd.org/document/DAF/COMP/GF/WD(2020)39/en/pdf.

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