

## CCIA Comments on the Brazilian Ministry of Finance’s Consultation on Digital Platforms

The Computer & Communications Industry Association (CCIA)<sup>1</sup> welcomes the opportunity to submit comments on the Brazilian Ministry of Finance’s (the “Ministry”) Consultation on the Economic and Competitive Aspects of Digital Platforms<sup>2</sup> (the “Consultation”), released on January 19, 2024.<sup>3</sup> These comments follow up on the remarks CCIA made during the Brazilian Chamber of Deputies’ Economic Development Commission hearing on Bill No. 2768/2022 in August 2023,<sup>4</sup> and the comments CCIA submitted to the Brazilian Congress in response to its public consultation on the same Bill in December 2023.<sup>5</sup>

Digital platforms offer innovative and popular services that have revolutionized the way consumers and businesses interact with each other. CCIA strongly believes that, to determine if there are any potential competition concerns that need to be addressed through regulation, it is paramount for policymakers to understand the various digital business models and services fully and accurately, as well as the industries in which they operate. As such, when proposing any *ex-ante* regulatory framework for digital markets, policymakers must consider market realities and how the proposed regulation might affect businesses, consumers, and the overall economy.

These comments discuss important principles for Brazilian policymakers to consider when contemplating and designing any regulation for digital markets. Without relying on some key regulatory considerations, any *ex-ante* regulatory framework runs the risk of harming Brazilian consumers, competition, and innovation. Therefore, these comments offer some

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<sup>1</sup> CCIA is an international, not-for-profit trade association representing a broad cross-section of technology and communications firms. For over fifty years, CCIA has promoted open markets, open systems, and open networks. The Association advocates for sound competition policy and antitrust enforcement. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. For more, visit [www.ccianet.org](http://www.ccianet.org).

<sup>2</sup> Ministério da Fazenda, Secretaria de Reformas Econômicas - SRE, Tomada De Subsídios No. 1 de 18 de Janeiro de 2024, <https://www.gov.br/fazenda/pt-br/assuntos/noticias/2024/janeiro/arquivo/tomada-de-subsidios-sre-plataformas-digitais-8012024-1.pdf>.

<sup>3</sup> Ministério da Fazenda, Secretaria de Reformas Econômicas - SRE, Tomada De Subsídios - Aspectos Econômicos E Concorrenciais De Plataformas Digitais (Jan. 19, 2024), <https://www.gov.br/participamaisbrasil/concorrencia-plataformas-digitais>.

<sup>4</sup> Câmara dos Deputados, Comissão de Desenvolvimento Econômico, “Regulamentação dos mercados digitais no Brasil precisa ser feita com cautela, afirmam especialistas estrangeiros” (Aug. 10, 2023), <https://www.camara.leg.br/noticias/985302-regulamentacao-dos-mercados-digitais-no-brasil-precisa-ser-feita-com-cautela-afirmam-especialistas-estrangeiros/>.

<sup>5</sup> CCIA, “CCIA Offers Comments On Brazilian Tech Regulation Bill” (Dec. 4, 2023), <https://ccianet.org/news/2023/12/ccia-offers-comments-on-brazilian-tech-regulation-bill/>.

important regulatory principles and recommendations regarding some of the key aspects of Brazil’s digital economy and its competitive ecosystem.

## I. Key Considerations and Principles to Guide Regulatory Proposals

Global digitalization across several industries of the economy has provided consumers and businesses with tremendous benefits. Numerous studies have confirmed the many ways in which digital services and multi-sided business models create and stimulate competition in the economy.<sup>6</sup> Given the dynamic and innovative nature of digital markets, any proposed digital regulation needs to consider the wider potential implications for businesses, consumers, innovation, and the broader economy.

Digital technology is diffusing across the entire economy in industries as diverse as advertising, agriculture, automotive, manufacturing, and retail. With the ongoing digitalization across the economy,<sup>7</sup> many industries have digital components and digital offerings that also compete with physical ones, including retail and telemedicine.<sup>8</sup> Businesses usually described as “digital” are companies that adopted early on the use of technology and digital tools across

<sup>6</sup> See, e.g., European Commission, “Staff Working Document: Evaluation of the Vertical Block Exemption Regulation” (Sep. 8, 2020), at 32, [https://ec.europa.eu/competition/consultations/2018\\_vber/staff\\_working\\_document.pdf](https://ec.europa.eu/competition/consultations/2018_vber/staff_working_document.pdf) (“[A]lternative online distribution models such as online marketplaces have made it easier for retailers to access customers. By using these third-party platforms, small retailers may, with limited investments and effort, become visible to potential customers and sell products to a large customer base and in multiple Member States.”); Oxera, “How platforms create value for their users: implications for the Digital Markets Act” (May 12, 2021), at 34, <https://www.oxera.com/wp-content/uploads/2021/05/How-platforms-create-value.pdf> (“The bundling and tying of different features and services by a platform can boost the efficiency of a market by reducing transaction costs, increasing choice for consumers, and helping businesses to achieve scale economies.”).

<sup>7</sup> See, e.g., Sarah Robson and Tim Cowell, AVEVA, “The four pillars of a trusted industrial information infrastructure” (2023), [https://discover.aveva.com/paid-search-industrial-cloud-hybrid-saas/whitepaper-the-four-pillars-of-a-trusted-industrial-information-infrastructure?https://discover.aveva.com/paid-search-industrial-cloud-hybrid-saas/whitepaper-the-four-pillars-of-a-trusted-industrial-information-infrastructure&utm\\_term=industrial%20digitalization&utm\\_campaign=G S A NA All Campaign Solution Cloud Industrial%20Cloud%20Hybrid%20SaaS&utm\\_source=adwords&utm\\_medium=ppc&gad\\_source=1&gclid=Cj0KCQjwir2xBhC\\_ARIsAMTXk87r9vMQVFqoL15eh0XMKGAY\\_cDwx6mfund3avCiupvdLEEQ0UbGRnAaAmYmEALw\\_wcB](https://discover.aveva.com/paid-search-industrial-cloud-hybrid-saas/whitepaper-the-four-pillars-of-a-trusted-industrial-information-infrastructure?https://discover.aveva.com/paid-search-industrial-cloud-hybrid-saas/whitepaper-the-four-pillars-of-a-trusted-industrial-information-infrastructure&utm_term=industrial%20digitalization&utm_campaign=G%20S%20A%20NA%20All%20Campaign%20Solution%20Cloud%20Industrial%20Cloud%20Hybrid%20SaaS&utm_source=adwords&utm_medium=ppc&gad_source=1&gclid=Cj0KCQjwir2xBhC_ARIsAMTXk87r9vMQVFqoL15eh0XMKGAY_cDwx6mfund3avCiupvdLEEQ0UbGRnAaAmYmEALw_wcB); Yifat Perry, NetApp BlueXP, “Digital Transformation: Examples from 5 Industries” (Jun. 2022), <https://bluexp.netapp.com/blog/cvo-blg-digital-transformation-examples-from-5-industries>.

<sup>8</sup> Rosa Abrantes-Metz and Mame Maloney, CCIA Research Center, “Competitive Dynamics of Online and Brick-and-Mortar Retail Prices” (Aug. 2, 2022), <https://research.ccianet.org/reports/competitive-dynamics-online-brick-and-mortar-retail-prices/>; Trevor Wagener, Jeff Simpson, and David Kearns, Deloitte, InsightIQ, “Consumer Preferences Embrace a Mix of Physical and Digital” (Jan. 31, 2022), <https://ccianet.org/research/reports/consumer-preferences-embrace-mix-physical-digital-shopping/>; John Glaser and Kyle Zebley, Harvard Business Review, “It’s Time to Cement Telehealth’s Place in U.S. Health Care” (Jan. 20, 2023), <https://hbr.org/2023/01/its-time-to-cement-telehealths-place-in-u-s-health-care>; Prashant Gandhi, Somesh Khanna, and Sree Ramaswamy, Harvard Business Review, “Which Industries Are the Most Digital (and Why)?” (Apr. 1, 2016), <https://hbr.org/2016/04/a-chart-that-shows-which-industries-are-the-most-digital-and-why>.

various industries. Thus, as the entire economy is moving towards digitalization, creating a different set of rules for digital companies could create asymmetric results in the market, leading to ambiguity and inconsistency.

Importantly, an overly burdensome and heavy-handed regulation for digital markets could significantly hinder innovation and economic growth. This should be a particularly important consideration for economies with a thriving innovation and start-up ecosystem, as is the case of Brazil and its technology start-ups, including its dynamic fintech sector.<sup>9</sup>

Policymakers should take into account that any regulatory proposal for digital markets will likely have a significant impact not only from a competition enforcement and policy perspective, but in other policy areas as well, such as data privacy, national security, cybersecurity, and intellectual property, with important ramifications for businesses operating in Brazil. This interconnectedness of policy areas in the digital space requires a particularly careful calibration of any regulatory considerations in this area.<sup>10</sup>

### **I.1. Policymakers Should Analyze the Costs and Benefits before Implementing Any New Regulation**

Given the potentially significant economic impact of regulating digital markets, it is fundamental for policymakers to engage with stakeholders in the development of any new *ex-ante* regulatory framework. Introducing new regulations is not costless, especially given the dynamic and innovative nature of digital markets. As a result, the ultimate objective of any new regulatory framework should be to promote and stimulate competition and innovation.

As the Organisation for Economic Cooperation and Development (OECD) and the International Competition Network (ICN) have underscored, to ensure that the cost of any new regulation does not outweigh its benefits, it should allow clearly procompetitive or competitively

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<sup>9</sup> International Telecommunications Union, “Brazil Country Review: Regulation in the Digital Transformation” (2023), at 9, [https://digitalregulation.org/wp-content/uploads/D-PREF-THEM.31\\_Brazil-2023-PDF-E.pdf](https://digitalregulation.org/wp-content/uploads/D-PREF-THEM.31_Brazil-2023-PDF-E.pdf); International Telecommunications Union, “International Telecommunication Union, ICT Regulatory Tracker” (2023), [https://app.gen5.digital/tracker/about?\\_ga=2.219506015.792952719.1652307232-1329504368.1648823243&\\_gl=1\\*vtee1m\\*\\_ga\\*MTMyOTUwNDM2OC4xNjQ4ODIzMjQz\\*\\_ga\\_27GW57NRWK\\*MTY1MjMwNzIzMi40LjAuMTY1MjMwNzIzMi4w](https://app.gen5.digital/tracker/about?_ga=2.219506015.792952719.1652307232-1329504368.1648823243&_gl=1*vtee1m*_ga*MTMyOTUwNDM2OC4xNjQ4ODIzMjQz*_ga_27GW57NRWK*MTY1MjMwNzIzMi40LjAuMTY1MjMwNzIzMi4w).

<sup>10</sup> See, e.g., United Nations, Report of the UN Secretary-General’s High-level Panel on Digital Cooperation, “The age of digital interdependence” (2019), at 6, <https://www.un.org/en/pdfs/DigitalCooperation-report-for%20web.pdf>; OECD, OECD Report to G-20 Finance Ministers, “Achieving Inclusive Growth in the Face of Digital Transformation and the Future of Work” (Mar. 19, 2018), [https://www.oecd.org/g20/OECD\\_Achieving%20inclusive%20growth%20in%20the%20face%20of%20FoW.pdf](https://www.oecd.org/g20/OECD_Achieving%20inclusive%20growth%20in%20the%20face%20of%20FoW.pdf).

benign conducts, and recognize justifications for legitimate protections.<sup>11</sup> Without appropriate safeguards, a regulation may harm Brazilian consumers and businesses, including small and medium-sized businesses (SMBs) that use and rely on digital services. Therefore, CCIA encourages Brazilian policymakers to analyze the potential impact of any *ex-ante* regulation, including Bill No. 2768/2022,<sup>12</sup> and whether its expected benefits would outweigh its potential harms to Brazilian consumers, businesses, and the economy.<sup>13</sup>

## I.2. Balancing Competition and Regulation in Digital Markets

Overly complex, intrusive, or broad regulatory regimes are likely to deter entry and investment from innovative companies.<sup>14</sup> Therefore, any *ex-ante* regulation should only be introduced to address particular market failures, which is not the same as the mere existence of market power. Dynamic competition, which is particularly relevant in digital markets, comes forth as a natural way to resolve market failures by firms competing for the market and creating new and innovative products.<sup>15</sup> In this regard, a key consideration before proposing any *ex-ante* regulation is whether the existing enforcement and policy frameworks, including competition, consumer protection, and data privacy already provide more proportionate ways to achieve the desired outcomes. Therefore, clarifying the expected outcomes of a proposed digital regulatory framework in advance is particularly important for consumers and businesses alike.

*Ex-ante* regulation for digital markets, in the absence of a specific market failure that requires correction, would hinder not only the growth of companies in the digital and connected

<sup>11</sup> OECD, OECD Global Forum on Trade 2023, “Key Issues in Digital Trade” (Oct. 2023), at 13, <https://www.oecd.org/trade/OECD-key-issues-in-digital-trade.pdf>; ICN, ICN Advocacy Working Group, “Framework of Competition Assessment Regimes” (Apr. 2015), [https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/09/AWG\\_FrameworkCompetitionAssessmentRegimes.pdf](https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/09/AWG_FrameworkCompetitionAssessmentRegimes.pdf); OECD, “Maintaining Competitive Conditions in the Era of Digitalization” (Jul. 2018), at 4, <https://www.oecd.org/g20/Maintaining-competitive-conditions-in-era-of-digitalisation-OECD.pdf>.

<sup>12</sup> Congresso Nacional, Projeto de Lei No. 2768/2022, [https://www.camara.leg.br/proposicoesWeb/prop\\_mostrarintegra?codteor=2214237&filename=PL%202768/2022](https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=2214237&filename=PL%202768/2022).

<sup>13</sup> See, OECD, Regulatory Policy Outlook (2021), [https://www.oecd-ilibrary.org/governance/oecd-regulatory-policy-outlook-2021\\_38b0fdb1-en](https://www.oecd-ilibrary.org/governance/oecd-regulatory-policy-outlook-2021_38b0fdb1-en); OECD, Regulatory Impact Assessment (2020), <https://www.oecd.org/gov/regulatory-policy/regulatory-impact-assessment-7a9638cb-en.htm>.

<sup>14</sup> See, e.g., Aghion, Philippe and Bergeaud, Antonin and Van Reenen, John, “The Impact of Regulation on Innovation” (Jan. 16, 2023), Banque de France Working Paper No. 804, <https://ssrn.com/abstract=4325116>; OECD, “Regulatory Reform and Innovation,” <https://www.oecd.org/sti/inno/2102514.pdf>; William D. Eggers, Sam J Walsh, Carsten Joergensen, and Pankaj Kamleshkumar Kishnani, “Regulation that enables innovation” (Mar. 23, 2023), <https://www2.deloitte.com/us/en/insights/industry/public-sector/government-trends/2023/regulatory-agencies-and-innovation.html>.

<sup>15</sup> Joseph A. Schumpeter, “Capitalism, Socialism, and Democracy,” 81 (1942).

markets, but it would also harm innovation and competition, and thereby the overall economy.<sup>16</sup> Hence, regulation of a specific sector of the economy should only be considered when there is evidence of a sector-specific market failure that harms competition.

In addition, the Brazilian competition authority (Conselho Administrativo de Defesa Econômica, or CADE), has the necessary tools to address potential competition concerns in digital markets. As such, to date CADE has reviewed a total of 233 transactions involving “digital platforms.”<sup>17</sup> Most of these transactions were analyzed under the agency’s fast-track procedure, indicating that they did not raise competition concerns. In addition to merger review, CADE has also opened 23 conduct investigations related to “digital” aspects since 2011.<sup>18</sup> These investigations required CADE analyzing economic conditions on a case-by-case basis, evaluating the competitive dynamics and specific business models in each case. In some cases, CADE imposed effective remedies, as appropriate.<sup>19</sup> In the majority of cases, however, CADE closed the investigations after careful analysis of the facts and the economic evidence, reflecting that the agency has the analytical tools that are necessary to investigate and deter potential harms to competition in digital markets. Importantly, over the years CADE has had many initiatives to gain a deeper understanding of the competitive dynamics of digital markets, including studies and detailed reports.<sup>20</sup> As such, there is no indication that the authority faces any new market problem or concern that would require additional tools or rules to address.

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<sup>16</sup> OECD, Directorate For Financial and Enterprise Affairs, Competition Committee, “*Ex-Ante* Regulation and Competition in Digital markets - Note by BIAC” (Dec. 2, 2021), at 4, [https://one.oecd.org/document/DAF/COMP/WD\(2021\)79/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2021)79/en/pdf); Badri Narayanan and Hosuk Lee-Makiyama, ECIPE, Economic Costs of *Ex-Ante* Regulations” (Oct. 2020), [https://ecipe.org/wp-content/uploads/2020/10/ECI\\_20\\_OccPaper\\_07\\_2020\\_Ex-ante\\_Regulations\\_LY06.pdf](https://ecipe.org/wp-content/uploads/2020/10/ECI_20_OccPaper_07_2020_Ex-ante_Regulations_LY06.pdf); Fed. Trade Comm’n, Broadband Connectivity Competition Policy Staff Report 9 (Jun. 2007), <https://www.ftc.gov/sites/default/files/documents/reports/broadband-connectivity-competition-policy/v070000report.pdf> (advising that “[i]n evaluating whether new proscriptions are necessary, we advise proceeding with caution before enacting broad, *ex-ante* restrictions in an unsettled, dynamic environment”).

<sup>17</sup> See Conselho Administrativo de Defesa Econômica – CADE, “Mercados de Plataformas Digitais” (Aug. 2023), at 21, [https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos-do-cade/Caderno\\_Plataformas-Digitais\\_Atualizado\\_29.08.pdf](https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos-do-cade/Caderno_Plataformas-Digitais_Atualizado_29.08.pdf).

<sup>18</sup> CADE, “Mercados de Plataformas Digitais, Cadernos do Cade” (Aug. 2023), at 162-164, [https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos-do-cade/Caderno\\_Plataformas-Digitais\\_Atualizado\\_29.08.pdf](https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos-do-cade/Caderno_Plataformas-Digitais_Atualizado_29.08.pdf).

<sup>19</sup> See, e.g., CADE, iFood exclusivity case (2022), Administrative Proceeding 08700.004588/2020-47; CADE, Gympass case (2022), Administrative Inquiry No. 08700.004136/2020-65.

<sup>20</sup> See, e.g., OECD, Directorate for Financial and Enterprise Affairs, Competition Committee, Global Forum on Competition, “Abuse of Dominance in Digital Markets - Contribution from Brazil” (Dec. 8, 2020), <https://cdn.cade.gov.br/Relatorios%20de%20gestao/2020/Cap.%201/Abuse%20of%20dominance%20in%20digital%20markets.pdf>; CADE, Cadernos de do Cade, “Mercados de Plataformas Digitais” (Aug. 2021), <https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos-do-cade/plataformas-digitais.pdf>; CADE, Documento de Trabalho No. 005/2020, “Concorrência em mercados digitais: uma revisão dos

### I.3. Policymakers Should Be Cautious in Relying on Untested International Regulatory Experiments

*Ex-ante* digital regulatory proposals are currently being discussed and debated in several jurisdictions worldwide.<sup>21</sup> However, it is important to underscore how, so far, there are only two jurisdictions with fully operational *ex-ante* digital regulatory frameworks: Germany, through the 10th amendment of the German Competition Act (GWB)<sup>22</sup> and Section 19a of the GWB,<sup>23</sup> and the European Union’s (EU) Digital Markets Act (DMA),<sup>24</sup> which became fully operational in March 2024.<sup>25</sup> However, there is still a long road ahead before the concrete application of the DMA can be properly assessed, with significant litigation roadblocks in its path.<sup>26</sup> Given the extremely limited experience with these regulations,<sup>27</sup> policymakers in Brazil and other countries will likely want to first learn from the experience in these jurisdictions and wait for more concrete results of those regulatory experiments. This, in turn, may help inform policymakers about whether these regulatory examples even end up providing the results for which they were originally crafted. Therefore, CCIA strongly recommends being cautious when relying on international regulatory experiments in this area.

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relatórios especializados” (Aug. 2020), <https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/documentos-de-trabalho/2020/documento-de-trabalho-n05-2020-concorrencia-em-mercados-digitais-uma-revisao-dos-relatorios-especializados.pdf>.

<sup>21</sup> See, e.g., Center for Strategic and International Studies (CSIS), “Digital Competition Policy Tracker” (Apr. 2024), <https://www.csis.org/programs/scholl-chair-international-business/competition-policy-digital-era>.

<sup>22</sup> 10th Amendment to the German Competition Act (GWB), Federal Law Gazette Volume 2021 Part I No. 1, issued in Bonn on January 18, 2021,

[https://www.bgbl.de/xaver/bgbl/start.xav#\\_bgbl\\_%2F%2F%5B%40attr\\_id%3D%27bgbl121s0002.pdf%27%5D1701266446605](https://www.bgbl.de/xaver/bgbl/start.xav#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl121s0002.pdf%27%5D1701266446605).

<sup>23</sup> *Id.*, Section 19a (“The Bundeskartellamt may issue a decision declaring that an undertaking which is active to a significant extent on markets within the meaning of Section 18(3a) is of paramount significance for competition across markets.”).

<sup>24</sup> Regulation (EU) 2022/1925 of The European Parliament and of The Council (Sep. 14, 2022), [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L\\_.2022.265.01.0001.01.ENG&toc=OJ%3AL%3A2022%3A265%3ATOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2022.265.01.0001.01.ENG&toc=OJ%3AL%3A2022%3A265%3ATOC).

<sup>25</sup> European Commission, News Announcement, “Designated gatekeepers must now comply with all obligations under the Digital Markets Act” (March 7, 2024), [https://digital-markets-act.ec.europa.eu/designated-gatekeepers-must-now-comply-all-obligations-under-digital-markets-act-2024-03-07\\_en](https://digital-markets-act.ec.europa.eu/designated-gatekeepers-must-now-comply-all-obligations-under-digital-markets-act-2024-03-07_en).

<sup>26</sup> See, e.g., Nicholas Hirst, MLex, “DMA litigation will be a different beast to antitrust appeals, Kramler says” (Sep. 14, 2023), <https://mlexmarketinsight.com/news/insight/dma-litigation-will-be-a-different-beast-to-antitrust-appeals-kramler-says>; Aymeric de Moncuit and Sarah Wilks, Mayer Brown, “The New EU Digital Regime: Already in Court” (Sep. 19, 2023), <https://www.mayerbrown.com/en/insights/publications/2023/09/the-new-eu-digital-regime-already-in-court>; Foo Yu Chee, Reuters, “Top EU judge expects a wave of litigation from tech giants against new tech law” (Mar. 17, 2023), <https://www.reuters.com/technology/top-eu-judge-expects-wave-litigation-tech-giants-against-new-tech-law-2023-03-17/>.

<sup>27</sup> Germany’s GWB went into effect just over two years ago in 2021. The EU’s DMA became fully operational in March 2024.

Although digital reforms are being considered in various jurisdictions, there are no convergent proposals or results in sight. For example, the U.S. antitrust bills targeting a handful of technology companies raised numerous major concerns and seem to have no political support to be adopted.<sup>28</sup> Other regulatory models around potential codes of conduct are being discussed in Australia and the United Kingdom.<sup>29</sup> Alternatively, they could potentially provide a more flexible and tailor-made regulation, which only time will tell.<sup>30</sup> Japan provides another international model with its so-called Transparency Act,<sup>31</sup> which stipulates that designated digital platforms take voluntary and proactive steps to ensure transparency and fairness under a so-called co-regulatory approach.

It is worth noting how each of these regulatory proposals came as an answer to specific regulatory concerns in the particular jurisdiction. It is important that policymakers considering *ex-ante* regulatory frameworks, particularly concerning digital markets, analyze the specific characteristics and necessities of their national markets. Therefore, and based on the extremely limited experience with recent *ex-ante* regulatory proposals worldwide, CCIA recommends that Brazilian policymakers take a step back and analyze the potential effects of importing these international regulatory experiments. As CADE's President and senior officials also underscored,<sup>32</sup> the recommended approach for Brazil would be to first allow some time to gauge

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<sup>28</sup> See, e.g., Krisztian Katona "AICOA's Data Security, Privacy, and Content Moderation Issues Call for Risk Assessment" (Jun. 7, 2022), <https://www.project-disco.org/privacy/060722-aicoas-data-security-privacy-and-content-moderation-issues-call-for-risk-assessment/>; "AICOA's Failure and the Future of Competition Policy in Congress," Project DisCo (Jan. 6, 2023), <https://www.project-disco.org/competition/010623-aicoas-failure-and-the-future-of-competition-policy-in-congress/>.

<sup>29</sup> See, e.g., CCIA, CCIA Comments on the Australian Treasury's Consultation Document on the Australian Competition and Consumer Commission's Regulatory Reform Recommendations (Feb. 17, 2023), <https://ccianet.org/wp-content/uploads/2023/02/CCIA-Comments-to-the-Australian-Treasury.pdf>; CCIA, CCIA Comments on the United Kingdom's "Digital Markets, Competition, and Consumer Bill" (Jul. 18, 2023), <https://ccianet.org/wp-content/uploads/2023/07/CCIA-Comments-to-UK-Parliament-on-DMCC.pdf>. See also Center for Strategic and International Studies, "UK Digital Markets, Competition and Consumers Bill: Extraterritorial Regulation Affecting the Tech Investment Climate" (Mar. 4, 2024), <https://www.csis.org/analysis/uk-digital-markets-competition-and-consumers-bill-extraterritorial-regulation-affecting>.

<sup>30</sup> See "ACCC calls for new competition and consumer laws for digital platforms" (Nov. 11, 2022), <https://www.accc.gov.au/media-release/accc-calls-for-new-competition-and-consumer-laws-for-digital-platforms>.

<sup>31</sup> Act on Improving Transparency and Fairness of Digital Platforms, (Jun. 3, 2020), [https://www.meti.go.jp/english/policy/mono\\_info\\_service/information\\_economy/digital\\_platforms/index.html](https://www.meti.go.jp/english/policy/mono_info_service/information_economy/digital_platforms/index.html).

<sup>32</sup> See, e.g., "Interview with Alexandre Cordeiro Macedo, President, Administrative Council for Economic Defense (CADE)," Conducted by Krisztian Katona on behalf of the ABA Antitrust Magazine (Jun. 30, 2023), [https://www.americanbar.org/groups/antitrust\\_law/resources/source/2023-june/interview-with-alexandre-cordeiro-macedo/](https://www.americanbar.org/groups/antitrust_law/resources/source/2023-june/interview-with-alexandre-cordeiro-macedo/); MLex, "Solid' body of case law for digital markets must be built in Brazil, CADE's Fernandes says" (Aug. 25, 2022), <https://mlexmarketinsight.com/news/insight/solid-body-of-case-law-for-digital-markets-must-be-built-in-brazil-cade-s-fernandes-says>.

how these international regulatory proposals are working in practice and then evaluate whether the reforms result in benefiting or harming consumers and innovation.

## II. The Potential Impact of *Ex-Ante* Digital Regulation on the Brazilian Economy

*Ex-ante* regulations may have a major impact on consumers, entrepreneurs, and the broader economy. Studies have found that the policy debate around the EU's DMA largely ignored competition and innovation models,<sup>33</sup> and how compliance costs for gatekeepers will increase between \$22 billion and \$50 billion.<sup>34</sup> If a similar *ex-ante* regulation were to be introduced in Brazil, companies would likely invest less in their own R&D, leading to a decrease in innovation expenditure in the country. In turn, this would have larger spillover impacts on the economy, thereby hurting employment, wages, and productivity.<sup>35</sup>

Looking further at the potential implications of the EU's DMA, this legislation could cause an over-enforcement of competition laws by restricting a series of business practices (including bundling, tying, and self-preferencing, among others) that are commonly found both offline and online, and that have a generally positive economic and societal impact.<sup>36</sup> If Brazil adopts a similar regulatory approach, it will risk over-enforcement and restriction of business practices that are often procompetitive or at least competitively benign. This would likely stifle the growth of the Brazilian digital economy, including the country's dynamic financial technology (fintech) sector.

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<sup>33</sup> See, e.g., Center for Strategic and International Studies, Meredith Broadbent, "Implications of the Digital Markets Act for Transatlantic Cooperation" (Sep. 15, 2021), at 6, <https://www.csis.org/analysis/implications-digital-markets-act-transatlantic-cooperation>; David J. Teece and Henry J. Kahwaty, "Is the Proposed Digital Markets Act the Cure for Europe's Platform Ills? Evidence from the European Commission's Impact Assessment" (Apr. 12, 2021), at 47, [https://media.thinkbrg.com/wp-content/uploads/2021/04/11215103/Is-the-DMA-the-Cure\\_Teece\\_Kahwaty.pdf](https://media.thinkbrg.com/wp-content/uploads/2021/04/11215103/Is-the-DMA-the-Cure_Teece_Kahwaty.pdf).

<sup>34</sup> Kati Suominen, CSIS Scholl Chair in International Business, Center for Strategic & International Studies, "Implications of the European Union's Digital Regulations on U.S. and EU Economic and Strategic Interests" (Nov. 2022), at 22, [https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/221122\\_EU\\_DigitalRegulations.pdf?VersionId=iuEI9KteAl\\_SKhjPCEWN8LvqqORV02X](https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/221122_EU_DigitalRegulations.pdf?VersionId=iuEI9KteAl_SKhjPCEWN8LvqqORV02X).

<sup>35</sup> David J. Teece and Henry J. Kahwaty, "Is the Proposed Digital Markets Act the Cure for Europe's Platform Ills? Evidence from the European Commission's Impact Assessment" (Apr. 12, 2021), at 6, [https://media.thinkbrg.com/wp-content/uploads/2021/04/11215103/Is-the-DMA-the-Cure\\_Teece\\_Kahwaty.pdf](https://media.thinkbrg.com/wp-content/uploads/2021/04/11215103/Is-the-DMA-the-Cure_Teece_Kahwaty.pdf).

<sup>36</sup> See, e.g., Felipe Florez Duncan, Oxera, "How platforms create value for their users: implications for the Digital Markets Act" (May 12, 2021), <https://www.oxera.com/insights/reports/how-platforms-create-value/>.



Even when *ex-ante* digital regulations seek to target digital “controllers of an essential access”<sup>37</sup> or “gatekeepers,”<sup>38</sup> these designations can spill over onto non-designated platforms, which increases the cost of false positives and overregulation in the digital economy.<sup>39</sup> A major concern for the Brazilian economy is that, under this regulatory approach, any company that is dominant or in a position in which suppliers are economically dependent on it could be impacted by the significant *per se* rules of *ex-ante* regulations. If Brazil adopts a DMA-like regulatory approach, the whole Brazilian economy, not only digital companies, will be heavily impacted.

It is expected that the EU’s DMA might significantly threaten workers in some of the largest job-creating industries – technology and e-commerce.<sup>40</sup> If Brazil were to adopt a similar regulatory approach, it could end up significantly hurting job growth in these important sectors and slow down the momentum of job creation.

As CCIA previously noted in its December 2023 comments to Congress on Bill No. 2768/2022,<sup>41</sup> this proposal could affect at least 187 different digital service and e-commerce companies that generate between \$13.3 billion and \$76.3 billion (between R\$65 billion and R\$372 billion) in revenue, and employ between 114,374 and 258,770 workers in Brazil.<sup>42</sup> These figures are limited to firms headquartered in Brazil, meaning that the impact of any *ex-ante* regulatory framework for Brazil’s workforce will increase once foreign firms operating in Brazil are also considered,<sup>43</sup> as these companies will face enormous compliance challenges, decreasing their revenue.

### III. Digital Regulation Could Hinder the Brazilian Start-up Ecosystem

Digital start-ups have been a disruptive force in the way traditional service providers work and interact with customers. They are changing the dominant paradigms by which

<sup>37</sup> Congresso Nacional, Projeto de Lei No. 2768/2022, article 9,

[https://www.camara.leg.br/proposicoesWeb/prop\\_mostrarintegra?codteor=2214237&filename=PL%202768/2022](https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=2214237&filename=PL%202768/2022).

<sup>38</sup> Gatekeepers, Digital Markets Act, European Commission, <https://digital-markets-act-cases.ec.europa.eu/gatekeepers>,

<sup>39</sup> See, e.g., Kay Jebelli, Project DisCo, “The DMA’s Risk to Non-Gatekeeper Platforms” (Mar. 11, 2022), <https://www.project-disco.org/european-union/031122-the-dmas-risk-to-non-gatekeeper-platforms/>.

<sup>40</sup> Project DisCo, “ICYMI: Experts Say DMA Threatens Job Creation” (Nov. 11, 2021), <https://www.project-disco.org/21st-century-trade/111121-experts-say-dma-threatens-job-creation/>; Aurelien Portuese, “The Digital Markets Act: A Triumph of Regulation Over Innovation,” Information Technology & Innovation Foundation - ITIF (2022), [https://itif.org/publications/2022/08/24/digital-markets-act-a-triumph-of-regulation-over-innovation/#\\_edn7](https://itif.org/publications/2022/08/24/digital-markets-act-a-triumph-of-regulation-over-innovation/#_edn7).

<sup>41</sup> CCIA Comments on Brazilian Bill No. 2768/2022, (Dec. 3, 2023), at 7, [https://ccianet.org/wp-content/uploads/2023/12/CCIA-Coments-on-Brazilian-Bill-No.-2768\\_2022.pdf](https://ccianet.org/wp-content/uploads/2023/12/CCIA-Coments-on-Brazilian-Bill-No.-2768_2022.pdf).

<sup>42</sup> Crunchbase data, see <https://www.crunchbase.com/>.

<sup>43</sup> *Id.*

consumers access products and services.<sup>44</sup> Given the great importance of start-ups in the digital economy, it is paramount for policymakers and regulators to promote, not hinder, competition and innovation in these complex ecosystems.

This is especially important for Brazil, as it is not only the first jurisdiction in Latin America to have a legislative proposal for an *ex-ante* digital regulation, but is also the largest and one of the most advanced Latin American economies in terms of policy and regulatory frameworks for the digital sector.<sup>45</sup> As the OECD noted, Brazil's investment in R&D in the digital sectors, relative to its GDP, is well above that of other countries in the region.<sup>46</sup> Further, the \$9.4 billion investment received by Brazil's start-up ecosystem in 2021<sup>47</sup> is a true testimony of the importance of the start-up industry to Brazil's overall economy. Brazil's 18,000 start-up companies accounted for 77 percent of Latin America's start-ups in 2021,<sup>48</sup> reflecting that the Brazilian digital ecosystem is a driver of innovation and development for the entire region.

Brazil, in addition to being the largest economy in Latin America, is also the fifth largest fintech market in the world,<sup>49</sup> and the second fastest growing country in the app market.<sup>50</sup> It accounts for 36.5 percent of the technology market in Latin America, being the 12th biggest tech

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<sup>44</sup> See, e.g., Zhang K, Feng L, Wang J, Qin G and Li H (2022), "Start-Up's Road to Disruptive Innovation in the Digital Era: The Interplay Between Dynamic Capabilities and Business Model Innovation," *Front. Psychol.* 13:925277, <https://doi.org/10.3389/fpsyg.2022.925277>; Maximilian Palmié, Jonas Boehm, Jonas Friedrich, Vinit Parida, Joakim Wincent, Jonas Kahlert, Oliver Gassmann, David Sjödin, "Startups versus incumbents in 'green' industry transformations: A comparative study of business model archetypes in the electrical power sector," *Industrial Marketing Management*, Volume 96 (2021), at 46, <https://doi.org/10.1016/j.indmarman.2021.04.003>.

<sup>45</sup> Brazil Country Review: Regulation in the Digital Transformation (2023), at 9, [https://digitalregulation.org/wp-content/uploads/D-PREF-THEM.31\\_Brazil-2023-PDF-E.pdf](https://digitalregulation.org/wp-content/uploads/D-PREF-THEM.31_Brazil-2023-PDF-E.pdf); International Telecommunication Union, ICT Regulatory Tracker, International Telecommunication Union (2023) [https://app.gen5.digital/tracker/about?\\_ga=2.219506015.792952719.1652307232-1329504368.1648823243&\\_gl=1\\*vtee1m\\*\\_ga\\*MTMyOTUwNDM2OC4xNjQ0ODIzMjQz\\*\\_ga\\_27GW57NRWK\\*MTY1MjMwNzIzMi40LjAuMTY1MjMwNzIzMi4w](https://app.gen5.digital/tracker/about?_ga=2.219506015.792952719.1652307232-1329504368.1648823243&_gl=1*vtee1m*_ga*MTMyOTUwNDM2OC4xNjQ0ODIzMjQz*_ga_27GW57NRWK*MTY1MjMwNzIzMi40LjAuMTY1MjMwNzIzMi4w).

<sup>46</sup> Going Digital in Brazil, Innovation in the Brazilian Economy (2020), OECD, [https://www.oecd-ilibrary.org/sites/e9bf7f8a-en/1/3/5/index.html?itemId=/content/publication/e9bf7f8a-en&\\_csp=4d15becbcaf4101a1f8bb9316741cfec&itemIGO=oecd&itemContentType=book#sec-148](https://www.oecd-ilibrary.org/sites/e9bf7f8a-en/1/3/5/index.html?itemId=/content/publication/e9bf7f8a-en&_csp=4d15becbcaf4101a1f8bb9316741cfec&itemIGO=oecd&itemContentType=book#sec-148) (Brazil's investment in R&D amounted to 1.26% of its GDP, while other countries in Latin America such as Argentina, Chile, and Mexico, do not invest in R&D more than 0.5% of their GDP).

<sup>47</sup> See, e.g., Market Intelligence, International Trade Administration, US Department of Commerce, "Brazil Digital Transformation" (Aug. 19, 2022), <https://www.trade.gov/market-intelligence/brazil-digital-transformation>.

<sup>48</sup> *Id.*

<sup>49</sup> See Malena Dailey, "Why the US. Rejected European Style Digital Markets Regulation: Considerations for Brazil's Tech Landscape" (2023), <https://www.progressivepolicy.org/wp-content/uploads/2023/10/PPI-Brazil-EU-Tech.pdf>.

<sup>50</sup> Business of Apps, Brazil App Market Statistics (Oct. 20, 2023), <https://www.businessofapps.com/data/brazil-app-market/#:~:text=According%20to%20Sensor%20Tower%2C%20Brazil,emerging%20as%20a%20gaming%20powerhouse>.

market in the world.<sup>51</sup> Further, in 2023 artificial intelligence in Brazil attracted investments of R\$1 billion,<sup>52</sup> and 81 percent of Brazilians have access to the internet,<sup>53</sup> with 99 cellular subscriptions for every 100 people in the country.<sup>54</sup> These numbers reflect the important role interconnectedness and digital markets play both in the broader economy and the daily lives of Brazilian consumers. Hence, when considering the necessity of an *ex-ante* regulatory framework for digital markets, policymakers should consider how these regulations can impact the growth of the national economy and Brazil’s regional leadership and global role in the technology sector.

An important example of Brazil’s regional and global technology leadership is the country’s dynamic fintech sector. According to the Inter-American Development Bank (IDB), the fintech industry grew 112 percent in the Latin American region from 2018 to 2021,<sup>55</sup> with Brazil representing almost a third of that market.<sup>56</sup> The Brazilian fintech industry, with its impressive size, rapid growth, and high investment levels, provides a critical example of the importance of the start-up ecosystem in the overall Brazilian economy. Importantly, Brazil has recently ranked as the top start-up ecosystem in the region and the 27th worldwide.<sup>57</sup>

It is important for Brazilian policymakers to think more broadly and consider what an *ex-ante* regulation’s impact would be on consumers and SMBs that have benefited from digital products and services. Before implementing a new *ex-ante* regulation, it is of paramount importance to analyze its potential impact and consequences for Brazilian consumers, innovation, and the economy to ensure that it is both necessary and proportionate.

Finally, and as CCIA also noted during the August 2023 Parliamentary hearing on Bill No. 2768/2022,<sup>58</sup> a particularly important point that Brazil and any other jurisdiction

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<sup>51</sup> International Trade Administration, “Brazil - Country Commercial Guide”, (Apr. 14, 2023), <https://www.trade.gov/country-commercial-guides/brazil-ict-information-and-communications-technologies-and>.

<sup>52</sup> *Id.*

<sup>53</sup> Data from The World Bank, <https://data.worldbank.org/indicator/IT.NET.USER.ZS?end=2022&locations=BR&start=2010&view=chart>.

<sup>54</sup> *Id.*

<sup>55</sup> IDB, IDB Invest and Innovista, “Fintech in Latin America and the Caribbean: A Consolidated Ecosystem for Recovery” (Apr. 26, 2022), at 5, <https://publications.iadb.org/publications/english/viewer/Fintech-in-Latin-America-and-the-Caribbean-A-Consolidated-Ecosystem-for-Recovery.pdf>.

<sup>56</sup> *Id.* (In 2021, Brazil’s 771 fintech companies accounted for 31 percent of the Latin American market. By late 2022, Brazil had 855 active fintech companies.)

<sup>57</sup> Jose Pulido, Contxto, “The Startup Ecosystem of Brazil,” StartupBlink (2023), <https://www.startupblink.com/startup-ecosystem/brazil>; “Brazil ranks first in startup development” (Jun. 29, 2023), <https://contxto.com/startups/brazil-ranks-first-in-startup-development/>.

<sup>58</sup> *Supra* n. 4.

contemplating an *ex-ante* regulatory framework for digital markets should keep in mind is that there is a global competition for technology investment. Companies want to operate in jurisdictions and economies with clear, fair, and principle-based regulatory environments, without extreme regulatory obligations and paying excessive expenses to operate.<sup>59</sup> This is particularly important for the global export competitiveness of Brazilian companies as well. The important question from a business perspective is – how does Brazil want to position itself in this global competition for investment? What kind of national regulatory framework does it want to provide for international companies? After all, before regulating competition, a country needs to attract it.

#### IV. CADE Should be the Designated Authority for Competition Issues in Digital Markets

In jurisdictions where regulatory proposals on digital competition are currently being discussed or debated, generally the competition agency is considered as the authority responsible for implementing such potential regulations.<sup>60</sup> This is based on the understanding that competition authorities have more experience and accumulated expertise reviewing transactions<sup>61</sup> and investigating business practices in digital markets, which best places them to implement any potential regulations in this area.

Under the regulatory framework proposed by Bill No. 2768/2022,<sup>62</sup> Brazil’s national telecommunications agency (Agência Nacional de Telecomunicações, or ANATEL) would be responsible for the *ex-ante* regulation of digital markets, while the national competition

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<sup>59</sup> See, e.g., Christian M. Dippon and Matthew D. Hoell, “A Quantitative Evaluation: The Economic Costs of Structural Separation, Line of Business Restrictions, and Common Carrier Regulation of Online Platforms and Marketplaces” (Mar. 18, 2022), <https://research.ccianet.org/reports/economic-costs-regulation-online-platforms-marketplaces/#main-content>; Engine and CCIA Research Center, “Tools to Compete Lower Costs, More Resources, and the Symbiosis of the Tech Ecosystem” (Jan. 25, 2023), <https://research.ccianet.org/reports/tools-to-compete/#main-content>.

<sup>60</sup> In Germany the Bundeskartellamt, and in the EU the European Commission’s DG Competition and DG Connect are responsible for the implementation of the new *ex-ante* digital regulations. Similarly, in the United Kingdom’s Parliamentary debate, the Competition and Markets Authority (CMA) would be tasked with implementing the draft Digital Markets, Competition and Consumers Bill (DMCC).

<sup>61</sup> See, e.g., Mercados de Plataformas Digitais, Cadernos do Cade, CADE (Aug. 2023), [https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos-do-cade/Caderno\\_Plataformas-Digitais\\_Atualizado\\_29.08.pdf](https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos-do-cade/Caderno_Plataformas-Digitais_Atualizado_29.08.pdf);

Lancieri, Filippo and Sakowski, Patricia, Competition in Digital Markets: A Review of Expert Reports (Jan. 30, 2021), 26 Stan. J.L. Bus. & Fin. 65 (2021), <https://ssrn.com/abstract=3681322>.

<sup>62</sup> Congresso Nacional, Projeto de Lei No. 2768/2022, at 9, [https://www.camara.leg.br/proposicoesWeb/prop\\_mostrarintegra?codteor=2214237&filename=PL%202768/2022](https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=2214237&filename=PL%202768/2022).

authority, CADE would oversee *ex-post* competition enforcement and merger control.<sup>63</sup> This proposed regulatory structure would potentially lead to significant institutional and regulatory overlap by empowering both ANATEL and CADE with enforcement tasks of digital markets. Today the two agencies have distinct responsibilities and authorities; however, the Bill's focus on digital platforms with essential access would increase the interdependence between the two agencies and risk significant overlaps in their responsibilities.

As a recent and important example, one of the key reasons behind Brazil's most recent competition reform<sup>64</sup> was to institutionally unify the previously existing three competition authorities into a single enforcement agency, CADE.<sup>65</sup> The reform brought more efficiency to the competition enforcement system by eradicating the overlap in enforcement functions. Now, a joint CADE-ANATEL digital competition enforcement and regulatory structure under the Bill would very likely lead to significant overlap of authority and duplication of responsibilities, raising similar issues that made the previous institutional reform necessary.

Companies in different sectors of the economy, including digital markets, are already subject to CADE's oversight and the enforcement of competition laws in Brazil. As discussed above, this can be seen in CADE's numerous competition decisions involving companies in digital markets.<sup>66</sup> Recent reports, including the Second Report of the BRICS Competition Authorities's Working Group on the Digital Economy,<sup>67</sup> underscore that CADE has the required expertise, having assessed several cases involving both national and international digital companies, to continue enforcing antitrust laws across the Brazilian economy, including in digital markets. Therefore, the current Bill's provisions regarding who would implement this proposed *ex-ante* regulation raises important questions to be reassessed. In addition, a number of commentators underscored whether ANATEL, having previously focused only on

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<sup>63</sup> *Id.* See also, Law No. 12.529 of November 30, 2011, Brazilian National Congress, at 10 and 28, [https://www.icao.int/sustainability/Documents/Compendium\\_FairCompetition/LACAC/LAW\\_12529-2011\\_en.pdf](https://www.icao.int/sustainability/Documents/Compendium_FairCompetition/LACAC/LAW_12529-2011_en.pdf).

<sup>64</sup> Law No. 12.529 of 2011 designated CADE as the sole competition enforcement authority in Brazil.

<sup>65</sup> See Krisztian Katona & Diego Herrera Moraes, "Reforms Achieved, but Challenges Ahead: Brazil's New Competition Law" (Nov. 30, 2011), International Antitrust Bulletin, American Bar Association, Vol. 3, 2011, <https://www.ftc.gov/system/files/attachments/key-speeches-presentations/2011katona-brazil.pdf>.

<sup>66</sup> See, e.g., Mercados de Plataformas Digitais, Conselho Administrativo de Defesa Econômica – CADE, (Aug, 2023) at 21, [https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos-do-cade/Caderno\\_Plataformas-Digitais\\_Atualizado\\_29.08.pdf](https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos-do-cade/Caderno_Plataformas-Digitais_Atualizado_29.08.pdf).

<sup>67</sup> See CADE, "BRICS in the digital economy: competition policy in practice – 2<sup>nd</sup> Report by the Competition Authorities Working Group on Digital Economy" (2024), <https://cdn.cade.gov.br/Portal/assuntos/noticias/2024/BRICS%20Digital%20Economy.pdf>.

telecommunications issues, would be the best-placed agency to implement a much broader digital regulatory framework.<sup>68</sup>

## V. Conclusion

Before contemplating *ex-ante* regulation for digital markets, Brazilian policymakers should first assess whether there are actual market issues that require regulation. Further, even if there is a market issue that calls for regulation, legislators and policymakers should consider the costs and benefits of a proposed regulation and its potentially significant impact on investment, innovation, and competition. This is particularly important for Brazil, a major and emerging economy and regional leader in technology investment and development. Therefore, the role of Brazilian policymakers remains to ensure that the country's competition regime and regulatory framework are fit for purpose and support the domestic economy, promote innovation, and deliver benefits to Brazilian consumers.

CCIA is pleased to provide this input and looks forward to continuing to engage in this important discussion with the Ministry.

Respectfully submitted,

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Regulatory Policy

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<sup>68</sup> See, e.g., Mariana Tavares de Araujo, "The View From Brazil: A TOTM Q&A with Mariana Tavares de Araujo," Truth on the Market (Oct. 18, 2023), <https://truthonthemarket.com/2023/10/18/the-view-from-brazil-a-totm-qa-with-mariana-tavares-de-araujo/>; "Regulation of markets mediated by digital platforms in Brazil," IPEA Center for Research on Science, Technology and Society (Sep. 9, 2023), <https://www.ipea.gov.br/cts/en/all-contents/articles/articles/381-regulation-of-markets-mediated-by-digital-platforms-in-brazil-an-open-discussion>.