**Digital Merger Watch**

**Public Statement in Support of the Brazilian Bill on Fair Competition in Digital Markets**

## Digital Merger Watch

Digital Merger Watch (DMW) is a global network of civil society and research organisations with the objective to prevent potentially harmful mergers in digital markets. The DMW's primary objective is to foster more fair, open and competitive digital markets by advocating for both effective enforcement of current rules and, where necessary, reforms in merger control policies worldwide. For more detailed information regarding our members and previous work on mergers and merger rules, please refer to our webpage.[1]

We are writing to express our support for the **Bill on Fair Competition in Digital Markets** (Bill of Law No. 4,675/2025), submitted by the Presidency to Congress in September 2025, which aims to strengthen the Brazilian competition authority's (*Conselho Administrativo de Defesa Econômica* or CADE) tools to address challenges in digital markets.

## Key Provisions in the Bill

Based on the last version of the text, some of the most relevant provisions of the Bill on Fair Competition in Digital Markets are:

- Creation of a specialized Digital Markets General Superintendence within CADE (Article 14-A), with the competence to recommend to CADE's final decision body the designation and the imposition of obligations or sanctions on Economic Agents with Systematic Relevance (SREA) in Digital Markets (Article 14-B) — that is, firms which are considered to be critical for competition in digital markets based on an enumerated set of criteria (Article 47-C).
- Establishment of a regulatory dialogue with designated SREAs by requiring them to have an office in Brazil and provide up-to-date contact information and identification data of their representatives (Article 47-D); as well as to submit periodic compliance reports and undergo independent audits, when requested by the Superintendence, to demonstrate compliance (Article 87-H).
- Granting CADE the power to impose a wide-ranging set of "special obligations" on SREAs (Article 47-F), including:
    - Transparency over the characteristics of any products and services they offer, and over any changes of their terms of service;
    - Duty to seek approval of all mergers, even below the legal threshold for mandatory submission to CADE;
    - Prohibition to engage in self-preferencing, tying, anti-steering, and other practices that create barriers to entry or limit access to the market, inputs or users or that are abusive or predatory;

[1] See SOMO *Digital Merger Watch*, SOMO, https://www.somo.nl/digital-merger-watch/.

    - Duties to provide interoperability and data portability, apply non-discriminatory conditions, permit the uninstalling of applications and the adjustment of defaults, grant access to data over the performance of their own products and services, provide effective complaint and dispute resolution mechanisms.
- Provisions for third-party intervention and a public hearing before any decisions of designation and imposition of special obligations, so as to guarantee the participation from civil society, academia and any affected enterprises or citizens.

**Why Is the Bill Needed for a Brazilian Digital Economy?**

The digital environment poses unique challenges for antitrust.

- The rapid growth of digital platforms — driven by network effects, economies of scale, algorithmic amplification, and data control — create risks of anticompetitive practices that are hard to detect or that may become entrenched before traditional antitrust enforcement can respond effectively (even more so when a practice is repeated across different markets).
- Traditional thresholds for submissions during merger review may fail to capture acquisition of promising startups, allowing incumbents to eliminate future competition and innovation.
- Entrants — especially startups and SMEs — face high barriers when competing with dominant platforms that employ different anticompetitive practices — harming innovation and economic growth and rendering traditional regulatory tools inadequate.
- Defending competition through new tools also means protecting user rights — including freedom of choice, pluralism, transparency, access to information, privacy, and interoperability — and preventing platforms from unilaterally imposing abusive terms of service that conflict with fairness, openness, diversity, human rights, and democracy.
- Ex ante antitrust tools broaden the instruments available to competition authorities by allowing them to prevent structural risks and harmful conduct through tailored obligations, proactive commitments, and mechanisms that address the limitations of traditional enforcement frameworks.
- Emerging regulatory tools — such as the European Digital Markets Act and recent reforms to antitrust law in Germany, the UK, and Japan — signal that Brazil risks falling behind in establishing a robust framework for its dynamic digital economy, potentially becoming a regulatory haven with limited capture of digital value creation, while these international experiences also offer valuable benchmarks to guide Brazilian reforms.
- Emerging technologies such as algorithmic amplification, while fostering disruption and competition, can entrench dominant firms' power faster than enforcement can react, making ex ante antitrust tools essential to prevent structural harm before it occurs.

**Debunking Myths**

1. *Regulation does not kill innovation; it shapes and promotes it*

Contrary to what is often claimed by Big Tech firms to argue against the introduction of new regulatory frameworks, the choice between regulation and innovation is a false trade-off.[2] Properly understood, regulation that corrects misaligned demand signals reshapes the portfolio of innovative activity, filtering and steering it toward socially desirable innovation whose benefits are broadly shared. Rather than inherently "stifling" innovation, well-designed regulatory interventions redirect innovative effort away from harmful or distorted paths and toward outcomes that more closely reflect genuine social preferences. Sweeping claims that regulation and innovation are in tension therefore miss the point: the central issue is how these tools are calibrated and combined, not whether they exist, since it is their design and interaction—not their mere presence—that determines whether innovation is undermined or made more socially beneficial.

Ex ante antitrust tools likewise do not constitute a "kill switch" for innovation. Properly implemented reforms to competition law promote innovation by stimulating entry, lowering market concentration, and sustaining rivalry — forces that drive firms to cut costs, improve quality, and develop new products. Empirical evidence shows that markets insulated from competition tend to stagnate, whereas rivalry enhances firms' incentives to innovate, at least when firms operate at a similar technological level.[3] Furthermore, the centralization of commerce into the infrastructure of large corporations gives them the ability to control two key forces of innovation competition- imitation and diffusion- leaving them in a better position to appropriate not only the intangibles derived from their own efforts, but also those of other firms[4]. By addressing structural risks and gatekeeper dominance before harm occurs, ex ante instruments can therefore strengthen — rather than weaken — the competitive process that sustains dynamic efficiency.[5] Far from suppressing innovation, such tools broaden participation in innovation ecosystems, prevent the entrenchment of incumbents, and facilitate the diffusion of knowledge across market participants. For instance, vertical interoperability may not only spur sustaining innovation, but also encourage disruptive innovations[6] in the long run by allowing entrants to create new paradigms departing from the incumbents' value network.[7]

The essential question, once again, is not whether such regulation exists but how it is designed and applied: when calibrated to preserve openness and contestability, ex ante antitrust interventions become a cornerstone of a more inclusive and sustainable innovation ecosystem.[8]

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[2] *See* Yafit Lev-Aretz & Katherine J. Strandburg, *Regulation and Innovation: Approaching Market Failure from Both Sides*, 38 Yale J. Reg. Bull. 1 (2020).

[3] *See* Philippe Aghion et al., *Competition and Innovation: an Inverted-U Relationship*, 120 *The Quarterly Journal of Economics*, Volume 120, Issue 2, May 2005, p. 701–728.

[4] Cecilia Rikap, Intellectual monopolies as a new pattern of innovation and technological regime, *Industrial and Corporate Change*, Volume 33, Issue 5, October 2024, p. 1037–1062, https://doi.org/10.1093/icc/dtad077.

[5] Jean Tirole, Michele Bisceglia, Fair Gatekeeping in Digital Ecosystems. 2025. ⟨hal-04963106⟩. Available at https://hal.science/hal-04963106v1.

[6] See on the concept of disruptive innovation in antitrust, OECD, 'Disruptive Innovation and Competition Policy Enforcement Note' by de Streel, Alexandre and Pierre Larouche (October 20, 2015). OECD Working Paper (DAF/COMP/GF(2015)7).

[7] Çağrı Çavuş. Does DMA interoperability promote innovation: a comparative study from EU competition law to the DMA, *European Competition Journal* (2025) 21:1, 161-188.

[8] Anu Bradford, T*he False Choice Between Digital Regulation and Innovation,* 19 *Nw. U. L. Rev.* 377 (2024).

Brazil's recent experience in the fintech sector shows that well-calibrated regulation can catalyze, rather than inhibit, innovation: through targeted measures by the Central Bank — such as tailored licensing regimes, regulatory sandboxes, interoperability requirements, and open finance — the number of fintechs grew from 244 to 855 between 2017 and 2022, alongside increased competition and consumer choice.[9] Across Latin America, similar initiatives — ranging from open banking and digital ID frameworks to innovation sandboxes — have reinforced the link between regulatory modernization and technological dynamism, illustrating how proactive governance can foster innovation and inclusion in emerging digital markets. In the same vein, the growing centrality of the digital economy in Brazil provides both the context and the justification for the proposed Bill on Fair Competition in Digital Markets, which seeks to deploy ex ante tools to discipline gatekeeper power, preserve openness and contestability, and consolidate an institutional environment in which innovation can flourish.

2. *Regulation does not block better products; it benchmarks and fosters their creation*

Some companies have argued that ex ante regulation — particularly the DMA — undermines their ability to introduce new products into the market or provide a better consumer experience.[10] This argument is misleading: establishing a baseline of rules for market functioning is not an obstacle to innovation, but its precondition. It draws lines of permissible behavior for companies with outsized impact on the economy and the local ecosystem, so as to foster open and competitive markets. While ex ante regulation may entail a sacrifice of efficiencies derived from digital conglomerates or vertically integrated players, this is the result of a conscious choice made in the pursuit of long term ecosystem welfare. Markets themselves are constituted by rules — contract law, property rights, and competition principles — that define who can participate, under what terms, and how value is distributed. Likewise, products rely on standards, consumer protections, and liability regimes that enable trust, interoperability, and diffusion. Without these institutional foundations, innovation is likely to be erratic, exclusionary, and ultimately unsustainable.

In digital markets, where structural features naturally foster concentration, such safeguards are essential. Practices like self-preferencing, strategic acquisitions, and anti-steering reinforce the dominance of large platforms, allowing them to operate in an exploitative manner — absorbing innovative startups and locking users into their walled gardens. Indeed, it was the very existence of clear and enforceable antitrust rules — by securing open market entry, fair competition, and access to essential technologies — that allowed several of today's dominant digital players to emerge and scale in the first place.

The Brazilian market is one of the largest in the world, and should not be left at the mercy of a small group of dominant platforms. It hosts a vibrant and fertile ecosystem for the creation of new products and ideas — one that should not be confined to the walled gardens of large incumbent digital companies. It is therefore essential to create conditions that allow diverse

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[9] See Ministério da Fazenda, 'Plataformas Digitais no Brasil: Fundamentos Econômicos, Dinâmicas de Mercado e Promoção de Concorrência' (2024). Available at https://www.gov.br/fazenda/pt-br/central-de-conteudo/publicacoes/relatorios/sre/relatorio-economico_plataformas_publicacao_rev.pdf, pp. 73-78.

[10] See, for instance, Oliver Bethell, 'The Digital Markets Act: Time for a reset. Google Blog (September 2025). Available at https://blog.google/around-the-globe/google-europe/the-digital-markets-act-time-for-a-reset/.

business models to flourish, including nationally driven initiatives. The financial sector provides a clear example: it was precisely regulatory frameworks that sustained the emergence of new markets, products, and services, as demonstrated by Brazil's remarkable fintech expansion. Similar dynamics can be observed in retail platforms and other digital players that have successfully disrupted established structures under a balanced regulatory environment. Ex ante regulation is part of this broader toolkit — not only to prevent systemically relevant players from entrenching their dominance but also to enable smaller firms to compete and grow. Such measures strengthen Brazilian entrepreneurship — one of the defining features of the domestic market — by ensuring that new entrants and established players can coexist within a fair, open, and genuinely competitive environment.

3. *Regulation does not create vulnerabilities; it safeguards choice and drives safer, higher-quality products*

Another common myth is that obligations promoting greater market openness — such as interoperability — pose risks to product quality and safety.[11] However, making systems interoperable does not mean lowering the standards of security or quality in the services offered by participating firms. To the contrary, the main point is that entry barriers created by network effects make it more difficult for an entrant to come along and attract consumers and advertisers with higher quality.[12] It is not the role of incumbent digital platforms to determine which products or services are "safe" or "superior" to others. In the European context, interoperability measures have proven fully compatible with high security and privacy standards, as they are developed and overseen by the European Commission through case-by-case assessments.[13]

Similarly, under the Brazilian Bill on Fair Competition in Digital Markets, the obligations imposed on platforms will be formulated and monitored by the Superintendence of Digital Markets on a case-by-case basis, taking into account the specificities of each business model and the characteristics of the relevant digital ecosystem(s) concerned. Indeed, the proposed bill envisages that CADE will take into account for the imposition of special obligations information security, aspects that improve the main functionality of the SREA's digital ecosystems, and the need for SREAs to respect applicable laws and regulations (Article 47-E). This enables the authority to pursue the overarching goals of reducing barriers to entry and protecting the competitive process while promoting freedom of choice (Article 47-B).

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[11] See, for instance, Apple Inc, 'The Digital Markets Act's Impacts on EU Users' (Apple Newsroom, 9 September 2025). Available at https://www.apple.com/newsroom/2025/09/the-digital-markets-acts-impacts-on-eu-users/.

[12] See Fiona M. Scott Morton, and Michael Kades, 'Interoperability as a Competition Remedy for Digital Networks' (March 19, 2021). Available at SSRN: https://ssrn.com/abstract=3808372.

[13] Dr. Ian Brown, Security, Privacy and the European Commission's Proposed iOS Interoperability (FGV Direito Rio, 2025). Available at https://direitorio.fgv.br/en/publicacao/security-privacy-and-european-commissions-proposed-ios-interoperability-requirements. See also, European Commission, Specification Decision- Apple – Operating systems – iOS – Article 6(7) – SP – Features for Connected Physical Devices. Case DMA.100203. Available at https://ec.europa.eu/competition/digital_markets_act/cases/202523/DMA_100203_1655.pdf, paras. 428-429.

Moreover, interoperability measures must be designed to ensure user control over their data and experiences, including clear and transparent interfaces that explicitly inform individuals about any sharing or exposure of personal information. This can be facilitated by the cooperation in the implementation and monitoring of obligations with other specialized regulatory bodies, and particularly the national data protection agency, who have relevant technical and sectorial knowledge (Article 47-F). Additionally, societal participation throughout the process of imposition of special obligations is crucial to gather a more comprehensive view of the effects of special obligations, leading to a more secure and effective enforcement framework through regulatory learning.[14]

Interoperability is already successfully deployed as a regulatory model across multiple sectors, including telecommunications and finance. In Brazil, interoperability initiatives within the Central Bank's digital agenda — such as open finance and instant payment systems — have not only expanded financial inclusion for millions of Brazilians but also enhanced variety, fraud prevention, and the quality of access to financial services. These initiatives demonstrate that openness and safety are complementary rather than conflicting objectives, as robust technical standards and supervisory mechanisms can ensure both innovation and reliability. Complementary to that, data portability increases the possibility of adopting alternative technologies outside dominant ecosystems, fostering user autonomy and greater competition among service providers. In this sense, interoperability can also stimulate a healthy competition over standards themselves — encouraging the development of more secure, efficient, and user-centric architectures across the digital economy.

## Conclusion

Digital Merger Watch considers the **Bill on Fair Competition in Digital Markets** a crucial and timely initiative for Brazil — one with broader implications for other democratic countries seeking to overcome the limitations of traditional competition law in addressing digital market failures. If approved with the necessary safeguards, the Bill will:

- **Modernize Brazil's competition framework**, equipping CADE with proactive and specialized tools to address the structural dynamics and fast-paced changes of digital markets;

- **Promote fairness and transparency** in platform behavior through clear ex-ante obligations that prevent abuses of dominance and ensure equitable market access for all players, including startups and SMEs;

- **Safeguard user rights** by embedding principles of freedom of choice, pluralism, privacy, diversity and participation into the core of digital market governance;

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[14] See Arthur Sadami Arelano Ikeda & Nicolo Zingales, *White Paper: A Proposal on Ex-Ante Regulation of Digital Ecosystems in Brazil* (Center for Technology & Society, FGV Law School., November 2024), https://cyberbrics.info/white-paper-a-proposal-onex-ante-regulation-of-ecosystems-in-brazil/; and Arthur Sadami & Nicolo Zingales, *Brazil: Ex Ante Regulation of Ecosystems, the Clash of Different Approaches and Paths Forward*, CeCo (Jan. 22, 2025), https://centrocompetencia.com/brazil-ex-ante-regulation-of-ecosystems-the-clash-of-different-approaches-and-paths-forward/.

- **Enhance legal certainty and international coherence**, ensuring that Brazil's regulatory framework does not lag behind other jurisdictions—especially in Europe—thereby providing a safe and predictable environment that fosters confidence among investors, consumers, and digital innovators;

- **Reinforce Brazil's digital sovereignty**, empowering national institutions to ensure that innovation and competition evolve in line with the public interest, human rights, and democratic values..

We call upon Congress, CADE, the Executive Branch, civil society organizations, academia, media outlets, activists, and technical experts to engage in constructive dialogue to ensure the final text is robust, rights-protective, and future-proof.


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