

# Digital Markets Bulletin



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# CGM Advogados highlights the main regulatory and competition developments regarding digital platforms in Brazil

*The firm closely follows legislative discussions, STF judgments, and CADE investigations into major digital players.*

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CGM Advogados has been strategically following the main regulatory and competition debates involving large digital platforms in Brazil. The firm closely monitors the discussions on the Bill being drafted by the Ministry of Finance, the development of the STF judgment on the Marco Civil da Internet, the processing of the artificial intelligence regulation project, and the recent CADE decisions involving companies such as Google, Amazon, and Apple.



## 1 | Regulation of digital platforms: CADE may take on a central role

The Bill on the regulation of digital platforms, drawn up by the Ministry of Finance, is at an advanced stage of consolidation for submission to the National Congress. The proposal establishes an “ex ante” regulatory regime for platforms with “structural control power”, with a focus on promoting competition, transparency, and interoperability. The main points of the proposal are:

- **Criteria for designating regulated platforms:** based on indicators such as number of users, market position, and ability to influence the digital ecosystem.
- **Specific conduct obligations:** including a ban on self-preferencing practices, a requirement for interoperability, and transparency in recommendation algorithms.
- **Functional separation mechanisms:** to avoid conflicts of interest between intermediation activities and direct competition with business users.

- **The ability to impose structural and behavioral remedies:** based on prospective analyses of competitive risk.
- **Creation of a specialized unit within CADE:** with competence for continuous monitoring, imposition of obligations, and coordination with other regulatory authorities.
- **Provision for institutional cooperation:** with ANPD, Anatel, the Central Bank, and others, to ensure regulatory coherence in converging digital environments.

CADE presented robust technical contributions during the public consultation, arguing that the antitrust authority is the most qualified to lead the regulation of digital markets in Brazil. In its statement, the agency pointed out that traditional “ex post” action is insufficient given the characteristics of digital markets - such as network externalities, economies of scope, and “winner takes all” dynamics - and proposed the creation of a specialized unit within CADE itself to deal with these issues.

### 1.1. Brazilian proposal for regulation is aligned with European and British models

The Ministry of Finance's proposal dialogues with international experiences, especially in the European Union and the United Kingdom, and differs from the more reactive approach adopted in the United States. The main points of comparison are highlighted below:

#### 1.1.1. Brazilian model (Ministry of Finance proposal)

- Designation of regulated platforms based on criteria such as number of users, market position, and ability to influence the digital ecosystem.
- Obligations imposed on platforms in advance.
- Regulatory powers granted to CADE.

### **1.1.2. European Union (Digital Markets Act - DMA)**

- Ex-ante regulation with pre-defined obligations for platforms designated as “gatekeepers”.
- Objective criteria for designation, such as turnover, number of users, and presence in multiple markets.
- Specific obligations such as:
  - Prohibition on combining data from different services without consent.
  - Obligation to allow the uninstallation of pre-installed apps.
  - Equitable access to data generated by business users.
- Centralized enforcement by the European Commission, with powers of investigation and sanction.

### **1.1.3. United Kingdom (proposed Digital Markets, Competition and Consumers Bill)**

- Designation of companies with “Strategic Market Status” (SMS) by the CMA (Competition and Markets Authority).
- Customized obligations per company, based on specific codes of conduct.
- Focus on regulatory flexibility, with the possibility of adapting according to the platform's behavior.
- Robust enforcement powers, including fines and the imposition of structural changes.

### **1.1.4. United States**

- Predominantly “ex post” approach, based on traditional antitrust enforcement.
- Lack of sector-specific regulation for digital platforms.
- Fragmented legislative proposals in Congress, focusing on specific practices (e.g., self-preference, interoperability), but no consolidated regime.
- Decentralized action, with multiple agencies (FTC, DOJ) and state and federal lawsuits.



## 2 | Artificial Intelligence: bill advances in the Senate

Bill 2.338/2023, authored by the Federal Senate, establishes the legal framework for the development and ethical use of artificial intelligence in Brazil. The proposal is currently being analyzed by a Special Committee in the Chamber of Deputies and has as its central axis the protection of fundamental rights, the promotion of innovation, and the mitigation of risks associated with AI. In June 2025, two public hearings were held by the Special Commission of the Chamber of Deputies dedicated to this topic; one of the hearings focused on "Concepts of AI and regulatory models", and the other on "Protection of Fundamental Rights and new technologies". The final report is expected to be presented in the second half of 2025, with the possibility of a plenary vote by the end of the year.

The main points of the bill include:

- **Classification of AI systems by risk levels:**
  - Unacceptable risk: prohibited systems, such as those that violate fundamental rights or promote subliminal manipulation.
  - High risk: subject to strict obligations, such as transparency, human supervision, and impact assessment.
  - Limited or minimal risk: subject to informational duties or exempt from specific regulation.
- **Guiding principles:**
  - Centrality of the human person.
  - Algorithmic non-discrimination.
  - Transparency and explainability.
  - Responsibility and accountability.

- **Obligations for developers and operators:**
  - Registration and technical documentation of systems.
  - Algorithmic impact assessment.
  - Guarantee of human supervision in automated decisions with significant effects.
- **Governance and oversight:**
  - Creation of a competent authority to supervise the application of the law (to be defined in subsequent regulations).
  - Audit and accountability mechanisms in the event of damage.
- **Sectoral impacts:**
  - The bill provides public hearings to debate the effects of AI on sectors such as culture, education, health, and public safety.
  - Recently, a hearing was held with representatives of the cultural sector to discuss impacts on copyright and artistic creation.
- **International inspiration:**
  - The text dialogues with the European Union's AI Act but seeks to adapt the regulatory parameters to the Brazilian reality, with an emphasis on digital inclusion and sustainable development.



### 3 | CADE intensifies action on big techs and advances in institutionalizing antitrust policy for digital platforms

The Administrative Council for Economic Defense (CADE) has been expanding its role in investigations and decisions involving large digital platforms. In 2025, the agency not only made progress in relevant cases but also held public hearings and announced institutional measures with the aim of consolidating a competition policy adapted to the dynamics of the digital economy.

Among the highlights:

- **Creation of a specialized technical unit:** In June 2025, CADE's general superintendent, Alexandre Barreto, confirmed the creation of a unit dedicated exclusively to the analysis of conduct and market structures involving digital platforms. The new structure, already in the implementation phase, aims to give greater agility and depth to investigations in digital environments, recognizing that "time is different" in this type of market.
- **Public Hearing on Digital Ecosystems for Mobile Devices:** Held in February 2025, the hearing brought together experts, company representatives, and academics to discuss barriers to competition in ecosystems dominated by operating systems such as iOS (Apple) and Android (Google). Topics such as interoperability, self-preference, restrictions on developers, and market closure were debated.
- **Google:** CADE is investigating possible self-preferencing practices in Google Shopping and favoritism in search results, as well as conduct in the programmatic advertising chain. The Jedi Blue case, which involved an alleged anti-competitive agreement with Meta, was closed without conviction, but generated relevant votes on the criteria for analyzing vertical agreements in digital markets.
- **Amazon:** Investigations analyze Amazon's undue advantage in favor of its products (Amazon Basics), the use of third-party data to obtain an undue advantage, and possible practices to exclude competitors in the marketplace. The investigations are ongoing with a focus on the structure and operating logic of the marketplace.

- **Apple:** On June 30, 2024, CADE's General Superintendence recommended that Apple be convicted of anti-competitive conduct in the digital ecosystem of the iOS operating system. The investigation looks into alleged abusive practices by Apple, such as imposing exclusive use of its payment system by app developers and restricting the distribution and marketing of third-party digital services. The case will be analyzed by the CADE Court. In parallel, there are investigations into restrictions on sideloading and competition in the in-app payments market.



## 4 | Marco Civil da Internet: STF forms majority to relativize article 19

In a majority vote, the Federal Supreme Court altered its interpretation of Article 19 of the Brazilian Civil Rights Framework for the Internet (Law No. 12.965/2014). The provision states that internet application providers can only be held civilly liable for damages arising from third-party content if they do not take steps to make the content unavailable after a specific court order.

**The score was 8 votes to 3 in favor of relaxing this rule**, allowing platforms to be held liable, even without a court order, in the following situations:

- Boosted or paid-for content, including content distributed by robots or artificial distribution networks.
- Mass circulation of "extremely serious content," such as terrorism and hate speech.

In these cases, internet service providers (ISPs) must act immediately to remove illegal content under penalty of civil liability. The main grounds adopted by most justices include:

- **A reinforced duty of care:** Given their centrality in the circulation of information, digital platforms have a duty to adopt effective mechanisms for moderating and responding to complaints, especially in cases involving hate speech, incitement to violence, or disinformation.



- **Partial unconstitutionality of Article 19:** The requirement of a prior court order is unconstitutional when there is clear and unequivocal notification of the unlawfulness of the content, especially in cases of flagrant violation of fundamental rights.

Additionally, ISPs must implement mandatory self-regulation, accessible service channels, and legal representation in Brazil.

The winning thesis substantially changes the liability regime for intermediaries, requiring significant adjustments to digital platforms' internal content moderation processes, especially when dealing with potentially offensive or discriminatory content.