EXECUTIVE SUMMARY

While new technologies and consumer behavior have created an environment in which digital services converge and the boundaries of media, content, television, streaming, and social media are floating, Brazil’s outdated regulation of PayTV might be a major barrier in the country’s digital future. Outdated regulations prevent Brazil from becoming competitive on global digital markets and deprive Brazilian consumers of the freedom to choose services and content. Leading representatives of regulators agree that Brazil’s PayTV regulations are outdated, and that they need to be repealed.

Recommendations

- A regulatory framework that allows the re-formulation of business models in the digital age.
- Abolishing barriers that prevent vertical integration of digital and media services (e.g. Act 12485/2011, Article 5).
- Foster innovation in convergence of services and reduce barriers that could slow down the rollout of 5G infrastructure.

INTRODUCTION

The global digital and media market is growing and there is a clear trend in the sector that operators are moving in the direction of vertical integration. The digital revolution is changing the World and in the near future this change will be accelerated. The impact of this revolution is clear in several instances, and regulators have to take this new reality into consideration. At the same time companies have to change their strategies in
this new and growing market. The integration of telecom, advertising, TV operators, internet giants, and the entire digital world is a clear and growing trend. It is important that jurisdictions welcome this change by implementing strategies for frameworks that embrace digital single markets.

The Brazilian example, in contrast, shows that regulation is holding the digital single market back, and significantly limiting the further development of the “market of the future”. One piece of legislation is worth pointing out for its overwhelmingly negative impact. Act 12485/2011, Article 5 is blocking the creation of a single digital market, in which operators could integrate content and channels in order to provide better and more comprehensive media services to their customer.

This Article is considered anachronistic by the President of Brazil’s telecommunications regulator ANATEL (Agencia Nacional de Telecomunicacoes) “because it is going against the convergence that it is developing in the new digital ecosystem”. Repealing, or changing, this article is urgent because it will provide clarity in today’s market, but more importantly, a change would act as an indicator that Brazil is moving in the right direction regarding a digital future.

**THE MARKET OF THE FUTURE**

The growth of 5G will lead to a significant increase in the use of data, and this is the reason why big investments in the telecommunications sector are needed. The number of subscriptions of smartphone contracts will increase from 5 to 7.2 billion, while at the same time there will be growth of the machine to machine market (M2M).

**Graph 1: Global IOT device growth**  **Graph 2: World Smartphone subscriptions**

![Graphs showing IoT device growth and world smartphone subscriptions](Source: Ericsson Report)
The growth of the big data economy, the arrival of autonomous vehicles, and the revolution of the digital market has already been taken into consideration by some countries, where regulators have started to change their mindset in the wake of new dimensions of the digital market.

Another clear trend, linked to data, is the rise of the services of Over The Top content providers (OTT). OTT content providers are able to give services over the internet bypassing the traditional channel sales of telecommunications or broadcast TV. Some examples of OTT providers are streaming services such as AmazonVideo, Netflix or Hulu. These new players have already reached a global audience, but regulators, in some cases, fail to understand the change of these markets.

**FAIR COMPETITION?**

The pay per view market is already strongly affected by the growth of these new streaming services offered. This disruption, and consumer shift towards OTT services, is likely to shift even further with the arrival of 5G technologies, creating the omnipresence of high speed mobile internet.

In some countries, Italy for example, a Gigabyte of data in mobile flat plans costs less than $0.15 USD. That means that OTT customers are already able to use the mobile subscription instead of fixed broadband when watching streaming content. This is another reason why it is important to underline the needs of infrastructure that the telecom operators have to answer in the next years.

**Graph 3: A different market, the rise of OTT in USA**

![Graph 3: A different market, the rise of OTT in USA](image)
In order to have investments, it is important to reduce barriers for infrastructure rollouts such as networks and antennas. In addition to that, it is especially important for an emerging market like Brazil to have a smart regulatory framework that attracts foreign direct investment (FDI).

Effective regulation is smart regulation that understands that the market is changing very fast (as shown for example in Graph 3) while at the same time it applying a fair regulatory framework between different players.

The growth of the platform economy is showing that there is a clear integration between different players in the sector, and competition is not only horizontal in terms of companies or market, but also vertical.¹

In fact, vertical competition is a clear element of the integration of services that the platform economy is able to deal with. An example of vertical competition can be seen in the competition between search engines such as Google and hardware devices that accept voice input such as Amazon Echo.

Platform companies such as Amazon, Google and Facebook are creating vertical integrated platforms competing in all directions. So, what are elements that were able to develop this kind of revolution?

---

**This Platform diversification is driven by 6 main elements:**

- **Network effects:** Users of a platform can have a stronger impact thanks to the fact that they have a lot of consumers at a global level.
- **Disruption & Diversification:** There is continuous growth of new services in new fields not directly related to the main business of a company.
- **Competition:** Not to be considered as competition between applications, but between services in different markets.
- **Consumer needs:** The key element of success of a platform is the ability to understand the consumer, thanks to the use of data (e.g. Netflix algorithm not suggesting movies suitable to the specific interests of a subscriber).
- **Artificial Intelligence and Big Data:** Platforms depend on the capability to analyze the data and to bring more and more solutions linked to AI (e.g. streaming services basing their content on what users loved in the past).
- **Payments:** Control of the payment channels is the last element platforms are developing to better know consumers. For example, the emergence of payment services by the biggest internet player (Alphabet), the biggest logistic players (Amazon and Alibaba) or Apple.
A typical example of platform revolution is the Chinese company Tencent, that is investing more and more in Artificial Intelligence and in autonomous vehicles, when at the beginning the company was born as messaging app. At this moment, the Chinese company is also one of the biggest global players in the field of payment systems. It is clear that the emergence of the platform economy means more integration. Traditional players have to compete against them in a market that in many cases, regulators have not yet understood.

**BRAZIL, A WORLD APART?**

The discussion in Brazil seems to be blocked by outdated legislation. Unfortunately, integration is not considered a benefit for consumers, but has been considered a risk in the PayTV and telecom markets.

The act 12485/2011, Article 5 (Conditioned Access Audiovisual Communication Services Act) has been interpreted by ANATEL (Agencia Nacional de Telecomunicacoes) that there is a limit in the merger between telecommunications companies and audiovisual content distribution and licensing companies in the PayTV market.

The President of the same regulator (ANATEL) Leonardo de Morais, underlined in April 2019 that Article 5 of Act 12485/2011 “is anachronistic because it is going against the convergence that it is developing in the new digital ecosystem”.¹

Article 5 has to be changed to have a smart and fair market in the single digital market that is emerging globally. The same interpretation of Article 5 is under discussion, because the act is not clear about the limit of corporate stakes held by operators in the PayTV licensing, programming, and packaging activities.

Article 5 seems not applicable to the merger between AT&T and Time Warner because the headquarters of the companies are not in Brazil: “The total and voting capital of sound and sound and image broadcast concessionaires and permittees and producers and programmers with headquarters in Brazil cannot be controlled or belong to collective interest telecommunications companies above the limit of fifty percent, and they must not directly explore such services.”²

---


This article is not only affecting an important opportunity for Brazil, that being the merger between a network and a media company, but it is also affecting the possibility of the country to continue to attract investors, leading to better sector development and more services for consumers.

The merger was already approved by the antitrust and media regulators of the leading economies such as the United States and the European Union, but not in Brazil, due to the restriction of Article 5.

From a competition point of view, it is clear that there is no problem in the merger between the two US-based companies. The reporting commissioner of CADE (Brazilian Antitrust Authority) Gilvandro Araujo, has also suggested that the legal prohibition of vertical integration between Pay TV segments should be revoked given the evolution of the technologies in those industries.  

Graph 4: The rise of faster connections in Brazil

The Brazilian mobile data market is developing very well and 4G technology is widely adopted. This helps to facilitate the change of the market with more than 130 million of users for this mobile data technology.

---

Combined, over 180 million of 3G and 4G connections are now used by Brazilian consumers, while merely 20 million connections are still on the outdated 2G communication standard.

The arrival of 5G in the next few years will develop more and more vertical integration between different sectors as it was told by Leonardo de Morais, President of ANATEL. At the same time, OTT players are growing in Brazil and the market of PayTV has been quite flat in the recent years, due to the change of the market structure. Embracing these changes in the future is a key element to supporting the needs of Brazilian consumers, and is only possible if government's enact smart regulations.

It is an anachronistic idea that the market could be segmented as in the past and the role of the authorities has to change due to this new reality. Fair competition has to be intended not only in a classic view, but also between operators in different sectors that are now competing directly (classical example are OTT and PayTV providers). Hence regulatory segmentation between OTTs and PayTV providers should be torn down.

Being attractive to foreign investments, is highly important in a global industry such as the digital and media market, and a key element for the success of the development of new services for consumers. The removal of barriers is essential for the creation of a single market and the single digital market is a key target for many regulators from all around the world.\(^4\)

### CONCLUSION: INTEGRATION OF SERVICES IN BRAZIL

The authors would like to provide the following action items on behalf of Brazilian consumers:

- The interpretation of Article 5 of the law 12485/2011 is still controversially discussed, but it is important for the Brazilian Parliament and Government to immediately revoke the “anachronistic law” that risks to stifle the development of services and products for Brazilian consumers.
- The vertical integration of services is a great opportunity for the country and could be observed in other developed markets. The ability to better meet customer needs with more customized and complete services gives clear benefits to consumers, as seen in the US and Europe.

---

\(^4\) The digital single market is a clear and strong target at European Union level, despite the difficulties of language and legislative barriers that incurred in Europe.
• The role of the regulator has to change to face the different market structure in a digital economy that will include not only Pay TV, and OTT services, but also very different sectors like the automotive industry (autonomous vehicles). A new regulatory framework is needed that acknowledges that it can’t foresee how digital and media services will be rendered in the future.
• The investment required for this kind of new services are huge and not only driven by telecom operators, but also by the developers of content, and other third parties.
• A single market could be created in Brazil if the Government, Parliament and Authorities decide to go in the same direction of an integrated digital market.
• Consumers and media/digital market investors in Brazil deserve a quick and clear signal from the government towards either revoking or changing Article 5 of law 12485/2011.
• This market is more and more global and it is important that Brazil will be not a follower, but an important player of this sector of the future.
• The possibility to have of economies of scale, due to a market of more than 200 million consumers (just for mobile services) presents a huge opportunity for Brazil - outdated regulation should not block this.

About the Authors

Prof. Dr. Andrea Giuricin is CEO of TRA consulting, a strategic consultancy company based in Barcelona, Milan, and Brussels. He is an adjunct professor in Transport Management at University Milano Bicocca in Italy and he is an adjunct professor in Marketing Management at Purdue University, University of Minnesota, Michigan State University, and the University Southern California. He is also a Research Fellow at the Consumer Choice Center. He is a visiting professor at the China Academy of Railways Sciences. He is working directly with airlines and railways companies from Asia, South America, Middle East, and Europe, analyzing the evolution of the market and the customer needs. He is board member of GBTA (Global Business Travel Association) in Italy. He cooperates and works with several transport and competition Authorities and the European Commission. He is senior consultant for the World Bank in the utility sector.
Fred Roeder is Managing Director of the Consumer Choice Center a Health Economist from Germany and has in healthcare reform and market access in North America, Europe, and several former Soviet Republics. One of his passions is to analyze how disruptive industries and technologies allow consumers more choice at a lower cost. Among many op-eds and media appearances, he has been published in the Frankfurter Allgemeine Zeitung, Wirtschaftswoche, Die Welt, the BBC, SunTV, ABC Portland News, Montreal Gazette, Handelsblatt, Huffington Post Germany, CityAM, L’Agefi, and The Guardian.

Andre Freo is Brazilian Affairs Manager of the Consumer Choice Center and a Law Student at the Pontifical Catholic University of Rio Grande do Sul (PUC-RS), with certification in Leadership by the Theodor Heuss Akademie, Germany and Social Entrepreneurship by Tongji University, China.

About the Consumer Choice Center
The Consumer Choice Center (CCC) is the consumer advocacy group supporting lifestyle freedom, innovation, privacy, science, and consumer choice. The main policy areas we focus on are digital, mobility, lifestyle & consumer goods, and health & science.

The CCC represents consumers in over 100 countries across the globe. We monitor closely regulatory trends in Washington, Brussels, Geneva and other hotspots of regulation and inform and activate consumers to fight for #ConsumerChoice.