Brasília, July 1, 2026

To His Excellency
Federal Deputy Aliel Machado
Praça dos Três Poderes
House of Representatives

Subject: Considerations regarding Bill of Law No. 4,675/2025

Dear Congressman,

The **Coalition for App Fairness (CAF)** is a global alliance composed of app developers, technology companies, and consumer advocacy organizations. The organization operates worldwide in defense of a more competitive and equitable digital environment, challenging the practices of major platforms that control app ecosystems in order to ensure greater freedom of choice and innovation for developers and users.

In the context of the legislative consideration of **Bill of Law No. 4,675/2025** - which establishes the designation of digital platforms of systemic relevance, defines specific obligations for such agents, and proposes the creation of the Digital Markets Superintendency (SMD) within the Administrative Council for Economic Defense (CADE) -, the Coalition for App Fairness (CAF) respectfully submits the following considerations for your review.

Initially, CAF recognizes and commends the initiative of the Secretariat for Economic Reforms of the Ministry of Finance (SRE/MF) and the House of Representatives in leading an in-depth legislative dialogue on the economic regulation of digital platforms. This is a topic of fundamental importance for the competitiveness and evolution of the Brazilian digital economy.

CAF believes that the success of this new *ex ante* regulatory framework for agents of systemic relevance depends on creating mechanisms that ensure effective and good-faith compliance with the imposed obligations. International experience with similar regulatory models demonstrates that, in the absence of such mechanisms, the efficacy of the rules is frequently undermined by delay tactics, partial compliance, and regulatory circumvention.

By their very nature, the agents to be designated are those with the greatest potential impact on the competitive environment. For this reason, it is imperative that the penalty regime for non-compliance with special obligations be at least as rigorous as that provided under the Competition Defense Law (Law No. 12,529/2011) for general violations against the economic order. The response to any eventual non-compliance must always be proportionate and adequate to deter such behavior.

Based on this premise, and with the objective of strengthening the deterrent effect of the text, CAF respectfully presents proposals for enhancement to Bill of Law No. 4,675/2025, with concrete drafting suggestions for incorporation into the bill:

1. **The cumulative application of sanctions under Law No. 12,529/2011** in case of non-compliance with imposed obligations – in particular, corporate liability and executive personal liability, including criminal liability;

2. **A standalone article authorizing the suspension of market access** as a measure of last resort (*ultima ratio*); and

3. **An express clause prohibiting circumvention (anti-circumvention)**, inspired by Article 13 of the European Digital Markets Act (DMA).

Proposals (1) and (2) are anchored in the enforcement architecture of Law No. 12,529/2011, while proposal (3) transposes Article 13 of the DMA, adapted to the Brazilian context.

1. Cumulative Application of Competition Defense Law Sanctions to Ensure Compliance

The enforcement architecture of Bill of Law No. 4,675/2025, in case of non-compliance with special obligations, relies on sanctions applicable to violations against the economic order provided in Arts. 37 to 45 of Law No. 12,529/2011, pursuant to Art. 47-G[1], and on the daily fine under Art. 44-A for the absence of an office in the country.

For agents of systemic relevance covered by Art. 47-C, § 1[2], however, isolated pecuniary fines can be absorbed as a mere cost of doing business (*cost of*

[1] Art. 47-G of Bill of Law No. 4,675/2025: Non-compliance with the special obligations determined under Art. 47-E shall entail the application of the penalties applicable to violations against the economic order, pursuant to Arts. 37 to 45.

[2] Art. 47-C, § 1 of Bill of Law No. 4,675/2025: Only agents whose economic groups have recorded annual global gross revenue exceeding BRL 50,000,000,000.00 (fifty billion reais) or annual gross revenue in the Country exceeding BRL 5,000,000,000.00 (five billion reais), based on the latest financial statements available on the date of initiation of the administrative proceeding for designation of an economic agent of systemic relevance, may be designated.

doing business). To prevent this effect, it is suggested to explicitly state that non-compliance with obligations will attract the sanctions of the Competition Defense Law in a manner compatible with its potential for harm, including cumulatively and in a graduated manner, when necessary, in particular: fines on the legal entity (Art. 37, item I); fines on individual administrators (Art. 37, item III[3]); criminal liability of administrators (Law No. 8,137/1990); and structural/alternative penalties (Art. 38), currently underutilized in CADE's enforcement practice.

At the individual level, the personal liability of administrators enhances the deterrent effect of the regime. Although already provided for under the Competition Defense Law, its application has been concentrated in cartel cases, remaining largely unexplored in unilateral conduct cases, which justifies its explicit inclusion in this special regime. As these decisions are frequently made by executives protected by a fine that is ultimately absorbed by the corporation, the proposal allows the penalty to reach, when the ordinary fine proves insufficient, the total annual remuneration of the executive, thereby reaching the individuals who actually dictate the conduct.

Furthermore, criminal liability forms part of the broader framework of competition defense in Brazil under Law No. 8,137/1990. However, the existing criminal offense is structured around abuses of economic power through agreements or collusion between companies, reflecting a model conceived prior to the emergence of Big Techs. For this reason, an express provision for a new criminal offense for willful non-compliance with special obligations is proposed. By linking personal liability to non-compliance, the regime creates direct incentives for executives responsible for operations in Brazil (or with decision-making power over them) to prioritize compliance with the law and cooperation with Brazilian authorities.

To this end, the addition of the following paragraphs to **Art. 47-G of Bill of Law No. 4,675/2025** is proposed:

> **Art. 47-G.** (...)
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> **§ 1º** The sanctions referred to in the *caput* shall be applied in a manner compatible with the potential for harm of the non-compliance with special obligations and, whenever necessary, in a cumulative and graduated manner, encompassing the fines set forth in Art. 37 and the penalties set forth in Art. 38 of this Law.
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> **§ 2º** Administrators who, by action or omission and with proven intent or fault, cause or contribute to non-compliance with special obligations shall be personally liable, pursuant to Art. 37, item III, of this Law.

[3] Art. 37, item III of Law No. 12,529/2011: in the case of an administrator, directly or indirectly responsible for the infraction committed, upon proof of fault or willful intent, a fine ranging from 1% (one percent) to 20% (twenty percent) of that applied to the company, in the case provided for in item I of the *caput* of this article, or to the legal entities or entities, in the cases provided for in item II of the *caput* of this article.

a) when the fine provided therein proves insufficient to deter the conduct, the Tribunal may impose on each responsible administrator a fine of up to the total annual remuneration received by them in the fiscal year in which the infraction occurred, including fixed salary, bonus, and any variable, deferred, or stock-based compensation.

§ 3º Any action or omission by managers and directors that results in the deliberate non-compliance with special obligations imposed by CADE constitutes a crime against the economic order, subjecting those responsible to imprisonment for 2 (two) to 5 (five) years and a fine, under applicable criminal legislation.

2. Standalone Provision on Market Access Suspension

Pecuniary sanctions, even at high levels, can be absorbed by global digital platforms as a mere operational cost and prove insufficient to ensure timely and effective compliance. For cases of severe or repeated non-compliance, a standalone provision authorizing the suspension of the designated agent's market access is therefore necessary to ensure effective compliance.

The measure is exceptional in nature and aligns with Art. 38, item V, of Law No. 12,529/2011, which already authorizes the partial cessation of activity[4]. It must be applied as a *ultima ratio* (last resort), only when fines or other previously imposed sanctions prove insufficient to ensure compliance, respecting the principles of proportionality, due process, and constitutional guarantees of free enterprise and fair competition. The suspension shall be provisional in character and, if the cure period expires without proof of compliance, may be converted into permanent suspension; the rights of end users affected by the measure, including data portability, shall remain protected.

Thus, the addition of the following article to **Bill of Law No. 4,675/2025** is proposed:

Art. 47-H. Without prejudice to the sanctions provided for in Art. 47-G, the Tribunal may, by a reasoned decision and as a measure of last resort, observing the principle of proportionality, in the event of severe or repeated non-compliance with the special obligations set forth under Art. 47-E, order the temporary suspension of the designated agent's right to commercialize, distribute, or offer products and services in the national territory, until effective compliance is demonstrated.

[4] Art. 38 of Law No. 12,529/2011: Without prejudice to the penalties provided for in Art. 37 of this Law, when so required by the severity of the facts or the general public interest, the following penalties may be imposed, individually or cumulatively: (...) V – corporate spin-off, transfer of corporate control, sale of assets, or partial cessation of activity; (...) VII – any other act or measure necessary for the elimination of harmful effects on the economic order.

§ 1º The measure provided for in the *caput*:

I – shall be applied only when the sanctions provided for in Arts. 37 to 45 and in Art. 47-G prove insufficient to ensure compliance with special obligations;

II – shall be preceded by specific notification to the designated agent, containing a precise description of the conduct to be cured and granting a reasonable cure period of no less than 90 (ninety) days; and

III – may be limited to specific products, services, or platforms of the designated agent, in accordance with the principles of proportionality and reasonableness.

§ 2º The decision ordering the suspension shall specify:

I – its scope, territorial reach, and duration;

II – objective and verifiable conditions for its revocation; and

III – daily fines for non-compliance with the suspension decision itself.

§ 3º The suspension shall be provisional, and if the cure period expires without demonstration of effective compliance, it may be converted, by a reasoned decision, into permanent suspension.

§ 4º The revocation of the suspension shall be determined by the Tribunal upon request by the designated agent, following demonstration of full compliance with the special obligations, as verified by the Digital Markets Superintendency.

§ 5º The suspension shall not affect pre-existing contractual obligations of the designated agent toward its users, who shall be guaranteed the right to data portability, under the terms of the respective decision.

3. Express Anti-Circumvention Clause (Inspired by Article 13 of the DMA)

Even robust obligations can be rendered ineffective in practice through service segmentation, interface design, degradation of access quality, or other conduct that frustrates the purpose of the regime without formally violating the letter of the law. In light of this, Article 13 of the Digital Markets Act (DMA)[5] was designed to address this risk by prohibiting practices intended to circumvent obligations imposed on designated agents.

[5] Regulation (EU) 2022/1925 (Digital Markets Act), Art. 13 (Anti-circumvention). The proposed wording adapts Art. 13(1) to (8) to the structure of Bill of Law No. 4,675/2025 and to Brazilian legislation, in particular Arts. 47-C and 47-E and Law No. 13,709/2018 (LGPD).

In this regard, the Bill would benefit from the inclusion of an equivalent provision ensuring full and effective compliance with the obligations set forth in Art. 47-E and preventing designated agents from undermining or compromising them through indirect means. To this end, the proposed provision seeks to address so-called circumvention through apparent compliance (*malicious compliance*) - that is, formal compliance with the letter of the rule while frustrating the purpose of obligations through deceptive interfaces, scare screens, or artificially complex processes. For this purpose, an effects-based criterion is adopted, evaluating circumvention by its practical impact rather than mere formal compliance, as well as authorizing increased penalties for circumventive conduct.

Therefore, the inclusion of the following article is proposed, the text of which transposes the substance of Article 13 of the DMA with necessary adaptations to the structure of the Bill and the Brazilian legal system:

> **Art. 47-I.** The designated agent shall ensure full and effective compliance with the special obligations determined under Art. 47-E, observing the following:
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> **I** – shall not segment, divide, subdivide, fragment, or separate its services or activities by contractual, commercial, technical, or any other means, with the objective of circumventing the quantitative criteria set forth in Art. 47-C, § 1º, such practice not preventing the agent's designation of systemic relevance in digital markets by CADE;
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> **II** – shall not engage in any conduct that compromises the effective compliance with special obligations, regardless of whether such conduct is of a contractual, commercial, or technical nature, or consists of employing behavioral techniques or interface design;
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> **III** – when consent for the collection, processing, cross-use, or sharing of personal data is necessary to ensure compliance with special obligations, the designated agent shall take the necessary steps to, alternatively:
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> **a)** allow business and professional users to directly obtain the consent necessary for the processing performed by them, when such consent is required by Law No. 13,709/2018 (LGPD); or
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> **b)** comply, by other means, with data protection and privacy rules and principles, including by providing business and professional users with duly anonymized data, where appropriate; it being prohibited, under any circumstances, to make obtaining this consent by business and professional users more burdensome than that required for its own services;
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> **IV** – shall not degrade the conditions or quality of services provided to professional or end users who exercise rights or options resulting from special obligations, nor make the exercise of such rights or options excessively difficult,

including through non-neutral presentation of options or the subversion of user autonomy, decision-making, or free choice through the structure, design, operation, or functioning of any user interface.

§ 1º When suspecting practices described in item I, the Digital Markets Superintendency may request from the agent the information necessary for its investigation, under the terms of Art. 14-B, item II.

§ 2º When the designated agent circumvents or attempts to circumvent special obligations by any of the means described in this article, the Digital Markets Superintendency, without prejudice to the sanctions under Art. 47-G, shall initiate appropriate proceedings so that the Tribunal may: (i) order the immediate cessation of the conduct, subject to a daily fine; (ii) specify additional measures necessary to ensure effective compliance; and (iii) increase applicable penalties by up to 50% (fifty percent), according to the circumventive nature of the conduct.

§ 3º The provisions of this article do not prejudice CADE's investigative and oversight powers, particularly those set forth in Arts. 13 and 14-B, nor the enforcement regime applicable to antitrust violations, pursuant to Arts. 37 to 45 of this Law.

Conclusion

The proposals presented seek to strengthen incentives for effective compliance with the special obligations set forth in Bill of Law No. 4,675/2025 and reduce the risk of their frustration through delay, partial non-compliance, or circumvention practices, with liability for non-compliance proportionate to the special nature of the regime. Their incorporation will contribute to conferring greater effectiveness and legal robustness to *ex ante* regulation, aligning it with international best practices and the objectives inspiring this legislative initiative.

CAF reiterates its compliments to the House of Representatives for the initiative and remains at your disposal to contribute to the technical and legal debate on the topic, offering its international experience and commitment to a competitive, balanced, and innovation-friendly environment.

Respectfully,

CAF – COALITION FOR APP FAIRNESS