2 IS THERE A BRAZILIAN EXPERIENCE WITH REMEDIES IN DIGITAL MARKETS? AN EMPIRICAL ANALYSIS OF DECISIONS BY CADE[1]

EXISTE UMA EXPERIÊNCIA BRASILEIRA COM REMÉDIOS EM MERCADOS DIGITAIS? ANÁLISE EMPÍRICA DE DECISÕES DO CADE

Bruno Polonio Renzetti[2]
Instituto de Ensino e Pesquisa (INSPER) – São Paulo, SP - Brasil
Daniele Eduarda de Oliveira[3]
Escola de Direito da Fundação Getulio Vargas (FGV/SP) - São Paulo, SP – Brasil

STRUCTURED SUMMARY

Objective: The paper investigates how Cade has applied remedies in digital markets. The objective is to verify whether the Brazilian authority has developed a singular experience in imposing digital remedies or if it has been following trends from other jurisdictions, particularly the European Union and the United States. The research question is relevant given that Brazil, as an emerging economy, faces specific challenges in dealing with large digital platforms, while also playing a key role in the Latin American and Global South economy.

Method: Literature review and case study.

Conclusions: The authors conclude that the Brazilian authority has not experimented with specific remedies for digital markets, often applying measures that have been applied in non-digital investigations or mergers. There has not been a tailor-made remedies approach to digital markets in the practice of Cade so far. In this sense, the authors urge Cade to develop a comprehensive framework to deal with competitive problems specific to digital markets.

1 **Editor responsável:** Prof. Dr. Victor Oliveira Fernandes, Conselho Administrativo de Defesa Econômica (Cade), Brasília, DF, Brasil.
Lattes: http://lattes.cnpq.br/5250274768971874. **ORCID:** https://orcid.org/0000-0001-5431-4142.

Recebido em: 16/01/2025 **Aceito em:** 11/06/2025 **Publicado em:** 25/06/2025

2 Doutor em Direito Comercial pela Faculdade de Direito da Universidade de São Paulo. Master of Laws (LL.M.) pela Yale Law School. Professor da graduação e pós-graduação em Direito do Insper, em São Paulo, SP.
E-mail: brunopr5@insper.edu.br **Lattes:** https://lattes.cnpq.br/0552342887882392 **ORCID:** https://orcid.org/0000-0001-8249-4451

3 Mestranda em Direito e Desenvolvimento pela Escola de Direito da Fundação Getulio Vargas (FGV/SP). Bacharel em Direito pela Faculdade de Direito da Universidade de São Paulo.
E-mail: daniele.eduarda98@hotmail.com **Lattes:** http://lattes.cnpq.br/0994673076761610 **ORCID:** https://orcid.org/0009-0000-0415-8241

https://doi.org/10.52896/rdc.v13i1.1933

Keywords: Remedies; Digital Markets; Mergers; Investigations; Enforcement.

JEL Codes: K21, L40, L49

RESUMO ESTRUTURADO

Objetivo: o artigo investiga como remédios têm sido aplicados pelo Cade em casos envolvendo mercado digitais. O objetivo é verificar se a autoridade brasileira desenvolveu uma experiência singular na imposição de remédios digitais ou se tem seguido tendências de outras jurisdições, particularmente da União Europeia e dos Estados Unidos. A questão de pesquisa é relevante dado que o Brasil, como uma economia emergente, enfrenta desafios específicos ao lidar com grandes plataformas digitais, ao mesmo tempo em que desempenha um importante papel na economia da América Latina e do Sul Global.

Método: revisão bibliográfica de literatura e estudo de casos.

Conclusões: os autores concluem que a autoridade brasileira não possui experiência na aplicação de remédios específicos para mercados digitais, recorrendo frequentemente à medidas que foram adotadas em atos de concentração ou investigações de mercados não-digitais. Até o momento, não houve uma abordagem sob medida para remédios em mercados digitais na prática do Cade. Nesse sentido, os autores sugerem que o Cade desenvolva um marco orientativo abrangente para lidar com problemas competitivos específicos dos mercados digitais.

Palavras-chave: Remédios; Mercados Digitais; Atos de Concentração; Investigações; *Enforcement.*

1 INTRODUCTION

It is well established that antitrust scholarship and enforcement have seen significant changes in the past decade. The ubiquity of digital markets has called for a necessary revision of the role of antitrust in modern economies and how to approach the challenges posed by a digital economy dominated by very few players. The fact that many academic think-tanks, competition authorities and supranational organizations have released lengthy reports on the capacity of antitrust to deal with the challenges posed by the digital economy[4] reinforces its significance on a global scale.

4 A comprehensive analysis of several expert reports on competition in digital markets can be found in Lancieri e Sakowski (2021).

If antitrust were a medical patient, the diagnosis would be clear: the current framework available to antitrust authorities is not enough to contest the illness of market concentration. Once the illness has been identified, the challenge is to determine which remedies to apply to treat the condition.

Depending on the seriousness of the malady, a competition authority may impose a more intrusive remedy – such as a structural break-up or mandatory sale of assets. Conversely, if the problem is considered less severe, behavioral remedies may suffice.[5] In any case, the authority must balance the effects of over- or under-enforcement when applying such measures.

There is a wide menu of remedies[6] that a competition authority may choose from the large categories of structural and behavioral approaches. The goal of this paper is to verify whether the Administrative Council for Economic Defense (Cade), the Brazilian antitrust authority, follows any, any pattern when imposing remedies in cases involving digital markets. We aim to provide a comprehensive overview of Cade's experience with such interventions in digital markets, aiming to understand the authority's rationale in adopting a given approach.

The relevance of this study is underscored by two key factors. First, developing countries face unique challenges in regulating digital markets, often stemming from less developed institutional frameworks, limited regulatory capacity, and insufficient resources to implement complex antitrust measures. In this context, examining the approach of a developing country—particularly one that is a member of the BRICS - provides valuable insights into how these challenges are addressed within the broader competition policy framework. Second, Cade's influence extends not only throughout Latin America but also across the Global South[7]. In recent years, the authority has consistently ranked among the top competition authorities globally[8]. With its influence acknowledged by the Organisation for Economic Co-Operation and Development (OECD)[9], Cade is an ideal subject for studying the dynamics of competition policy in the context of digital platforms within developing economies. In this sense, this paper aims to offer insights on how Brazil can further enhance its competition policies, providing guidance not only for its regulatory framework but also valuable lessons for other emerging economies facing similar challenges.

Bearing in mind such considerations, the remaining question is whether there is a specific Brazilian experience with the application of digital remedies[10]. If such experience is lacking, the paper

5 "Behavioral remedies are therefore only intended to temporarily restrict the competitive behavior of the parties to enable operators (competitors, customers or suppliers) to react to the structural modification of the market that has occurred as a result of a merger strengthening the market power of a stakeholder. They do not aim to fix the competitive structure of a market, and as such form part of a dynamic prospective analysis that incorporates the capacity of economic stakeholders to react to the changes." (Autorité de la Concurrence, 2020, p. 264).

6 The term "remedy" is commonly used in antitrust to refer to commitments or restrictions undertaken by parties or imposed by an antitrust authority to address competition concerns or correct harm to competition (Halperin, 2025).

7 In this article, the term "Global South" refers to a group of countries typically characterized by their developing economies, regardless of their geographic location. For instance, the BRICS countries are often considered part of the Global South, which, despite ongoing debates about whether these economies should still be considered developing, continue to be classified as such based on various indicators. It is crucial to note that the term does not imply that these countries are homogeneous. Instead, it highlights that, despite their vast economic, social, and political differences, they share common vulnerabilities and challenges.

8 As reflected in the international ranking annually published by the Global Competition Review (GCR) – a British journal specialized in antitrust policy and competition law.

9 The OECD's 2019 peer review highlights Cade as an "international standing as a leading competition authority both regionally and globally " (OECD, 2019, p. 24).

10 In this article, the term "digital remedies" refers to measures or conditions imposed by antitrust authorities to

https://doi.org/10.52896/rdc.v13i1.1933

seeks to explore how Cade could effectively apply antitrust remedies in digital markets by adapting practices from developed jurisdictions, considering Brazil's unique challenges and capacities. To address this issue, the paper is structured into the following sections, besides this introduction: (i) The Role of Antitrust Remedies in the Digital Economy, examining the theoretical and practical significance of these measures; (ii) Challenges Faced by Developing Countries; (iii) Case Studies of Antitrust Remedies in Brazil, scrutinizing specific instances of antitrust interventions; (iv) Recommendations, offering tailored strategies for Brazil; and (v) Conclusion, summarizing key findings and implications for policy and practice.

2 THE ROLE OF ANTITRUST REMEDIES IN THE DIGITAL ECONOMY

The capacity to impose remedies is one of the many typical attributions of a National Competition Authority (NCA). In fact, the existence of a NCA would not be justified if the authority did not have the power to intervene in markets, curbing anticompetitive conduct and market concentration, therefore correcting the path sought for sustainable economic development.

While merger review conducted by NCAs typically adopts a forward-looking approach — assessing the potential anticompetitive effects of a transaction before it takes place and, when necessary, imposing remedies to prevent harm to market competition — the enforcement of anticompetitive conduct usually follows a backwards looking logic, when the goal is to restore the *status quo ante* of the market while sanctioning the anticompetitive player, aiming to deter future violations[11]. In some cases, the remedy may be more straightforward: for example, mandating for an exclusive distribution agreement to cease, and therefore creating alternative sales channels. There are cases, however, in which the dynamics of the markets involved do not provide a clear answer on how the NCA should act.

Such is the case with digital markets. The rapid evolution of this sector presents unique challenges for competition authorities, requiring a more agile response. Key concerns identified include high market concentrations driven by factors such as network externalities and switching costs (UNCTAD, 2024). Mergers often involve multi-sided platforms serving different user groups - such as consumers and advertisers - with interactions between these groups creating complex dynamics that can amplify network effects and lead to increased market concentration, where traditional remedies may not be sufficient. In this regard, certain authorities are already contemplating the implementation of *ex ante* regulation for digital mergers, aiming to expand the range of potential remedies.[12]

Beyond acquisitions, addressing anticompetitive practices in these markets is equally

address competition concerns within digital markets. "Digital markets" are understood as those primarily driven by digital technologies, such as e-commerce platforms, social media networks, search engines, and digital service providers.

11 "Antitrust remedies seek to deter anticompetitive conduct. But antitrust remedies serve an additional purpose after occurrence of anticompetitive conduct. They seek to restore a competitive equilibrium as close as possible to the 'but for' world that would have prevailed absent the anticompetitive conduct, while not imposing excessive implementation costs on antitrust courts and agencies and preventing the reoccurrence of the unlawful conduct. It is generally agreed that antitrust remedies applied to date in digital markets have not met these goals and have largely been ineffective" (Gal; Petit, 2021, p. 619).

12 "Hence there seems to be a broad consensus that some form ex ante regulation is needed as a complement to competition law enforcement to deliver fast and effective action against structural barriers and risks of anti-competitive practices in rapidly evolving digital platform markets. That said, national competition authorities as well as jurisdictions still differ in what they see as the best approach: whether they want separate sector-type ex ante regulation; new competition law instruments or simply an adaptation of existing competition law tools" (OECD, 2021, p. 12).

challenging, as traditional frameworks may not effectively tackle the complexities of digital ecosystems. A recent example of the difficulties faced by authorities when designing remedies in digital markets is the *Google Search* case in the United States.[13] In his decision of August 2024, Judge Amit P. Mehta of the United States District Court for the District of Columbia found that Google was a monopolist and had acted to maintain its monopoly in violation of Section 2 of the Sherman Act. However, no remedy was imposed at the time. In October 2024 the U.S. Department of Justice (DoJ) filed a *Proposed Remedy Framework*, laying what the authorities understand to be the most suitable remedies for Google's monopoly position (USA, 2024).

The DoJ identified four key areas of concern: search distribution and revenue sharing; generation and display of search results; advertising scale and monetization; and accumulation and use of data. The remedies to prevent monopoly maintenance would then be related to contractual requirements – including non-discrimination and data interoperability – as well as potential structural requirements. A decision on the remedies is expected to be released in 2025.

The menu of remedies proposed by the DoJ demonstrates the need to think of remedies in digital markets not to address only one aspect of the anticompetitive conduct but to encompass a larger number of concerns[14]. Considering the several economic activities that digital platforms have in numerous relevant markets, as well as the business structures of such players, it is ever more difficult to pinpoint and individualize a single aspect of a digital platform that would be producing anticompetitive effects in the market.

Crafting tailored approaches to remedies in digital markets is crucial and complex, but undoubtedly necessary. In the European context, authors have argued that the European Commission, even though constrained by the legal framework, has enough room to develop more creative remedies (Bostoen; Van Wamel, 2023, p. 540). Additionally, some cases may call for immediate measures from the authorities, to minimize potential market damage in rapidly evolving digital landscapes. Interim measures are an important tool to be used by antitrust authorities and must be on the menu of adequate measures to address concerns in digital markets (OECD, 2022a, p. 20). Thus, competition authorities play a crucial role in maintaining markets contestable and assuring that consumers benefit from the competitive process.

The *OECD Handbook on Competition Policy in the Digital Age* suggests several strategies for the effective implementation of remedies by the competition authorities (OECD, 2022b). For instance, enhancing interoperability[15] and data portability is vital, allowing users to swiftly change between platforms, reducing barriers to entry and switching costs. Moreover, line of business remedies[16], such as prohibiting exclusive practices, are also helpful in preventing monopolization and exclusionary practices and maintaining market access for competitors.

13 In the Matter of Google, Inc., FTC File Number 111-0163 (USA, 2013).

14 DoJ's proposed remedy was submitted under the Biden administration. However, the Trump administration has reinforced the government's intention to seek a structural remedy to address the anticompetitive behavior of Google in the market for online search engines (McCabe, 2025).

15 For a more skeptical vision of interoperability as an adequate remedy in digital markets, *see* Hovenkamp (2023), *Antitrust Interoperability Remedie*.

16 "Line of business restrictions are used to address competition concerns associated with vertical integration or conglomerate business models in specific situations. In particular, they may be used to address concerns about refusals to deal, margin squeeze, or bundling. These restrictions can be imposed in the context of abuse of dominance (or monopolization) investigations, merger control, or regulation" (OECD, 2022, p. 55).

https://doi.org/10.52896/rdc.v13i1.1933

The issue is that past experiences show that "traditional" remedies have not been successful in digital markets[17]. This has led authors to call for new remedy designs. For instance, Lancieri e Pereira Neto (2022, p. 613) propose an error-cost framework to identify the most suitable substantive remedy, as well as identifying which regulatory body would be the most appropriate to implement and monitor the remedy[18]. Other authors have advocated for more "radical" remedies (Gal; Pettit, 2021)[19].

Fact is that designing remedies is not a simple task – and has become more arduous in digital markets. There is no *one size fits all*. Remedies that may have worked in a specific case may not be suitable for another situation, as similar as they could be. Also, the types of remedies found in competition law textbooks cannot be applied indistinctly across industries. The characteristics of digital markets call for finely tailored remedies, taking particularly into account the business model of the players. Understanding the business model is of paramount importance for a competition authority to impose an adequate remedy capable of being monitored.

3 CHALLENGES FACED BY AUTHORITIES WHEN IMPOSING REMEDIES IN DIGITAL MARKETS

Despite global recommendations and the recognition of the need for effective measures to ensure fair competition in digital markets, developing economies often face significant challenges in achieving these goals. Financial constraints, a lack of specialized personnel, and the nascent stage of their digital markets hinder the ability to implement robust antitrust measures.

As highlighted in the World Bank report *Antitrust and Digital Platforms: An Analysis of Global Patterns and Approaches by Competition Authorities* (World Bank, 2021), developed countries generally have the resources and institutional capacity to enforce comprehensive and targeted remedies. In contrast, developing nations face significant challenges, both in designing effective solutions and in implementing them. The report examines 103 competition cases, of which 44 resulted in the imposition of remedies, including fines[20]. Unsurprisingly, most of the substantial fines and remedies

17 "Remedies imposed for competition law infringements ('antitrust remedies') have not been very effective in digital markets. Antitrust remedies that were imposed on tech companies such as Microsoft and Google failed to produce meaningful effects in the EU. While the remedial measures may have addressed the illegal conduct narrowly defined, they were largely unable to mitigate the infringements' anticompetitive consequences" (Bostoen; Van Wamel, 2024, p. 1)

18 "Choosing the right remedy is an exercise prone to errors that can lead to costly over and under-enforcement. As a general rule, authorities should be willing to impose more stringent remedies as they increase their certainty on the negative effects of a particular conduct. This also means being more cautious when testing new theories of harm. Above all, any complex remedy must be understood as a dynamic exercise that is reviewed over time and adjusted as more information on its impact on actual behavior comes forth" (Lancieri; Pereira Neto, 2022, p. 667).

19 The authors advocate for mandatory sharing of algorithmic learning, subsidization of competitors, and temporary shutdowns. "All three proposed remedies are radical in more than one way. First, they go beyond halting specific anticompetitive conduct or imposing financial sanctions. Their goal is to change the dynamics of market equilibrium produced by an antitrust violation, by attacking entrenching features such as incumbency advantages, large returns to scale and scope, the significance of data as a competitive advantage, and strong network effects. Second, the remedies entail a degree of government interference with freedom of enterprise and property rights which is substantially higher than that associated with the market-drive process which normally governs the design of antitrust remedies. However, the remedies all aim to restore the competitive process, not to impose a competitive outcome. As such, they fall short of more interventional forms of economic regulation. Third, the remedies generate complex tradeoffs which must be carefully balanced, as they could lead to either consumer welfare gains (such as increased product variety with the introduction of a new competitor) or losses (such as switching costs or sacrifices in the short-term performance of users in case of a shutdown" (Gal; Petit, 2021).

20 It may be argued that "fines" are not exactly remedies because they serve a punitive function, but they do have a twofold aim: to penalize previous conduct and deter future conducts. According to the European Commission "[t]he purpose of fines is to sanction undertakings for having infringed competition rules, in order to deter these undertakings as well as other

were imposed by developed jurisdictions, particularly in cases involving anticompetitive conduct. For instance, the European Commission imposed a record (at the time) $4.5 billion dollars fine on Google in 2018 for abuse of dominance related to its Android operating system, and Apple was fined $450 million dollars by the DoJ for a vertical restraints case in the e-book market. In contrast, in developing jurisdictions, most remedies were applied to merger cases, with only a few addressing anticompetitive conduct (World Bank, 2021, p. 54)[21].

This disparity highlights a broader trend: while high-income countries have been proactive in addressing competition issues in digital markets, developing economies have typically adopted a more reactive approach. This passive stance may result in something similar to the "Brussels Effect"[22], whereby the regulatory frameworks of powerful economies, such as the EU, influence global business practices, compelling developing nations to adopt standards that may not align with their local contexts. The fact that the first comprehensive regulation of digital markets, focusing on contestability and fairness of the markets, came from the European Union (the Digital Markets Act) is a testament to this.

The absence of tailored legal frameworks for digital markets in many developing countries is a key factor that highlights the influence of developed economies. As the global tech industry evolves rapidly, regulatory frameworks in emerging economies frequently lag, hindering their ability to address the complex challenges posed by digital platforms - such as data-driven market power, multi-sided platforms, and anti-competitive practices - that do not fit neatly within traditional antitrust models. Moreover, the global dominance of large tech companies exacerbates enforcement challenges in these jurisdictions, as local authorities often lack both the legal tools and institutional capacity to address the market power of multinational corporations.

One of the World Bank's key recommendations is that authorities in developing jurisdictions should integrate emerging issues — such as data — related concerns — into their analyses while strengthening their capacity in these areas by leveraging the experiences and insights from developed economies. Valuable lessons can be drawn from international cases where antitrust authorities in the European Union and the United Kingdom have imposed significant remedies in high-profile matters, such as the Google/Fitbit and Microsoft/Activision Blizzard mergers. These cases illustrate how NCAs can address digital market challenges by securing commitments that foster fair competition, such as preventing the misuse of consumer data and promoting interoperability across platforms.

---

undertakings from engaging in or continuing behavior which restricts competition" (European Commission, 2025). However, fines that have been applied to large tech companies only represent a small fraction of that company's turnover.

21 "Remedies or conditions have been imposed in 20 cases: in developing jurisdictions, this is largely in merger cases, while in developed jurisdictions, it is mostly in abuse of dominance cases. The cases that resulted in remedies or conditions are split evenly between developed and developing jurisdictions; however, the distribution among types of cases differs significantly. In developing jurisdictions, most cases with conditions are mergers (78 percent). Developing jurisdictions only imposed remedies in one abuse of dominance case and one anticompetitive agreement case. In developed jurisdictions, cases with remedies are split more evenly among abuse of dominance cases, mergers, and anticompetitive agreements" (World Bank, 2021, p. 54).

22 "The Brussels Effect refers to the EU's unilateral power to regulate global markets. Without the need to use international institutions or seek other nations' cooperation, the EU has the ability to promulgate regulations that shape the global business environment, leading to a notable "Europeanization" of many important aspects of global commerce. Different from many other forms of global influence, the EU does not need to impose its standards coercively on anyone—market forces alone are often sufficient to convert the EU standard into the global standard as companies voluntarily extend the EU rule to govern their worldwide operations. Under specific conditions, the Brussels Effect leads to "unilateral regulatory globalization," where regulations originating from a single jurisdiction penetrate many aspects of economic life across the global marketplace" (Bradford, 2020, p. xiv).

The European Commission's approval of Google's acquisition of Fitbit was conditional on a series of remedies designed to address potential anti-competitive effects, particularly in the digital health and wearable technology market[23]. Although the merger raised only limited horizontal overlaps, the Commission identified key concerns around Google's ability to leverage Fitbit's data to strengthen its position in digital advertising, restrict access to Fitbit's data for competitors, and potentially limit the interoperability of Fitbit devices with Android smartphones. To resolve these concerns, Google committed to three main remedies.

First, Google agreed not to use Fitbit's health and fitness data for advertising purposes, maintaining a strict separation between Fitbit data and Google's advertising systems in a "data silo," effectively preventing any unfair advantage in targeted advertising. Second, Google committed to continuing to offer free and non-discriminatory access to Fitbit's Web API, ensuring that third-party developers can still build applications and services for Fitbit users, subject to GDPR consent. Third, Google agreed to maintain and license essential Android APIs to competitors to preserve the interoperability between Fitbit devices and Android smartphones.

The remedies, with a duration of up to ten years, are specifically designed to safeguard competition in the dynamic digital and health tech markets, where data control, platform access, and interoperability is crucial. The role of a trustee with expertise in data governance ensures that these commitments are effectively monitored, addressing the fast-evolving nature of the markets while preventing Google from abusing its market position. The remedies also reflect the EU's growing focus on regulating big tech mergers to preserve fair competition and consumer choice, particularly in nascent sectors like digital health.

The CMA's decision to clear the Microsoft/Activision Blizzard merger on October 2023 followed a significant restructuring of the deal (CMA, 2023). The British authority initially blocked the merger due to concerns that Microsoft, with its vast ecosystem, could harm competition in cloud gaming by withholding the videogame Call of Duty from rival platforms. Unlike the European Commission, which accepted behavioral remedies such as licensing deals for cloud streaming rights, the CMA rejected the measures, expressing skepticism about their enforceability in the rapidly evolving digital market. The CMA's preference for structural remedies — such as divestitures — was a key factor in its decision. The final remedy involved the divestiture of Activision's non-EEA cloud streaming rights to Ubisoft, ensuring that these rights were no longer part of Microsoft's acquisition.

Additionally, Microsoft agreed to behavioral commitments to monitor and enforce the divestiture, including ensuring the effective transfer of rights to Ubisoft for 15 years. These remedies were designed to prevent Microsoft from leveraging its ecosystem power to exclude competitors in the growing cloud gaming market. The CMA's focus on structural remedies, especially in the digital realm, reflects its concern that behavioral measures could be difficult to enforce, especially in dynamic and fast-changing sectors like cloud gaming, where innovation and new entrants are frequent[24]. This approach highlights a cautious stance toward behavioral remedies, preferring solutions that directly alter market structures and reduce the likelihood of anti-competitive conduct.

Beyond these examples, South-South collaboration offers additional valuable insights, as low- and middle-income countries could benefit from sharing experiences and adapting global

23 Case M.9660, Google/Fitbit (European Commission, 2020).

24 S*ee* Greenwood and Robert (2024) for a comprehensive overview of the CMA's recent activities.

best practices to their specific contexts. For instance, the BRICS countries have been engaging in discussions about the challenges of competition enforcement in digital markets, covering topics such as market power assessment, innovation and dynamic competition, the acquisition of entrants by incumbents, algorithmic pricing, and big data. As a result, Brazil's competition authority released a report in September 2019 (updated in 2024) on competition policy in the digital economy (Cade, 2024a). This example of horizontal collaboration demonstrates how countries with similar developmental challenges can share more relevant and actionable insights.

The individual proactive engagement of competition authorities in the digital debate is also emphasized by the World Bank, a commitment clearly reflected in the actions of agencies like Cade. The Brazilian authority has demonstrated a strong interest in digital markets, actively participating in discussions and initiatives surrounding this area. However, it remains unclear to what extent it has developed and implemented remedies specifically tailored to the unique challenges of digital markets.

4 CASE STUDIES: THE BRAZILIAN EXPERIENCE WITH REMEDIES IN DIGITAL MARKETS

As aforementioned, we recognize that Cade has been increasingly involved in the discourse surrounding digital markets. The federal agency has published studies, organized key events, and contributed to parliamentary debates on platform regulation, expressing its interest in assuming a regulatory role. Despite this growing engagement, its experience in applying targeted antitrust remedies specifically to digital markets appears to remain limited. To assess its effectiveness in this area, this chapter examines several high-profile cases to determine whether the authority has applied remedies suited to the unique characteristics of digital markets or whether its approach remains anchored in traditional antitrust tools.

4.1 Merger Control

Brazil's approach on merger control in digital markets seems to be relatively passive. While the authority has reviewed numerous mergers in the digital sector in recent years, the application of remedies has been limited. According to a report written by Cade's Department of Economic Studies (Cade, 2023) (hereinafter DEE Report) from 1995 to 2020, 143 merger notifications related to digital markets were filed, a significant portion of which involved sectors such as online advertising and retail. Between 2020 and 2023, the number of notified mergers surged to 90 cases. However, the authority applied remedies in only three of these cases, all of which were approved subject to conditional measures. These cases — (i) XP Investimentos and Itaú Unibanco (XP/Itaú); (ii) SBF/Centauro and Nike Brasil (Nike/SBF), (iii) and Bus Serviços and J3 Participações (Bus/J3) - serve as rare examples where Cade imposed behavioral commitments to address potential anti-competitive concerns. In each of these cases, Cade and the involved parties signed consent decrees (known in Portuguese as "*Acordos em Controle de Concentrações*" or simply ACCs) to address competition issues, typically by restricting exclusivity arrangements, ensuring fair access to critical resources, and preventing the misuse of sensitive business information.

Given that remedies were applied in three cases of our research, this limited number allows

for a detailed analysis of each one to assess whether the remedies were tailored to address specific challenges posed by digital markets, or if they were based more on traditional antitrust concerns. By examining the remedies applied, we can investigate whether they responded to the unique dynamics of digital platforms, such as data control, network effects, or platform dominance, or whether they adhered more closely to classic antitrust principles focused on issues like market share and exclusivity. We also comment on the *Catena X* that present interesting particularities to understand different approaches that the competition authority has taken.

4.1.1. Itaú/XP[25]

The first digital market case in which Cade applied remedies (according to the DEE Report) involved the merger between XP Investimentos and Itaú Unibanco, two important players in Brazil's financial services sector. This was also the first merger analyzed after a cooperation agreement between Cade and the Central Bank of Brazil, which allowed for a coordinated review of the transaction.

Itaú Unibanco is one of Brazil's largest banks, offering a wide range of financial services, including retail and corporate banking, asset management, and investment products. XP Investimentos, a major player in Brazil's investment market, operates as an open platform providing access to various third-party financial products, disrupting the traditional brokerage model. When Itaú sought to acquire XP concerns were raised about the potential for reduced competition, particularly with Itaú potentially using its market power to restrict competitors' access to critical resources. And while Cade acknowledged XP's role as a significant player, the remedies primarily focused on traditional concerns rather than those specific to digital markets.

The commitment (ACC) included ensuring that Itaú would not unduly influence XP's operations, requiring its operational independence to ensure fair access to its platform for third-party financial providers. Itaú, for its part, agreed not to discriminate against competing platforms when distributing its investment products and refrained from targeting its own customers to XP. Both companies also agreed to an external monitoring system to oversee compliance with the conditions, ensuring the merger would not harm market competition.

Despite the importance of these measures, the remedies did not specifically address digital dynamics such as data control or network effects.

4.1.2. Nike/SBF[26]

The second case involved the acquisition of Nike Brasil by SBF, the parent company of Centauro, a major player in the Brazilian sports retail market. This deal raised concerns about potential horizontal and vertical anti-competitive effects, particularly in the retail and online sales of sporting goods. The merger would bring together SBF's retail operations with Nike's distribution rights in Brazil, creating potential for market foreclosure and the exclusion of competing retailers from accessing Nike products.

25 Merger nº 08700.004431/2017-16. Applicants: Itaú Unibanco S/A e XP Investimentos S/A.
All the CADE public proceedings mentioned in this article can be consulted at: https://x.gd/KJaW9.

26 Merger n. 08700.000627/2020-37. Applicants: Grupo SBF S.A e Nike do Brasil Comércio e Participações Ltda.

Among the provisions, the ACC established measures to prevent discriminatory practices against competitors and to protect sensitive information. It also required the separation of the commercial units of Centauro and Nike Brazil, including restrictions on employee transfers between the companies and the maintenance of confidentiality agreements. Furthermore, the ACC established that the information and documents related to the commercial operations of Nike in Brazil would be kept segregated from Centauro's databases within SBF's systems.

While the last condition draws attention, an analysis of the case reveals that by prohibiting the unification of their databases, the remedy primarily aimed to preserve the competitive integrity of the market. It does so without directly addressing digital-specific challenges, such as the exploitation of consumer data for scaling business operations. Instead, the focus is on preventing the misuse of sensitive business information - such as product inventory details - that could distort competition. Therefore, the remedies focused on maintaining a level playing field in the retail sector but did not consider the long-term impact of e-commerce and digital channels on competition.

4.1.3. Bus/J3[27]

In the third case, Cade reviewed the merger between *Bus Serviços de Agendamento* and *J3 Participações*, both active in Brazil's online travel agency (OTA) market. The merger raised concerns about potential market foreclosure, as Bus Serviços held a dominant position in the Global Distribution System (GDS) market. As in previous cases, Cade imposed remedies through an agreement (ACC), which required commitments from the merged entity to prevent anti-competitive practices, such as exclusive agreements with bus operators and the improper sharing of sensitive competitive data.

The primary competition concerns identified by Cade related to the potential for market foreclosure. The combined entity could direct its aggregated bus content solely to ClickBus, thus disadvantaging other GDS providers and competing OTAs which could significantly reduce the options available to competitors and hinder their ability to challenge the market power of the newly formed entity. Thus, imposed remedies focused on preventing exclusivity arrangements that could restrict competition in the GDS and OTA markets.

The ACC imposed key remedies, including prohibiting exclusive contracts between the merged entity and bus operators or competing OTAs, ensuring equal access to Bus Serviços' GDS platform. It also required Bus Serviços to notify clients with exclusivity clauses that they were no longer bound by them and committed the merged entity to non-discriminatory contracting practices. Additionally, Cade prohibited the use of sensitive information from rival OTAs, and Bus Serviços was required to implement a competition compliance program to monitor adherence to these commitments. Third parties were also given the ability to report any potential anti-competitive behavior through a whistleblower mechanism.

As is readily apparent, these measures focused on improving access to the GDS and preventing exclusivity, and were not designed to address any specific digital market concern.

27 Merger nº 08700.004426/2020-17. Applicants: Bus Serviços de Agendamento S.A. e J3 Participações Ltda.

4.1.4. Catena X

The Catena X case[28], involving the creation of a joint venture between eleven automotive companies, was approved by Cade with restrictions, reflecting concerns about potential competitive impacts. The transaction aimed to establish a collaborative cloud-based data platform to enhance efficiency and innovation in the sector. While the applicants argued that the initiative would benefit the entire supply chain by increasing transparency and reducing costs, the Brazilian authority identified risks related to the exchange of competitively sensitive information. As a result, the conditional approval introduced safeguards to mitigate these risks.

This case is noteworthy, especially because of unilateral imposition of conditions - as it is not a common practice on Cade's merger control. However, it also demonstrates the authority's vigilance in addressing potential risks arising from digital transactions. The measures adopted — such as appointing a compliance officer and implementing tracking software — were primarily focused on monitoring potential antitrust risks rather than actively fostering competition. While digital remedies can take a behavioural form, they are often designed to promote interoperability, data access, or algorithmic transparency, which were not central aspects of Cade's decision in this case. Instead, the measures were more aligned with traditional compliance safeguards to prevent collusion.

Despite Cade's approval of the transaction with restrictions, the companies ultimately chose to abandon the transaction. This situation highlights a broader challenge regarding enforcement in the Global South. When authorities impose remedies, especially those that are perceived as overly burdensome or restrictive, companies may choose to abandon the transaction rather than comply with the conditions. This reflects the difficulty of enforcing antitrust regulations in regions where companies may be less willing to accept conditions that they view as detrimental to their business model or operational flexibility. It also underscores the potential limitations of regulatory power in the Global South, where businesses may prioritize market expansion or flexibility over compliance with competition rules.

4.2. Anticompetitive Investigations

Turning to the realm of anticompetitive conduct, Cade has also investigated anti-competitive behavior in digital markets. Despite an increase in scrutiny, many of these proceedings have been dismissed[29], which may reveal a gap in effective enforcement, particularly in unilateral conducts.

To analyze the authority's approach in this area and assess the potential application of remedies in cases of anticompetitive conduct, we refer to the 2023 study released by DEE. According to the report, from 1995 to April 30, 2023, Cade initiated 23 investigations related to digital markets. Of these, 9 were still under investigation, 11 were dismissed, and 3 were archived following the signing of a Cease-and-Desist Agreement (from Portuguese Termo de Compromisso de Cessação, TCC) (Cade, 2023). These cases primarily involved exclusivity agreements and abuse of dominant position. Based on this

28 Merger n. 08700.004293/2022-32. Applicants: Basf S.E, BMW Holding BV and others.

29 Cade's General-Superintendence is the body responsible for conducting investigations of anticompetitive conducts. It has the power to dismiss investigations in early stages should it consider not to have enough evidence for a more detailed investigation.

data, it is evident that, to date, there has been no condemnation for anticompetitive conduct in digital markets - likely reflecting the challenges Cade faces in investigating this space. Indeed, after reviewing the sources, no cases of condemnation have been identified since the publication of the report.

Given the relatively large number of relevant investigations, however, an in-depth analysis of all of them would unnecessarily lengthen the article. Therefore, in parallel with the previous section, we will examine only those where TCCs were signed - OTAs, iFood/Rappi, and Gympass/TotalPass. We will assess whether the commitments in these agreements address issues specific to digital markets or if they align more with traditional antitrust concerns. Additionally, we offer a short comment on the Brazilian version of the *Google Shopping* investigation, as well as remarks on two ongoing investigations: Meta AI and Apple App Store.

4.2.1. Google Shopping[30]

The first case we highlight is the Google Shopping case, one of Brazil's earliest and most important investigations into anticompetitive conduct by a digital platform. Initiated in 2013, the case centered on allegations that Google manipulated its search algorithms to favor its own price comparison service over competing platforms. This self-preferencing behavior, in which a dominant platform promotes its own services at the expense of competitors, is a classic concern in antitrust law. However, despite similarities to the European Union's investigation, which led to a €2.42 billion fine against Google in 2017 for similar practices, Cade's response was markedly different. While the European Commission required Google to amend its business practices, Cade ultimately archived the case in 2019, citing insufficient evidence that Google's conduct harmed competition or consumers in the local market.

Cade's instruction reflected the complexity of analyzing conducts of digital platforms, particularly when it comes to self-preferencing practices. As noted by Santos (2020, p. 296), there was excessive focus on defining relevant markets, while the discussion of anticompetitive strategies associated with innovation was less emphasized. Moreover, by concluding that there was insufficient evidence of competitive harm and that Google's actions constituted a pro-competitive product improvement, Cade reinforced the idea that product changes benefiting consumers should generally be seen as positive unless they explicitly harm rivals or block access to essential facilities (Blume; Bruch, 2023, p. 42)

4.2.2. OTAs[31]

The first critical example of a TCC signed due to anticompetitive conduct in a digital market is the case involving OTAs Booking.com, Decolar.com and Expedia. The investigation centered around the use of Most-Favored-Nation (MFN) clauses in contracts between OTAs and hotels, which required hotels to offer the same or better terms to OTAs as they did to other platforms or their own website.

30 Administrative Proceeding n. 08700.009082/2013-03. Claimant: E-Commerce Media Group Informação e Tecnologia Ltda. Defendant: Google Inc. e Google Brasil Internet Ltda.

31 Administrative Proceeding n. 08700.005679/2016-13. Respondents: Fórum de Operadores Hoteleiros do Brasil (FOHB)/ Expedia do Brasil Agência de Viagens e Turismo Ltda., Decolar.com Ltda. e Booking.com Brasil Serviços de Reserva de Hotéis Ltda.

These clauses were seen as harmful to price competition and potentially creating barriers to entry for new competitors and Cade signed an agreement with the parties.

The TCC required the removal of "wide" MFN clauses, which restricted hotels from offering better terms elsewhere, as they were seen as anti-competitive. However, "narrow" MFN clauses, which only prohibited hotels from offering lower prices on their own websites, were allowed, as Cade determined they were legitimate to prevent free-riding on OTAs' investments. While this case addressed competition concerns, it is important to note that the remedies imposed were not specifically tailored to digital markets. Rather, the case centered on traditional competition concerns - mainly price parity and market access - which are common in both digital and non-digital contexts.

4.2.3. iFood/Rappi[32]

Another critical example is the iFood/Rappi that following the precedent of the OTAs case, ended with a TCC. iFood, a dominant player in Brazil's online food delivery market, faced investigation after Rappi filed a complaint alleging that iFood was imposing exclusivity clauses with restaurants, potentially hindering competitors.

The investigation revealed that the company exclusivity policy with restaurants could have been preventing the entry of rivals. In response, the General Superintendence (Cade's investigative body) imposed a preventive measure on the food delivery app, effectively prohibiting iFood from entering into new contracts that included exclusivity clauses. After a few months, iFood and Cade settled a TCC.

The TCC included several key provisions, such as prohibiting MFN clauses with other marketplaces and banning clauses that prevent partners from offering promotions on competing platforms or mentioning other food delivery services in ads outside of the iFood platform. It also restricts iFood from entering into contracts that prevent restaurants from working with other platforms after the exclusivity period ends, offering incentives to retain delivery business, or providing individualized volume-based discounts.

One of the most noteworthy aspects of the agreement between iFood and Cade is the clause concerning the commitment to open APIs. The agreement includes a provision requiring iFood to maintain certain APIs that provide specific information available to external developers. This commitment is intended to reduce operational costs for restaurants using multiple online food delivery marketplaces, facilitating better integration between iFood's platform and other Point of Sale (POS) software used by restaurants. By making this data available, restaurants can manage their sales directly through the POS software, ensuring a more seamless operation across platforms.

Indeed, while the commitment to open APIs represents a step towards greater integration and operational efficiency for restaurants, it does not fully address the structural issues inherent to the digital economy, such as the role of network effects in reinforcing iFood's market position or the impact of data control in limiting competitors' ability to offer competing services. In this case, the API commitment, while beneficial, focuses more on improving operational efficiencies for restaurants

32 Administrative Proceeding n. 08700.004588/2020-47. Respondent: iFood.com Agência de Restaurantes Online S.A. (iFood).

rather than addressing the underlying competitive dynamics in the online food delivery marketplace.

Thus, although the case sought to ensure some level of market access for competing aggregators, it did not go beyond contractual limitations to implement remedies that could structurally impact competition in digital fitness platforms. This highlights a recurring challenge in antitrust enforcement in digital markets - ensuring that commitments are not merely adaptations of traditional remedies but rather tailored interventions that address the core mechanisms of platform dominance.

4.2.4. Gympass/TotalPass[33]

A similar approach was taken in the Gympass/Total Pass case, which involved allegations that Gympass was using exclusivity clauses to restrict gyms from offering services on competing platforms. Gympass, which aggregates access to fitness centers, was investigated for imposing exclusivity clauses that allegedly restricted gyms from offering services on competing platforms. Once again, the case ended up with an TCC focusing on imposing restrictions to ensure greater competition.

Under the terms of the Agreement, Gympass is required to limit exclusivity clauses with affiliated gyms to no more than 20% of its gym base in any given city or district and being monitored by a trustee nominated by the signatories and approved by Cade, with a daily fine imposed in case of non-compliance. Moreover, despite the similarities, the Gympass/TotalPass case did not include additional measures that signalled a broader effort by the authority to address digital market-specific concerns - such as the API-sharing commitment seen in the iFood case. In this sense, even the small progresses towards a more specific approach does not seem consistent. In this regard, e, the decision in this case also does not address broader issues specific to digital platforms.

4.2.5. Jedi Blue[34]

The Jedi Blue case concerned an alleged agreement between Google and Facebook that allegedly favored Facebook in online advertising auctions in exchange for Facebook's commitment to refrain from supporting alternative advertising technologies, therefore horizontal restrictions.

In this case, Cade focused on whether the sharing of sensitive information between the two companies was intended to artificially raise ad prices by creating the illusion of competition. Specifically, the agreement between the two technological giants was said to involve preferential treatment for Facebook in terms of ad fees, placement, and data access, while Facebook would avoid using a competing programmatic advertising system, header bidding, which could have undermined Google's ad revenues.

The case ended up being dismissed by the General-Superintendence a few months after the beginning of the investigations. The authority found that the agreement lacked evidence of anti-competitive effects, noting that it did not impose absolute restrictions on either company's ability to develop competing services.

33 Administrative Proceeding n. 08700.004136/2020-65). Interested party: GPBR Participações Ltda. (Gympass).

34 Administrative Proceeding n. 08700.006751/2022-78. Claimant: Cade ex officio Respondent: Google Inc. and Google Brasil Internet Ltda.

https://doi.org/10.52896/rdc.v13i1.1933

4.2.6. Meta AI[35]

The recent probe opened against Meta may offer a unique opportunity for the competition authority to consider remedies and to work alongside the national data protection authority. The investigation started via a petition by IDEC – a third-sector NGO focused on consumer protection – arguing that Meta would be employing public personal data of its users to train it artificial intelligence tools. According to IDEC, Meta's conduct would amount to unlawful exercise of market power (monopolization), with the goals of raising barriers to entry (no other company would have access to the same amount of data as Meta to train an AI tool) and entrenchment of a dominant position.

A similar petition was submitted to the Brazilian Data Protection Authority (ANPD). As a result, ANPD issued in July 2024 an interim measure ordering the immediate suspension of Meta's use of personal data to train the AI tool, as well as imposing tailored remedies that should be complied with if Meta wished to resume the use of data[36]. On August 30, 2024, it was announced that Meta had accepted the conditions to collect, process and use personal data for AI purposes. ANPD continues to monitor compliance of the remedy.

The investigation at Cade is still ongoing. This case highlights how issues in digital markets may call different regulatory bodies for action. In order for a successful enforcement of anticompetitive conducts – and the development of suitable remedies – it is of utmost importance for authorities to cooperate.

4.2.7. Apple App Store

The *Apple App Store* investigation[37] is the Brazilian version of the debacle that started with Epic Games and Apple in the United States. In the Brazilian version, the company Mercado Livre filed a complaint with Cade arguing that Apple would be (i) prohibiting the distribution of third-party digital services, which would be enforced through a ban based in its App Developer Program License Agreement (ADPLA) and App Store Review Guidelines (the Guidelines), preventing app developers from offering goods or services on the iOS system that are used outside the developer's app; and (ii) an obligation imposed on app developers who sell digital goods or services within their apps to exclusively use Apple's own payment processing system.

In November 2024, the General-Superintendence imposed an Interim Measure against Apple. According to the decision, Apple would have to suspend the application of some parts of its ADPLA and the Guidelines, allowing developers to (i) inform users about alternative means of payment outside the app; (ii) show users links and buttons (known as *call to action*) which allow users to purchase goods or services without using the in-app payment system; and (iii) contract with alternative means of in-app payment. The Interim Measure also demanded for the sideloading of app stores on iOS. Apple was given twenty days to comply with the measures.

Apple appealed to Cade's Tribunal and also sought relief in the Brazilian courts against the Interim Measure. The company granted an injunction by a judge suspending the effects of the interim

35 Administrative Proceeding n. 08700.004482/2024-77. Claimant: Instituto Brasileiro de Defesa do Consumidor - IDEC. Respondent: Meta INC. e Facebook Serviços Online do Brasil Ltda.

36 Proceeding n. 00261.004509/2024-36. Defendant: Meta Platforms Inc. – Facebook Serviços Online do Brasil. Voto n. 11/2024/DIR-MW/CD.

37 Investigation n. 08700.009531/2022-04. Complainant: Ebazar.com.br Ltda and Mercado Pago Instituição de Pagamento Ltda. Defendant: Apple Inc. and Apple Services LATAM LLC.

measure until a final decision was rendered by Cade. More recently, the Federal Court of Appeals for the 1st Region (TRF1) overturned the decision by the judge and reinstated the Interim Measure, granting Apple ninety days to comply (Peters, 2025). The case is still ongoing.

It is worth noting that given the importance of the matter, Cade organized a Public Consultation to discuss competitive aspects of mobile digital ecosystems, particularly iOS and Android. The consultation took place on February 19, 2025, and had the participation of players of the industry, associations, academics and non-governmental organizations.

4.3. Findings

In summary, the analysis of the cases listed above shows that, despite Cade dealing with both structural and behavioral cases in digital markets, and notwithstanding its apparent proactivity and engagement with the issue, the remedies applied have not specifically addressed the unique concerns of digital markets. The few and rare instances in which the Brazilian authority imposed remedies to restrict competitive concerns were done through agreements negotiated with the parties involved. The balance is three *ACCs* and three *TCCs*. This could indicate the agency's reluctance to handle these emerging markets and its caution in considering the perspectives of the parties involved, avoiding taking more intrusive position in digital markets.

However, Cade has also dismissed significant cases concerning activities that seemed to fall within antitrust violations. In this sense, there has yet to be any formal condemnation of digital platforms in Brazil, highlighting the complexities the agency faces in adapting antitrust enforcement to the digital economy.

5 CONCLUSION AND RECOMMENDATIONS

The typical remedies applied to competition concerns have not been effective in addressing the specific challenges of digital markets. The unique characteristics of these markets - such as network effects, data control, and multi-sided business models - call for more proactive and tailored regulatory approaches. This means that competition authorities must move beyond traditional tools and consider more intrusive measures, such as *ex ante* regulation, to address competitive deficits. Acknowledging that competition law alone may not possess all the necessary tools to ensure a more contestable, fair, and democratic market is an important step in advancing regulatory frameworks in the digital economy.

Nevertheless, this is not an easy task, especially for developing countries, which face significant challenges in adapting traditional regulatory models to the complexities of digital platforms. These countries often struggle with limited resources and weaker institutional capacity to effectively monitor and regulate fast-evolving digital markets. Additionally, many digital platforms operate on a global scale, making it difficult for national regulators to enforce rules without international cooperation. As a result, countries in the Global South must contend with the double burden of regulating emerging digital sectors while simultaneously addressing existing economic disparities and institutional weaknesses.

In Brazil, the situation is no different. The authority has not yet established a comprehensive framework to deal with the unique challenges of digital platforms. As evidenced in the cases discussed, Cade's approach to remedies continue to rely heavily on traditional antitrust tools, which often fail to

capture the full complexities of digital markets. While such tools remain important, they do not address the underlying issues of data control, network effects, and the platform economy, which are central to understanding and regulating competition in digital markets. Moreover, there is no pattern of analysis for digital market investigations. This likely mirrors the situation in other countries of the Global South, where competition authorities are struggling to adapt traditional models to distinctive features.

While traditional competition law tools may still play a role, Brazil needs to revisit its toolkit and embrace the fact that the current framework is not sufficient to tackle all the concerns that digital markets pose to the competitive environment. In this sense, we believe that the authority must not be constrained to well-established remedies in antitrust practice and literature but act boldly by developing updated remedies more capable of curing the competitive ailment forged by dominant digital players.

An initial step has been done in Brazil. In October 2024, the Ministry of Economy unveiled a 130-page report in which it outlines its proposals and recommendations to enhance the regulatory environment applicable to digital platforms in Brazil (Brasil, 2024). The report was led by the Secretariat for Economic Reforms and is a product of a public consultation opened by the Ministry in the first months of 2024.

The proposals set forth by the Report are divided in two categories. First, a group of proposals deemed as a new tool for fostering competing in cases of platforms with "systemic relevance". This would entail a legislative change in order to establish in law the criteria for designating platforms as such. The criteria would be both qualitative and quantitative: it would look at aspects such as market power associated with strong network effects, the offering of multiple online services, intense use of personal data and significant number of users; on the quantitative side, the law would establish a minimum turnover threshold – globally and nationally - for platforms to be designated as "systemic relevant". The report stresses the importance of setting a safe harbor for platforms with turnovers below the threshold. Even though we do not know what the threshold would be, it is expected to be high enough to capture only the Big Tech firms. Importantly enough, all the designation decisions must be submitted to Cade.

Second, on the remedy discussion, the Report establishes that Cade would have the power to impose new substantive obligations to the designated platforms. Such obligations would be individually tailored to each platform, taking into consideration its business model. Should a platform fail to comply with the obligations, it would be subject to an in-depth investigation by Cade.

The Report released by the Ministry of Economy is a testimony to the importance given to competition enforcement in the current Brazilian administration. It is worth noting that Cade submitted lengthy comments to the Ministry while the report was being crafted. In its comments, Cade acknowledges the need for an updated framework of competition enforcement in the country to deal with the challenges of digital markets. On the remedies discussion, Cade asserts that it has an important that track record that should be expanded[38].

38 "CADE's robust track record in implementing remedies to restore market competitiveness, including digital ones, combined with its specialized regulation, is essential for efficiently dealing with antitrust issues in this dynamic sector. Centralizing this competency strengthens the agency's ability to adapt to the complexities and innovations of digital markets, avoiding fragmented oversight and ensuring timely and informed interventions" (Cade, 2024b, p. 55).

The Brazilian Competition Act needs to be revisited to be ready to face the continuing challenge of digital markets. Considering what we found in this paper – that is, the reticent activity of the authority in developing and imposing specific remedies in digital markets – a possible *ex ante* regulation is welcome and will only enhance Brazil as a leading antitrust enforcer in the Global South.

REFERENCES

ADMINISTRATIVE COUNCIL FOR ECONOMIC DEFENSE (Cade). **BRICS in the Digital Economy**: Competition Policy in Practice: 2nd Report by the Competition Authorities Working Group on Digital Economy. Brasília: Cade, 2024a. Available at: https://x.gd/dVkt2n. Accessed on: 26 Feb. 2025.

ADMINISTRATIVE COUNCIL FOR ECONOMIC DEFENSE (Cade). **CADE's contribution to the Ministry of Finance's Public consultation for regulation of digital platforms**. Brasília: Cade, 2024b. Available at: https://x.gd/SWTkX. Accessed on: 6 March 2025.

ADMINISTRATIVE COUNCIL FOR ECONOMIC DEFENSE (Cade). **Mercados de Plataformas Digitais**: Cadernos do Cade. Brasília: Cade, 2023. Available at: https://x.gd/NGkhq. Accessed on: 26 Feb. 2025.

AUTORITÉ DE LA CONCURRENCE. **Les engagements comportementaux**: Behavioural Remedies. Paris: La Documentation Française, 2020. (Les essentiels).

BLUME, Igor Marcelo; BRUCH, Kelly. O Paradoxo do Google: a geração de ganhos de eficiência e as condutas anticompetitivas. **Revista de Defesa da Concorrência**, Brasília, i. 11, n. 2, 2023. DOI: https://doi.org/10.52896/rdc.v11i2.1062. Available at: https://x.gd/daSfV. Accessed on: 26 February 2025.

BOSTOEN, Friso; VAN WAMEL, David. Antitrust remedies: From caution to creativity. **Journal of European Competition Law & Practice**, [*s. l.*], v. 14, i. 8, p. 540-552, 2023. DOI: https://doi.org/10.1093/jeclap/lpad051. Available at: https://x.gd/TpSJ3. Accessed on: 26 Feb. 2025.

BOSTOEN, Friso; VAN WAMEL, David. The Digital Markets Act: A Partial Solution to Antitrust's Remedy Problem. **Common Market Law Review**, [*s. l.*], v. 61, i. 6, 2024. Available at: https://x.gd/Bxb0l. Accessed on: 26 Feb. 2025.

BRADFORD, Anu. **The Brussels Effect**. New York: Oxford University Press, 2020.

BRASIL. Ministério da Fazenda. **Plataformas Digitais**: Aspectos econômicos e concorrenciais e recomendações para aprimoramentos regulatórios no Brasil. Brasília: Ministério da Fazenda, 2024. Available at: https://x.gd/jCbPc. Accessed on: 26 Feb. 2025.

COMPETITION MARKET AUTHORITY (CMA). **Microsoft / Activision Blizzard merger inquiry.** London: CMA, 2023. Available at: https://x.gd/TKfgl. Accessed on: 26 Feb. 2025.

EUROPEAN COMMISSION. Fines. **European Commission**, Brussels, 2025. Available at: https://x.gd/2Rfaf. Accessed on: 25 Feb. 2025.

EUROPEAN COMMISSION. **Case M.9660 – GOOGLE/FITBIT**. Brussels, 2020. Available at: https://x.gd/twWw5. Accessed on: 25 Feb. 2025.

GAL, Michal S.; PETIT, Nicolas. Radical restorative remedies for digital markets. **Berkeley Technology Law Journal**, Berkeley, v. 36, i. 2, p. 617-674, 2021. Available at: https://www.jstor.org/stable/27210392. Accessed on: 26 Feb. 2025.

GREENWOOD, Natalie; ROBERT, Gavin. Who's Afraid of the UK Competition & Markets Authority? **Antitrust Magazine**, Chicago, v. 38, i. 3, 2024. Available at: https://x.gd/4t6M2. Accessed on: 26 Feb. 2025.

HALPERIN, Michal. Remedies (antitrust). **Global Dictionary of Competition Law**. Paris: Concurrences, 2025. Available at: https://x.gd/aSgHB. Accessed on: 24 Feb. 2025.

HOVENKAMP, Herbert. Antitrust Interoperability Remedies. **Columbia Law Review**, New York, v. 123, 2023. Available at: https://x.gd/9G2Zk. Accessed on: 23 Feb. 2025.

LANCIERI, Filippo; PEREIRA NETO, Caio Mario S. Designing remedies for digital markets: the interplay between antitrust and regulation. **Journal of Competition Law & Economics**, [*s. l.*], v. 18, i. 3, p. 613-669, 2022. DOI: https://doi.org/10.1093/joclec/nhab022. Available at: https://x.gd/e2YXi. Accessed on: 26 Feb. 2025.

LANCIERI, Filippo; SAKOWSKI, Patricia Morita. Competition in Digital Markets: A Review of Expert Reports. **Stanford Journal of Law, Business & Finance**, Stanford, v. 26, p. 65, 2021. Available at: https://x.gd/u3WwJ. Accessed on: 26 Feb. 2025.

MCCABE, David. Justice Dept. Double Down on Request to Break Up Google. **New York Times**, New York, Mar. 7, 2025. Available at: https://x.gd/SxqXR. Accessed on: 7 March 2025.

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD). **Ex ante regulation and competition in digital markets**. OECD Publishing: Paris, 2021. Available at: https://x.gd/Gku5h. Accessed on: 25 Feb. 2025.

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OCDE). Interim Measures in Antitrust Investigations. 2022a. **OECD Roundtables on Competition Policy Papers**, No. 283, OECD Publishing: Paris, 2022. DOI: https://doi.org/10.1787/5a3242e9-en. Available at: https://x.gd/SCDJD. Accessed on: 26 Feb. 2025.

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OCDE). **OECD Handbook on Competition Policy in the Digital Age**. OECD Publishing: Paris, 2022b. DOI: https://doi.org/10.1787/c8c1841b-en. Available at: https://x.gd/SH0il. Accessed on: 26 Feb. 2025.

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD). **OECD Peer Reviews of Competition Law and Policy**: Brazil, 2019. Competition Law and Policy Reviews. OECD Publishing: Paris, 2019. Available at: https://doi.org/10.1787/8657b785-en. Accessed on: 25 Feb. 2025.

PETERS, Jay. Apple has 90 days to allow app sideloading in Brazil. **The Verge**, New York, Mar. 6, 2025. Available at: https://x.gd/K5VXq. Accessed on: 25 Mar. 2025.

SANTOS, Humberto Cunha dos. A concorrência dinâmica das plataformas digitais: o respeito à inovação sem desprestigiar a preservação da competição na economia digital – reflexões a partir do caso "Google Shopping". **Revista do IBRAC**, São Paulo, i. 1, p. 296–317, 2020. Available at: https://x.gd/Utad5. Accessed on: 26 Feb. 2025.

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD). **Enforcing Competition Law in Digital Markets and Ecosystems**: Policy Challenges and Options. Geneva: Unctad, 2024. Available at: https://x.gd/i6V3S. Accessed on: 26 Feb. 2025.

UNITED STATES OF AMERICA (USA). Federal Trade Commission. **File Number 111-0163**. Washington: Federal Trade Commission, 2013. Available at: https://bit.ly/3Rh8T8a. Accessed on: 4 Apr. 2022.

UNITED STATES OF AMERICA (USA). Department of Justice. **Plaintiffs' Proposed Remedy Framework**. Case 1:20-cv-03010-APM, Document 1052, Oct. 8, 2024. Available at: https://www.justice.gov/atr/media/1373101/dl. Accessed on: 25 Feb. 2025.

WORLD BANK. **Antitrust and Digital Platforms**: An Analysis of Global Patterns and Approaches by Competition Authorities. Washington, D. C.: World Bank Group, 2021. (Levelling Up). Available at: https://x.gd/0RsRd. Accessed on: 26 Feb. 2025.