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**Regulation and Competition in Digital Markets: Latest Developments in Brazil**

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## *Brazil*

This contribution summarizes the main findings of the report “Digital Platforms: Economic and Competition Aspects and Recommendations for Regulatory Improvements in Brazil,”<sup>1</sup> prepared by the Secretariat for Economic Reforms of the Ministry of Finance (SRE). The study evaluates the Brazilian digital platform markets using two approaches that go beyond the classic antitrust analysis (section 3) and offers recommendations to strengthen the Brazilian Competition Defense System (SBDC) (section 4). Key suggestions include legislative changes to provide the [Administrative Council for Economic Defense \(CADE\)](#) with additional pro-competitive tools, specifically targeted to deal with systemically relevant platforms.

### 1. Introduction

Digital platforms have redefined the way businesses and consumers interact, driving global economic growth and reshaping many sectors. Recent evidence demonstrates that economic growth and gains in productivity are directly linked to the intensive use of digital technologies. Exemplifying the dynamism of the Brazilian digital market, sectors such as fintechs, marketplaces and delivery apps represented 6.5% of the country's GDP in 2023,<sup>2</sup> with average salaries in these sectors being twice the national average.

To ensure that Brazil fully benefits from the increasingly digitalized economy, it is essential to guarantee a competitive environment. However, digital platforms possess unique economic characteristics that profoundly influence competitive dynamics and market structures, often surpassing the capacity of traditional antitrust tools to identify and address issues effectively and promptly. Strong network effects, multi-sided markets, and the strategic collection and processing of data can foster the rise of digital ecosystems. These ecosystems introduce new economic and competitive concerns, including intensified user lock-in effects and heightened barriers to entry for less diversified competitors.

This has sparked a significant debate across various jurisdictions regarding the extent to which the concentration of economic power in large platforms constitutes a new market power structure, limiting the ability of traditional antitrust tools to identify and remedy issues in an adequate and timely manner.

In this context, the SRE, exercising its mandate of competition advocacy, conducted an extensive study to delve into the economic and competition aspects of digital platforms in Brazil and to support proposals for improvement of the Brazilian Competition Defense System (SBDC).

This contribution summarizes the key findings and recommendations of the study, which was discussed in the report “Digital Platforms: Economic and Competition Aspects and

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<sup>1</sup> Accessed at: <https://www.gov.br/fazenda/pt-br/central-de-conteudo/publicacoes/relatorios/relatorio-plataformas-consolidado.pdf> (portuguese)

<sup>2</sup> Brasscom. Relatório Setorial 2023, Macrosetor TIC. Março de 2024, available at: <https://brasscom.org.br/wp-content/uploads/2024/04/BR12-2024-004-001-Relatorio-Setorial-versao-resumida-v23.pdf>. Accessed on: 21/07/2024.

Recommendations for Regulatory Improvements in Brazil”<sup>3</sup>. Section 2 presents an important transparency and public participation mechanism that was used to bring subsidies to the SRE, the *Tomada de Subsídios SRE/MF nº 1/2024*. Section 3 evaluates the Brazilian digital platform markets using two approaches that go beyond classic antitrust analysis. Section 4 brings recommendations for improving the Brazilian Competition Defense System, which encompasses legislative changes that provide CADE with additional pro-competitive tools, specifically targeted at dealing with systemically relevant platforms, and suggestions to adapt instruments and procedures for analyzing mergers and conducts in digital markets.

## 2. Transparency and public participation mechanism

In addition to a comprehensive review of academic literature and economic studies focused on the Brazilian digital markets,<sup>4</sup> as well as international benchmarking of regulatory practices,<sup>5</sup> a fundamental component in the development of the Report was the SRE Public Consultation No. 1/2024.<sup>6</sup>

SRE sought to obtain contributions from society on the economic and competitive regulation of digital platforms in Brazil, aiming to collect information that would better support the debate, in three main axes:<sup>7</sup> diagnosis;<sup>8</sup> rationality and regulatory design;<sup>9</sup> and institutional design.<sup>10</sup>

There was significant social engagement, with over 300 submissions from 72 distinct participants, with a diverse profile: academics, professional associations, the third sector, public interest groups, think tanks, telecommunications operators, professional users, and other government agencies. Most of the participants were foreign (Figure 1).

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<sup>3</sup> Accessed at: <https://www.gov.br/fazenda/pt-br/central-de-conteudo/publicacoes/relatorios/relatorio-plataformas-consolidado.pdf> (portuguese)

<sup>4</sup> Detailed in the Report: Digital Platforms in Brazil: Economic Fundamentals, Market Dynamics and Promotion of Competition, accessed at:

<sup>5</sup> Detailed in the Report: Digital Platforms in Brazil: Economic Fundamentals, Market Dynamics and Competition Promotion, accessed at: [Benchmark](#) (portuguese).

<sup>6</sup> Detailed in the Public Consultation Systematization Report no 01/2024, accessed at: [Relatório de Sistematização das Contribuições à Tomada de Subsídios nº1/2024, da Secretaria de Reformas Econômicas do Ministério da Fazenda](#) (portuguese)

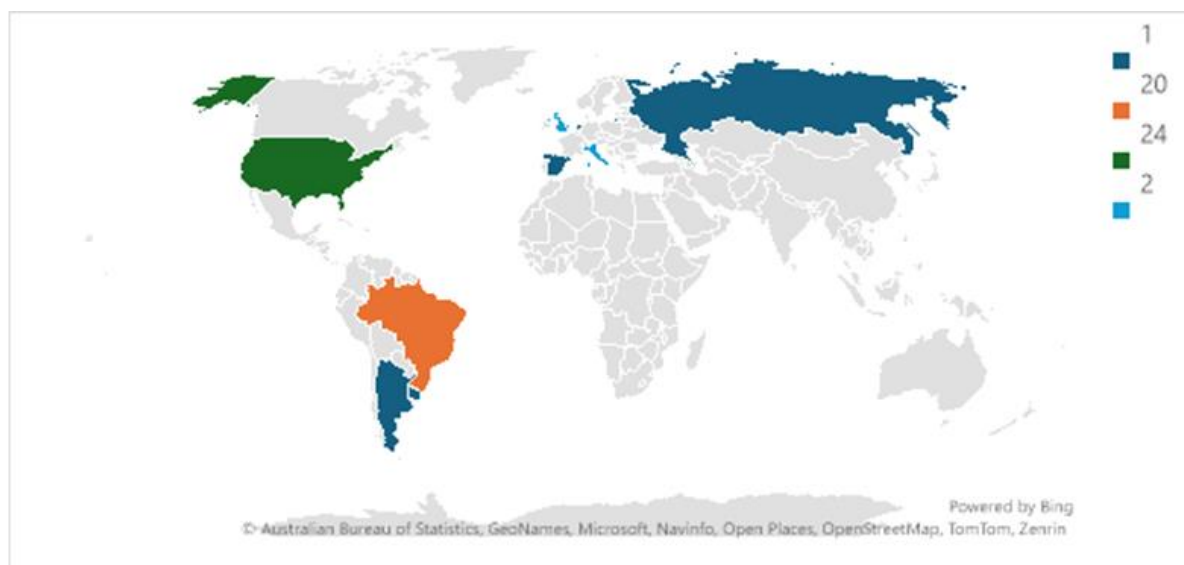
<sup>7</sup> Detailed in SRE Public Consultation No. 1/2024 (Tomada de Subsídios SRE/MF nº 1/2024). accessed at: <https://www.gov.br/fazenda/pt-br/assuntos/noticias/2024/janeiro/arquivo/tomada-de-subsidios-sre-plataformas-digitais-8012024-1.pdf/view>

<sup>8</sup> For this, the comments focus mainly on: (1) the competitive scenario in markets with digital platforms in Brazil, (2) the main competition concerns mentioned, and (3) the sufficiency or the insufficiency of the Brazilian Competition Defense System (SBDC) to deal with the potential competition concerns identified.

<sup>9</sup> In this axis, there are the proposals that discussed the objectives and the design of eventual regulatory and institutional changes in the Brazilian legal system aiming to modify the existing competences of the SBDC and/or establish new competences through ex ante regulations.

<sup>10</sup> In this axis the discussions are aimed at institutional arrangements and the structure needed for the application of a new ex ante regulatory framework, as well as its relationship with the pre-existing competition defence framework.

Figure 1. Nationalities of the participants, based on the branches or headquarters (map format)



Source: Public Consultation Systematization Report

The Public Consultation provided insights into different perspectives on the need for regulatory changes to expand the competencies of competition agencies.

Platform operators identified by the GAFAM acronym (Google/Alphabet, Apple, Facebook/Meta, Amazon, and Microsoft) expressed opinions that differed from those of other platform operators. These platforms were generally against the implementation of regulatory changes.

Non-GAFAM platform operators, telecommunications companies, professional users, the public sector, and the third sector were the groups that most advocated for regulatory changes. Even those opposed to legislative changes, such as GAFAM platforms and think tanks, provided subsidiary suggestions in case changes were implemented.

Respondents discussed the scope of potential regulation for digital platforms, presenting divergent views on identifying the economic agents subject to obligations: some suggested predefining the services covered, while others preferred a broader approach. There was convergence regarding regulatory design, with support for asymmetric ex ante regulation that combines quantitative and qualitative criteria and allows for flexible designation of agents. Overall, there was recognition of the need for regulatory authorities to have discretionary power to act both proactively and correctively. Some supported the idea of legislation outlining a minimum set of essential obligations, but there was no consensus on which obligations should be included.

### 3. Economic and competition aspects of digital platforms in Brazil

Given the technological dynamics and innovative business models introduced by digital platforms, traditional antitrust analytical tools risk oversimplifying the unique competitive dynamics of these platforms. Consequently, antitrust agencies may fail to promptly identify practices that could harm competition, allowing multi-sided markets to transition from being contestable to being dominated by key platforms or complex ecosystems.

In this context, the report concluded that two additional approaches offer valuable insights into organizational and behavioral patterns that extend beyond the traditional analysis of relevant markets: (i) the analysis of business models and (ii) the analysis of the interrelationships between services and companies surrounding major platforms.

The analysis of business models focuses on grouping segments by monetization strategies rather than product functionalities or production technologies. This approach highlights organizational and behavioral patterns, emphasizing interrelated sides and services, thereby enriching the understanding of competitive dynamics and aiding in the identification of different types of platforms that are of particular relevance to the economy.<sup>11</sup>

To map the Brazilian reality and highlight the benefits of this broader approach, the report examined platforms monetized through digital advertising. The competitive dynamics of these platforms are driven by the "eyeball economy," where various services are typically offered for free and with open access, aiming to capture consumers' attention for as long as possible while collecting the largest and most valuable set of data along the way. In turn, providers monetize the attention and data gathered through the sale of advertising space.

This sector is highly complex, with services exhibiting multiple layers of overlap and interdependence. The leading digital platforms function simultaneously as key publishers (e.g., search engines, social networks, VoD, maps) and significant players in the programmatic media chain (e.g., DSPs, SSPs, ad networks). Additionally, services such as browsers, operating systems, telecommunications companies, and mobile device manufacturers serve as crucial access points for users and are often operated by the same economic groups.<sup>12</sup>

The competitive dynamics on each side of an ecosystem influence the ability of actors to capture and exert market power. Some players in this market operate across multiple segments, all aimed at enhancing user loyalty and attention, surrounding them with complementary services to keep them within the same ecosystem for as long as possible. At the same time, operating in various segments enables data collection associated with the provision of a sophisticated advertising product that is ideally non-replicable by competitors. Figure 2 of the Report illustrates this challenge.

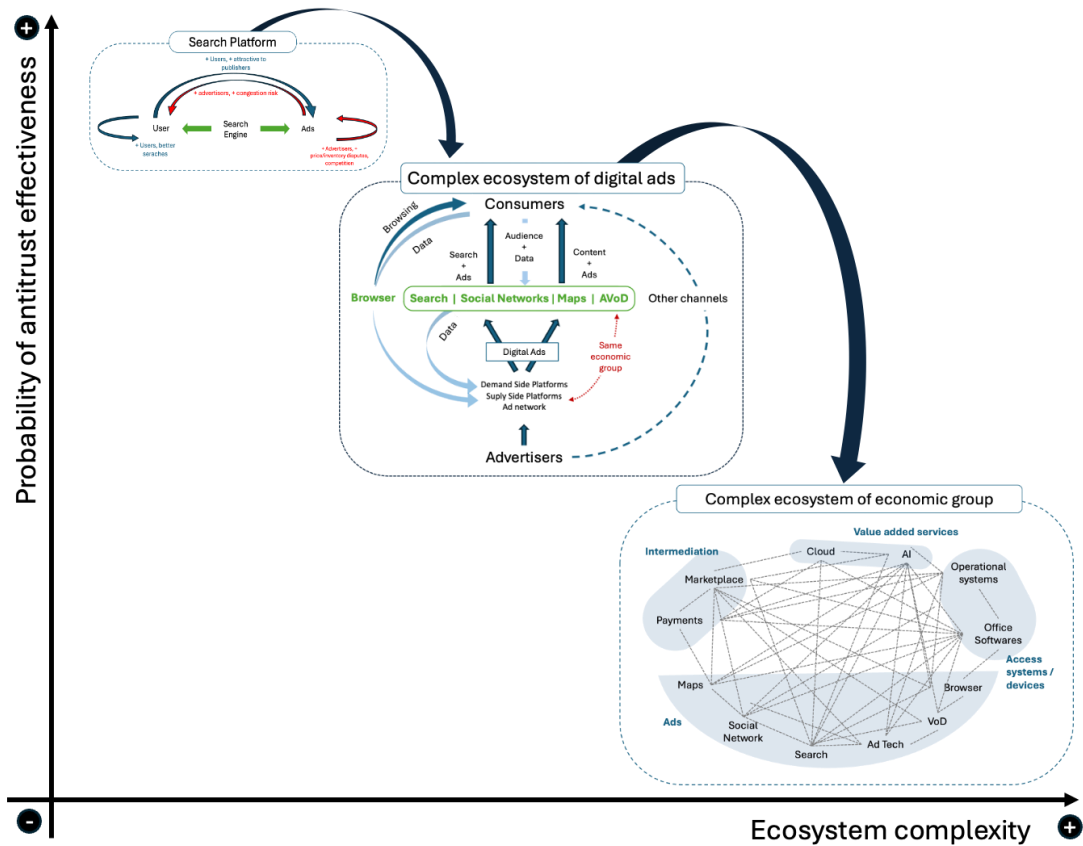
In addition to digital advertising ecosystems, the Brazilian economy features many other complex ecosystems. These include ecosystems monetized through access fees for operating systems and mobile devices, as well as those generating revenue through intermediation fees, ranging from the gig economy (delivery and transportation) to fintechs and marketplaces. Each ecosystem encompasses multiple interdependent sides with distinct competitive dynamics and cross-market interactions. Properly mapping these ecosystems is a crucial step to ensure effective regulatory enforcement.

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<sup>11</sup> Morton et al. identify three basic organizational patterns for platforms, monetized through (i) the sale of digital advertising, (ii) access fees, or (iii) intermediation fees. Morton, F. S., Etro, F., Latham, O., Caffarra, C. (June 2020). Source: Designing regulation for digital platforms: Why economists need to work on business models. Centre for Economic Policy Research (CEPR), <https://cepr.org/voxeu/columns/designing-regulation-digital-platforms-why-economists-need-work-business-models>.

<sup>12</sup> See UNITED STATES OF AMERICA et al., v. GOOGLE LLC, Case No. 20-cv-3010 (APM); STATE OF COLORADO et al., v. GOOGLE LLC, Case No. 20-cv-3715 (APM), MEMORANDUM OPINION.

Figure 2. Regulatory matrix: platforms and complex ecosystems



Source: SRE/Ministry of Finance

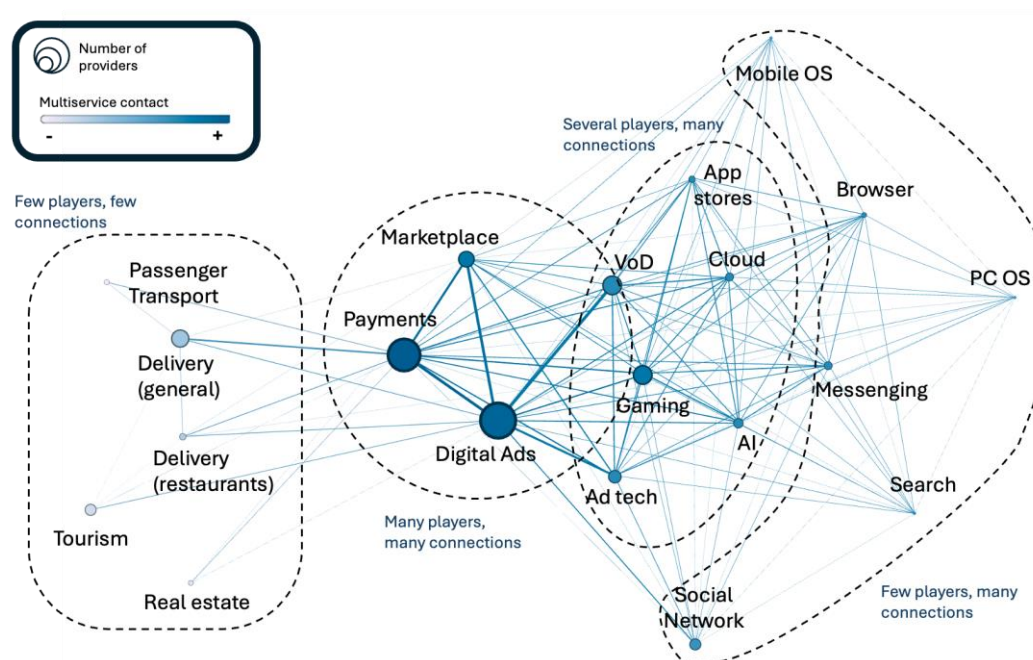
The second approach – the analysis of the network of relationships between services and companies operating in national digital platform markets – adds important variables by mapping how these platforms may be interconnected with others, each employing different monetization strategies. This helps to identify potential economies of scope or more complex network effects resulting from these interconnections.

To assess the Brazilian market, the SRE adopted this approach by analyzing 20 digital services<sup>13</sup> – in which digital platform business models are present. The analysis in Figure 3 allows for the interpretation of characteristics of networks across different services and

<sup>13</sup> The selected sectors are relevant in the Brazilian context, either for the wide usage or for the existence of high-profile Brazilian companies, and/or have already raised competition concerns in Brazil or in other countries. The main companies in the Brazilian market were identified in these services, as well as the services provided by the same economic group in this universe. The services included were: (1) digital advertising ecosystems (search engines; browsers; social media; AVoD; messengers; digital advertising: search engine, display, video; programmatic advertising services chain: ad tech); (2) services in ecosystems financed by devices or access fees (mobile operational systems, desktop operational systems, games, artificial intelligence, VoD, and cloud services); (3) services in intermediary ecosystems (payment fintechs, marketplaces, general delivery, food delivery, transportation, tourism, app stores, and real state). The AVoD and VoD were analysed together, such as fintechs include payments, cards and credit; Ad tech includes the whole chain (eg. DSP, SSP, and Ad Exchange).

the potential specialization of national companies.<sup>14</sup> For example: tourism, real estate, general deliveries, restaurant deliveries and passenger transport sectors point to segments with the lowest number of connections in the entire network. Therefore, companies that offer these services offer relatively fewer complementary services compared to the rest of the network.

**Figure 3. Network Analysis: Digital services offered in Brazil (2024)**



Source: SRE/Ministry of Finance. Obs: Network generated by the software Gephi v0.10.1 based on the algorithm ForceAtlas

The right-hand side of the network presents nodes with few companies (except for VoD and games), but with a high degree of connection. This may indicate that the networks generated by these segments present significant economies of scope, allowing platforms to leverage these effects by offering a large number of services. At the same time, network effects may be strong enough to form “winner takes all” or “winner takes most” dynamics in their segments of origin.

In many cases, it is possible to identify the consolidation of key platforms in several markets, with the presence of two or three actors, which requires monitoring by the antitrust authority, through the application of appropriate tools to identify, dissuade and punish possible anti-competitive strategies and results.

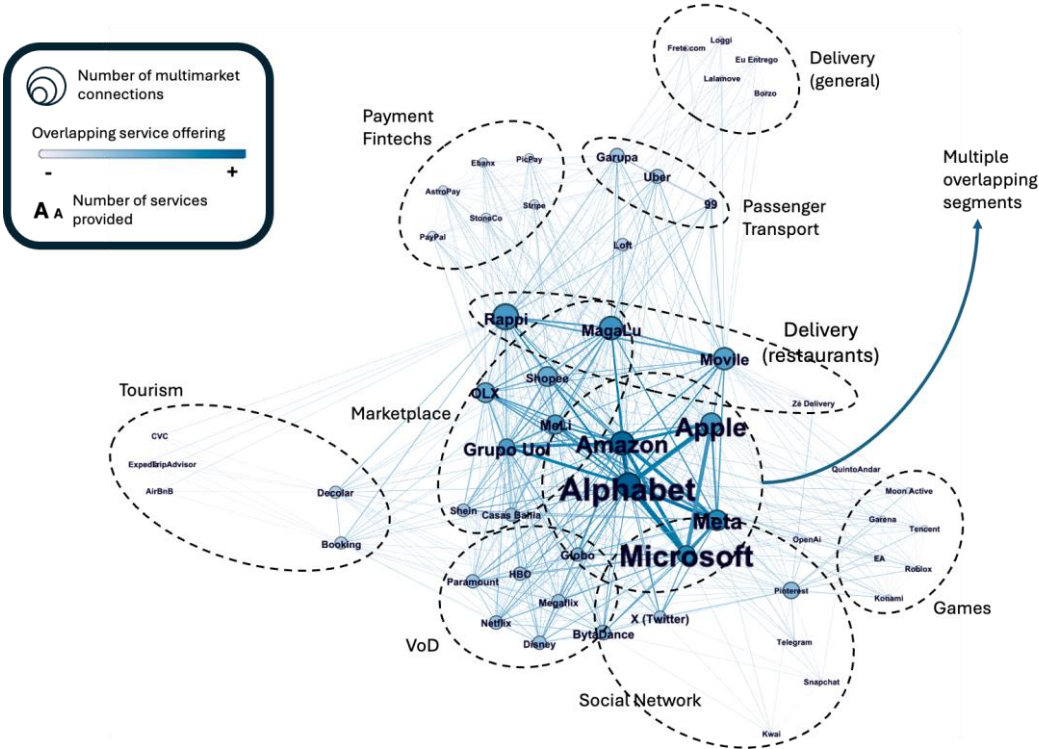
The analysis of economic groups (Figure 4) aids in mapping complex ecosystems, highlighting characteristics intrinsic to specific platforms, such as their varying tendencies to diversify across multiple business models and monetization strategies. Additionally, it

<sup>14</sup> The network nodes were delimited as the 20 selected digital services, while the edges between them represent the presence of the same economic group offering the services at these nodes



reveals potential differences between national and international groups operating within Brazil.<sup>15</sup>

**Figure 4. Network Analysis: economic groups operating in the main digital platform services in Brazil (2024)**



Source: SRE/Ministry of Finance. Network generated by the software Gephi v 0.10.1 based on the algorithm ForceAtlas.

The network analysis presented in Figure 4 provides preliminary evidence about the presence of both specialized platforms and complex ecosystems of companies. A group of companies stands out, offering a large and diversified number of services, characterized by strong multi-service contact (they offer alternative services on all sides of different platforms), with connections with practically all companies on the network.

In the Brazilian context, these actors are candidates to be identified as part of complex business ecosystems. They are considered candidates because the analysis must go beyond the mere potential offer of multiple services, and seek to understand whether, in fact, these actors are active and relevant participants in these segments, and, furthermore, to what extent their activity is connected in a way that effectively generates economies of scope and leverages economies of network, data and other assets between different segments.

Moreover, some of the services analyzed are not capable of being associated with any specific region of the network, given the size of the overlapping offer in these segments, as

<sup>15</sup> The main attributes of the network are the size of the names of each segment, which represents the number of services offered by each economic group. The size of the nodes, on the other hand, varies according to the number of connections multiplied by the weight of each link (multiple overlapping links, indicating that there are many overlapping services between different economic groups).



in the case of artificial intelligence, cloud operating systems (mobile and personal computers), retail stores, app and ad tech. Not coincidentally, these are the services located on the right-hand side of the service network (Figure 3), where there are services that combine both a relatively low number of providers and a high multi-service offering.

Thus, while the services graph highlighted strong network effects in these cases, the company network in Figure 4 further strengthens this evidence, suggesting that these services could serve as key pillars in the development of complex business ecosystems.

#### 4. Regulatory and public policy proposals

The analysis conducted by the SRE indicates that numerous platforms have evolved towards highly complex ecosystems, in which the combination of economic and market characteristics can significantly hinder contestability and competition, requiring actions from the competition authority that escape its current mandate.

While Brazilian competition law offers some flexibility, the analytical tools developed for traditional linear markets are insufficient to address the complexities of digital platforms. Therefore, reforms within the Brazilian Competition Defense System are essential to address these shortcomings and adapt to the challenges posed by digital ecosystems.

Jurisdictions around the world have reflected on the need for changes in competition legislation and practice, as well as the adoption of new pro-competitive regulatory tools.

While considering a new regulatory design for digital platforms in Brazil, SRE looked at the European model of the Digital Markets Act (DMA) and at recent regulatory changes adopted by the United Kingdom, Germany and Japan, in addition to ongoing discussions and studies in other jurisdictions such as Australia, South Africa, India, Taiwan and Singapore. There are a rich variety of regulatory approaches, which although differ significantly in their objectives, instruments, and scope of application, converge towards the introduction of new hybrid rules, situated between traditional antitrust law and economic regulation.

The SRE report advocates for changes in the Competition Law to empower CADE with additional pro-competitive tools specifically designed for dealing with platforms with systemic relevance, alongside the institutional framework necessary for their effective implementation. The objectives are to foster contestability in multi-sided markets with significant network effects, establish robust governance standards to manage these effects in the absence of competitive pressure, protect users' freedom of choice on digital platforms, and improve transparency across digital markets.

These instruments would grant CADE the mandate to identify and address situations where power asymmetries or a lack of structural competition hinders the proper functioning of digital markets:

- **Establishing a procedure for CADE to designate systemically relevant platforms for digital markets.** A change in the law would provide a list of qualitative criteria for the designation of companies, considering factors such as: presence in multi-sided markets; market power associated with network effects; significant provision of multiple digital services; vertical integrations in related markets; access to large volumes of relevant personal and commercial data; and a significant number of users. To ensure that only large-scale agents are subject to designation, the proposed legislation would set minimum revenue thresholds, both globally and in Brazil. Companies with revenues below these thresholds would be exempt from designation (safe harbor).

- **Introducing procedural transparency obligations** to which designated agents may be subject from the moment of designation, at CADE's discretion. These could include, for example: mandatory pre-notification of mergers and acquisitions; transparency rules for end-users and professional users regarding commercially relevant information for the use and offering of services and products; and an obligation to inform end-users, professional users, and CADE about changes to terms of use or offered services.
- **Establishing a procedure for CADE to investigate designated companies** and define, case by case, and to the extent necessary, specific obligations to these companies. A change in the law would establish a list of obligations that may be imposed by CADE, providing flexibility for each case. The scope of obligations may be specified in relation to specific products and services offered by the designated agent. It is also suggested to reverse the burden of proof: proof with objective justification falls on the designated agent.

The implementation of these new powers requires building capacity within the antitrust body and, to this end, it is recommended the creation of a unit specialized in digital markets within CADE. The new specialized unit would be responsible for monitoring digital markets, designating economic agents, establishing and monitoring obligations, and investigating possible violations. Additionally, it is proposed that a cooperation forum be created between the antitrust authority and other federal bodies, including the National Data Protection Authority - ANPD and the National Telecommunications Agency – ANATEL.

The second group of measures suggested by the Report focuses on enhancing the enforcement of antitrust law by adapting existing tools to better analyze conduct and mergers in cases where competition is feasible. These incremental adjustments aim to address the unique competitive dynamics of digital markets. By adapting procedures and incorporating new methodologies, such as network and ecosystem analysis, the goal is to empower the antitrust authority to act more effectively in markets where competition can be promoted through traditional antitrust mechanisms.

An example of these suggestions to enhance CADE's practices is the proposed revision of its merger notification form to include specific questions addressing the unique dynamics of digital markets. It also suggests adopting the standard review process for mergers involving digital platforms with a large user base, provided they meet the gross revenue thresholds established by law for mandatory merger notification. Additionally, it recommends requiring the submission of merger notifications for transactions involving digital platforms that, while not meeting the criteria for mandatory merger notification or the designation criteria discussed in the specific instrument, could significantly impact competition.

## 5. Conclusion

Like other jurisdictions, the SRE concluded that, although the Brazilian competition law has flexibility, analysis tools designed for traditional linear markets are inadequate to deal with the complexity of digital platforms. Therefore, to overcome the identified bottlenecks, reforms are necessary in the Brazilian Competition Defense System, with the adoption of mechanisms capable of increasing market contestability ex-ante and, more importantly, making it more efficient when there is not enough competitive pressure.