

Challenges to competition and innovation in digital platform markets: Insights from Latin American cases

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Appendix 2 – List of Latin-American cases in digital platform market

COUNTRY / AUTHORITY	TYPE OF CASE	TYPE OF CONDUCT OR EFFECT ANALYSED	CASE REF. (#) [WEB LINK INSERTED]	MARKETS OR SECTORS	COMPANIES	DECISION OR STATUS (INCLUDING DATE)
ARGENTINA	MERGER CONTROL	OTHERS	Ex-2018-29901019- -APN-DGD#MP - CONC. 1643	OTT PLATFORMS	TIME WARNER INC. AND AT&T INC.	APPROVED WITHOUT CONDITIONS (OCTOBER 24TH, 2019)
ARGENTINA	UNILATERAL CONDUCTS	EXCLUSION OF OTHER DIGITAL PLATFORM OPERATORS	EXPTÉ. N° S01:0242802/2008	OPERATIVE SYSTEMS	MICROSOFT DE ARGENTINA S.A.	DISMISSED (DECEMBER 1ST, 2017)
BRAZIL	ADVOCACY	MARKET STUDIES	NOTA TÉCNICA N°39/2017/DEE/CA DE	RIDE HAILING APPS	UBER	PUBLISHED (OCTOBER, 2017)

BRAZIL	ADVOCACY	MARKET STUDIES	<u>DOCUMENTO DE TRABALHO Nº 001/2018</u>	RIDE HAILING APPS	UBER	PUBLISHED (APRIL, 2018)
BRAZIL	ADVOCACY	OPINIONS FOR SPECIFIC REGULATORY PROCESSES	<u>NOTA TÉCNICA Nº21/2020/DEE/CA DE</u>	RIDE HAILING APPS	UBER	PUBLISHED (JUNE, 2020)
BRAZIL	UNILATERAL CONDUCTS	EXCLUSION OF OTHER DIGITAL PLATFORM OPERATORS	<u>08012.010483/2011 -94</u>	SEARCH RESULTS	GOOGLE INC.	DISMISSED (JUNE 26TH, 2019)
BRAZIL	UNILATERAL CONDUCTS	EXCLUSION OF OTHER DIGITAL PLATFORMS OPERATOR	<u>08700.009082 / 2013-03</u>	SEARCH RESULTS	GOOGLE INC.	DISMISSED (JUNE 19TH, 2019)
BRAZIL	MERGER CONTROL	OTHERS	<u>08700.007262/ 2017-76</u>	DELIVERY APPS	DELIVERY HERO, IFOOD AND SPOONROCKET	APPROVED WITHOUT CONDITIONS (JULY 2ND, 2018)

BRAZIL	MERGER CONTROL	OTHERS	<u>08700.004494/2018</u> -53	OTT PLATFORMS	DISNEY AND FOX	APPROVED WITH CONDITIONS (MAY 6TH, 2020)
BRAZIL	CARTELS	PRICE-FIXING	<u>08700.008318/2016</u> -29	RIDE HAILING APPS	UBER	DISMISSED (DECEMBER, 2ND, 2014)
BRAZIL	UNILATERAL CONDUCTS	EXCLUSION OF COMPETING SELLERS (ZERO- RATING)	<u>08700.004314/2016</u> -71	MOBILE APPS	CLARO, TIM, OI MÓVEL AND TELEFONICA	DISMISSED (SEPTEMBER, 20TH, 2017)
BRAZIL	UNILATERAL CONDUCTS	OTHERS (RPM)	<u>08700.005679/2016</u> -13	TOURISM SERVICES	EXPEDIA, DECOLAR, BOOKING, AND FÓRUM DE OPERADORES HOTELEIROS DO BRASIL - FOHB	DISMISSED WITH COMMITMENTS (MARCH, 29TH, 2018)
Colombia	Advocacy	Opinion (on regulatory project)	<u>Concepto No. 17- 383708</u>	Hosting services	N/A	Published (August 8, 2018)

COLOMBIA	ADVOCACY	MARKET STUDIES	“REGULACIÓN Y COMPETENCIA EN ECONOMÍAS COLABORATIVAS”	SHARING ECONOMY	N/A	PUBLISHED (APRIL 2018)
Colombia	Advocacy	Opinion (on regulation and bill)	CONCEPTO No. 15-280358 , Concepto No. 17-53113	Ride Hailing Apps	N/A	<i>Published (November 26, 2015; March 8, 2017)</i>
COLOMBIA	ADVOCACY	MARKET STUDIES	“COMERCIO ELECTRÓNICO EN COLOMBIA”	E-COMMERCE	N/A	PUBLISHED (2013)
COLOMBIA	Merger Control	Exclusion of Competing Sellers	Res. No. 60515 of 2018	Tourism Services through App	Avianca, Price Res and Aviancatours	Approved with conditions (August 22, 2018)
COLOMBIA	MERGER CONTROL	OTHERS	RES. No. 21069 OF 2020	DIGITAL IDENTIFICATION SERVICES	BANCOLOMBIA, BANCO DAVIVIENDA AND BANCO DE BOGOTÁ	APPROVED WITH CONDITIONS (MAY 18, 2020)
COSTA RICA	ADVOCACY	OPINION (ON BILLS)	OPINIÓN No. 21-2018 , OPINIÓN No. 013-2019 , OPINIÓN No. 026-2019 &	RIDE HAILING APPS	UBER	PUBLISHED (OCTOBER 30, 2018; MAY 21, 2019; OCTOBER

			<u>OPINIÓN NO. 30-2019</u>			29, 2019; NOVEMBER 11, 2019)
COSTA RICA	ADVOCACY	MARKET STUDY	<u>“REGULACIÓN Y COMPETENCIA EN EL TRANSPORTE REMUNERADO DE PASAJEROS MODALIDAD TAXI Y SIMILARES”</u>	RIDE HAILING APPS	UBER	PUBLISHED (JULY 15, 2018)
CHILE	MERGER CONTROL	EXCLUSION OF OTHER DIGITAL PLATFORM OPERATORS AND EXCLUSION OF SELLERS	<u>FNE F161-2018</u>	DELIVERY APPS	WALMART CHILE S.A. AND CORNERSHOP TECHNOLOGIES LLC	APPROVED WITHOUT CONDITIONS (JANUARY 11TH, 2019)
CHILE	MERGER CONTROL	EXCLUSION OF OTHER DIGITAL PLATFORM OPERATORS	<u>FNE F217-2019</u>	DELIVERY APPS	UBER TECHNOLOGIES INC. AND CORNERSHOP TECHNOLOGIES LLC	APPROVED WITHOUT CONDITIONS (MAY 29TH, 2020)

CHILE	MERGER CONTROL	OTHERS (CONGLOMERATE EFFECTS)	FNE F116-118	OTT PLATFORMS	CANAL DEL FÚTBOL SPA AND TURNER INTERNATIONAL LATIN AMERICA, INC	APPROVED WITH CONDITIONS (DECEMBER 14TH, 2018)
CHILE	MERGER CONTROL	OTHERS	FNE F-81-17	OTT PLATFORMS	TIME WARNER INC. AND AT&T INC.	APPROVED WITH CONDITIONS (SEPTEMBER 4TH, 2017)
Ecuador	Advocacy	Market Study	SCPM - Special report	App Software	Google Inc.	Published (April 2017)
ECUADOR	ADVOCACY	MARKET STUDY	SCPM-IAC-DNEM- 015-2017	RIDE HAILING APPS	N/A	PUBLISHED (8 AUGUST, 2018)
EL SALVADOR	ADVOCACY	OPINION	SC-017-S/ON/R- 2017	RIDE HAILING APPS	UBER	PUBLISHED (AUGUST 23, 2017)
EL SALVADOR	ADVOCACY	OPINION	SC-014-S/ON/R-2019	E-commerce	N/A	Published (June 19, 2019)

MEXICO (COFECE)	ADVOCACY	LEGAL OPINION	<u>OPN-008-2015</u>	RIDE-HAILING APPS	UBER	PUBLISHED (JUNE 4, 2015)
MEXICO (COFECE)	ADVOCACY	MARKET STUDY	<u>"REPENSAR LA COMPETENCIA EN LA ECONOMÍA DIGITAL"</u>	DIGITAL PLATFORMS	N/A	REPORT ON DIGITAL PLATFORMS CASES (MARCH, 1ST, 2018)
MEXICO (COFECE)	MERGER CONTROL	EXCLUSION OF OTHER DIGITAL PLATFORM OPERATORS AND EXCLUSION OF SELLERS AND OTHERS	<u>CNT-161-2018</u>	DELIVERY APPS	WALMART AND CORNERSHOP TECHNOLOGIES LLC	BLOCKED (MAY 27TH, 2019)
MEXICO (COFECE)	MERGER CONTROL	TO BE ANNOUNCED	CNT-111-2019	DELIVERY APPS	UBER TECHNOLOGIES INC. AND CORNERSHOP TECHNOLOGIES LLC	INVESTIGATION ON GOING

MEXICO (COFECE)	UNILATERAL CONDUCTS	TO BE ANNOUNCED	<u>Io-002-2017</u>	E-COMMERCE ONLINE PLATFORMS	TO BE ANNOUNCED	INVESTIGATION ON GOING
PANAMA	ADVOCACY	OPINION	<u>OPINION</u>	RIDE HAILING APPS	UBER	PUBLISHED (AUGUST 31, 2016)
PARAGUAY	ADVOCACY	OPINION	<i>OPINION</i>	RIDE HAILING APPS	UBER	<i>TO BE PUBLISHED (2020)</i>
PERU	ADVOCACY	OTHERS	<u>"DIGITAL AGENDA"</u>	E-COMMERCE, SHARING ECONOMY	N/A	PUBLISHED (2018)
PERU	ADVOCACY	MARKET STUDY	<u>"LOS SISTEMAS DE TARJETAS DE PAGO"</u>	PAYMENT CARD SYSTEMS	N/A	PUBLISHED (NOVEMBER 2018)
URUGUAY	UNILATERAL CONDUCTS	ABUSE OF SUPERIOR BARGAINING POSITION	<u>RESOLUCIÓN N° 103/018</u>	E-COMMERCE ONLINE PLATFORMS	MERCADOLIBRE (DEREMATE.CO M DE URUGUAY S.R.L.)	DISMISSED WITH COMMITMENTS (NOVEMBER 26TH, 2018)

URUGUAY	ADVOCACY	OPINIONS FOR SPECIFIC REGULATORY PROCESSES	RESOLUCIÓN N° 93/016	RIDE HAILING APPS	UBER TECHNOLOGIES URUGUAY	OPINION ON THE REGULATORY TREATMENT OF TAXIS SERVICES V/S RIDE HAILING APPS (AUGUST 5TH, 2016)
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To classify the cases in terms of the competition issues of digital platforms, we adapted a taxonomy developed by Japan's Fair Trade Commission (JFTC). This taxonomy was used by the JFTC (2019a) in its report of trade practices on digital platforms and distinguishes between the following conducts:

1. **Abuse of Superior Bargaining Position:** When a digital platform with a strong position in the market and a "superior position over business partners" (due to the combination of data accumulation, network effects and economies of scale) causes unjustifiable disadvantages for trading partners (JFTC, 2019a, pp. 7–8).
2. **Exclusion of Other Digital Platform Operator:** When a digital platform operator with monopolistic or oligopolistic status excludes competitors or prevents them from entering the market, for example by unreasonably preventing "other companies from using competing digital platforms"(JFTC, 2019a, p. 8).
3. **Exclusion of Competing Sellers:** When a digital platform operator excludes rivals who sell through the platform by changing its "conditions for usage" (JFTC, 2019a, p. 8).
4. **Anti-Competitive Merger:** When a digital platform operator with a "strong position in the market" acquires rivals or potential rivals (start-up companies) which may substantially restrain competition, or prevent innovations" (JFTC, 2019a, p. 9).

In sum, the cases assessed by Latin American competition agencies are classified with the following taxonomy:

1. Unilateral conducts:
 - a. Abuse of superior bargaining position.

- b. Exclusion of other digital platform operators.
 - c. Exclusion of competing sellers.
 - d. Others (i. e. recollection and use of personal data by a dominant platform). ¹
- 2. Cartels
 - a. Involving algorithms or artificial intelligence
 - b. Other
- 3. Merger control:
 - a. Abuse of superior bargaining position.
 - b. Exclusion of other digital platform operators.
 - c. Exclusion of competing sellers.
 - d. Others.
- 4. Advocacy:
 - a. Market studies.
 - b. Opinions for specific regulatory processes.
 - c. Others (i.e. strategic planning documents).

¹ This taxonomy is used by the JFTC (2019b), regarding some kinds of abuses of bargaining position. In particular, the JFTC recognizes the following conducts:

- 1. "Unjustifiable acquisition of personal information":
 - a. "Acquiring personal information without stating the purpose of use to consumers."
 - b. "Acquiring personal information against consumers' intention beyond the scope necessary to achieve the purpose of use."
 - c. "Acquiring personal data without taking the precautions necessary and appropriate for safe management of personal information."
 - d. "Causing consumers in continuous use of services to provide other economic interest like personal information, etc. in addition to the consideration provided in exchange for the use of services."
- 2. "Unjustifiable use of personal information":
 - a. "Using personal information against the intention of consumers beyond the scope necessary to achieve the purpose of use."
 - b. "Using personal data without taking the precautions necessary and appropriate for the safe management of personal information."