



Analysis of competition policies in five countries of Latin America and the Caribbean and the post-pandemic recovery period

René Bustillo



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Abstract

The COVID-19 pandemic has transformed the daily lives of the world's population, the digitization of the economy has accelerated and with it, the use of digital platforms has intensified. Likewise, the pandemic has highlighted the deficiencies in the regulatory frameworks regarding data protection, cybersecurity and competition policy and the need to face the new challenges posed by the increased digitization of countries.

The purpose of this paper is to analyze on the main policy actions of the competition authorities and SMEs of five countries in Latin America and the Caribbean (LAC), namely Argentina, Chile, Colombia, Costa Rica and Peru in support of small companies (SMEs) during the pandemic, to facilitate its survival and recovery process, in a context of increasing digitization.

Introduction

Information and telecommunication technologies (ICTs) have become an integral part of everybody's life, encompassing almost every aspect of everyday routines and activities. Their impact in human activity is so pervasive that it is hard to imagine a world without them nowadays. However, there is a growing consensus that as technology evolves, markets related to ICTs cannot be left completely unrestrained. Any economic sector that changes so rapidly and has such a strong influence in human activities will need to be regulated at some point in time.

During the pandemic, the use of digital platforms has intensified and along with the need to control it becomes prevail. Teleworking, teleducation, telemedicine, and ecommerce platforms have had to deploy all their tools, making them available to users and consumers to meet the needs generated by quarantine measures implemented across countries.

Since the COVID-19 pandemic has affected all sectors of the world economy and the digital economy market is not an exception. We have been experiencing general economic effects impacting ICT usage and threatening MSMEs survival, whose economic scope cannot be quantified until the pandemic is controlled. In this context, antitrust policy has played a precautionary major role by intensifying markets' performance monitorization.

In this context of increasing digitalization as a result of the pandemic, the objective of this paper is to analyze main competition, policies of five selected Latin American countries, deployed to face the pandemic's economic crisis and to stimulate economic recovery.

The country selection criteria were based essentially in a combination of two factors: Population and competitiveness. As a result, the following countries were selected for this study: Argentina, Chile, Colombia, Costa Rica and Peru.

Since regional and sub-regional cooperation agreements have also an incidence in the competition framework for the countries under analysis, the relevant ones were accounted for, which are: (i) Andean Community (CAN); (ii) Latin American and Caribbean Economic System (SELA); (iii) Latin American Integration Association (ALADI); (iv) Asia Pacific Economic Cooperation (APEC); (v) Central America Integration System (SICA); (vi) MERCOSUR; (vii) Central America Dominican Republic Free Trade Agreement (CAFTA-DR); (viii) Pacific Alliance; and (ix) Trans-Pacific Partnership (TPP).

In Argentina, the National Antitrust Commission (CNDC) is allowed to apply the competition law. The shutting of CNDC's offices due to the pandemic accelerated the implementation of digital access to competition files. Online stores and platforms generally benefitted during the pandemic, with the result of price gouging practices becoming widespread. The consumer protection agency announced the regular monitoring and auditing of publications posted on online retailers' platforms.

In Chile, the antitrust authorities are the Antitrust Court (TDLC) and the National Economic Prosecutor (FNE). Both are responsible for enforcing Chile's Antitrust Law. Under the pandemic, the TDLC issued a new regulation allowing consulting parties to proceed (despite the existence of a pending consultation) with cooperation agreements among competitors which may be needed to maintain the supply chain of goods or services which are essential. The FNE also created an Intelligence Unit dependent from the Antitrust Division, responsible for running and constantly updating a cartel detection system.

The Superintendence of Industry and Commerce (SIC) is the competition authority and consumer protection agency in Colombia, responsible for enforcing antitrust regulations, promoting competition and protecting consumer rights. Due to the sanitary emergency, the SIC issued a resolution allowing that an agreement among competitors aimed at attending the emergency caused by the COVID-19 or to overcome its negative effects on the economic system just has to be informed to the SIC, under the presumption that efficiency is achieved.

The Costa Rican Competition Law created the competition authority (COPROCOM) to oversee its enforcement. SUTEL has exclusive jurisdiction to apply competition law and merger control in the telecommunications market. The only change during the pandemic in relation to digital platforms policy has been the issuance of a resolution establishing the procedure for the VAT collection regarding digital services.

Peru has two competition agencies: The Supervisory Agency for Private Investment in Telecommunications (OSIPTEL), which is competent in all matters concerning the telecommunications sector, and the Institute for the Defense of Competition and Intellectual Property (INDECOPI) for all other sectors of the economy. The authorities have not issued any competition or price control law in the context of digital platforms during the COVID-19 pandemic, nor online marketplaces have taken any measures against sellers using their platforms. INDECOPI underlined the legality of agreements that maximize the efficiency of production and distribution for the benefit of consumers during the pandemic; thus, economic agents can join efforts to reduce technological or distribution costs.

In the first chapter, we begin with an assessment of the current state of the digital economy, followed by a general description of the new antitrust environment and an overview of the micro, small and medium enterprises (MSMEs) in the context of a new competition environment. Chapter 2 examines the criteria used to select the countries for this report, followed by an assessment for each country based on: i) competition policy framework for ICTs; ii) responsible authorities for competition enforcement; iii) revision of the situation of digital platforms in relation to MSMEs; and iv) adoption of measures due to the Covid-19 pandemic. The last chapter recaps this exercise's learned lessons, displays the conclusions extracted from the debate competition framework versus digital platforms in Covid-19's context and finally some recommendations about the way forward.

I. ICTs and Competition

ICTs have become an integral part of everybody's life, encompassing almost every aspect of everyday routines and activities. Their impact in human activity is so pervasive that it is hard to imagine a world without them nowadays. However, there is a growing consensus that as technology evolves, markets related to ICTs cannot be left completely unrestrained. Any economic sector that changes so rapidly and has such a strong influence in human activities will need to be regulated at some point in time.

In this chapter we begin with an analysis of today's digital economy, beginning with an assessment of the current state of the digital economy, followed by a general description of the new antitrust environment and an overview of the micro-, small and medium enterprises (MSMEs) in the context of a new competition environment. Since the Covid-19 pandemic has affected all sectors of the world economy and the digital economy market is not an exception, we take a look at the general economic effects, followed by an impact assessment on ICT usage and the effect on MSMEs, finalizing with a description of the areas of concern and looking prospectively at what could happen when the pandemic is over.

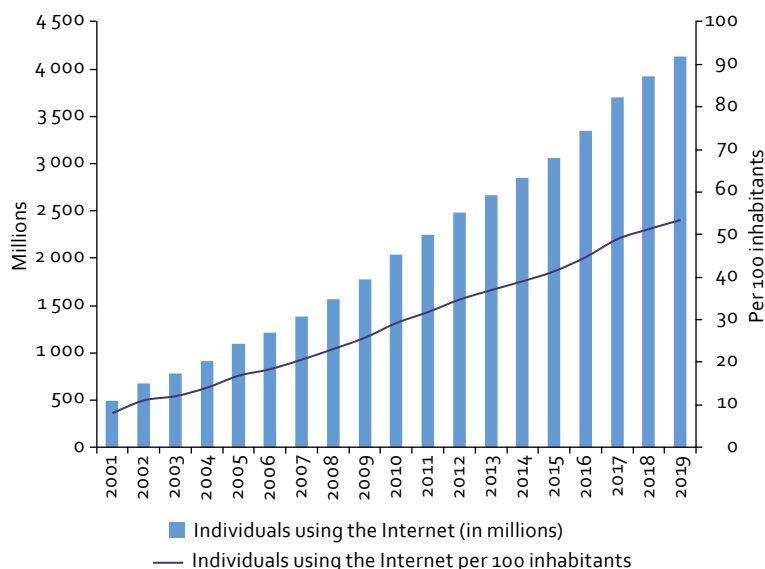
A. Digital economy in today's context

Today's digital economy is the result of groundbreaking advances in technology and massive embracement of information technology during the last two decades. Developments can be observed in ICT infrastructure and usage, as well as applications and ICT environment.

1. The internet phenomenon

Internet has been around just for a few decades, but its influence in shaping today's world has been formidable. Growth of internet usage however, has risen to an unprecedented scale just in the last two decades, as it can be appreciated in figure I.1.

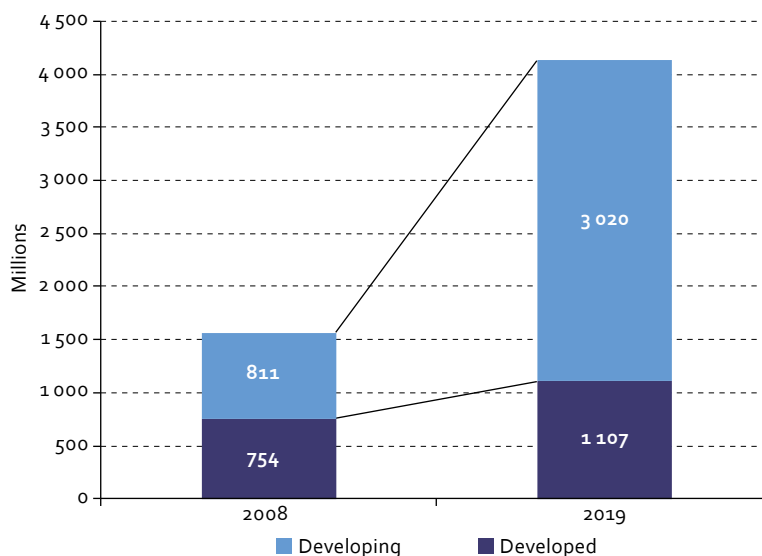
Figure I.1
Growth of internet usage globally



Source: (ITU 2020).

More than 50% of the world population uses internet nowadays, and its usage growth in the last decade can be appreciated more in developing countries, as shown in figure I.2. This also implies that many developing countries are just starting to grasp the challenges of dealing with ICT innovations.

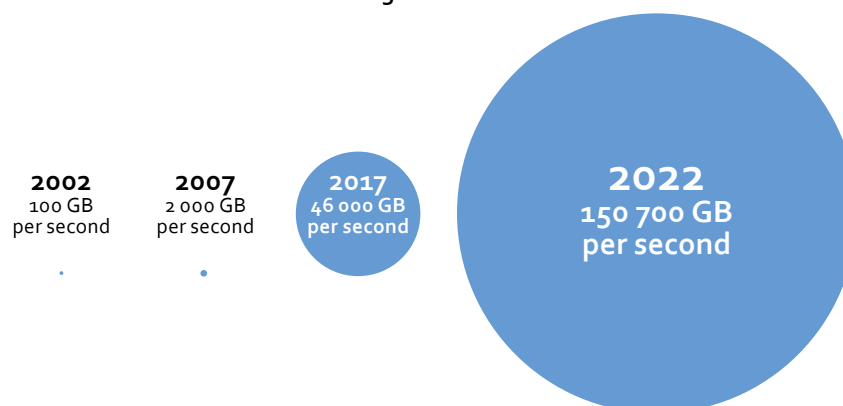
Figure I.2
Internet usage by level of development



Source: (ITU 2020).

Another metric used to measure the evolution of technology is the growth of global internet traffic, as observed in figure I.3. The increase in two decades can be measured in orders of magnitude, meaning that the average ICT user twenty years ago was nowhere near in sophistication to that of today. In addition, changes observed in the ICT environment are huge, as described next.

Figure I.3
Evolution of global Internet traffic



Source: (UNCTAD, 2019).

2. The digital economy

The new digital economy is the result of the internet evolution. “Throughout history, economies have been reshaped by revolutionary inventions. These breakthroughs —such as the telegraph, railroads and the automobile— each sparked a virtuous circle of growth for the economies that could take advantage of them. The difference with the internet is that it is inherently global, benefitting both developed and developing economies.” (Oxford Economics, 2011).

While it is true that the digital economy revolves around internet and its widespread usage, it is also true that without enabling tools to grasp the benefits of a digital environment, the internet becomes just a nice mechanism to connect with the world. The process of building a digital economy in a developing country is full of challenges and providing ubiquitous access to internet is just one of them.

(a) Importance of digital platforms

The digital economy continues to thrive on digital data (binary information or zeros and ones), collected from almost any imaginable source in the planet. Data is collected pretty much from anybody and anything and the onset of the Internet of Things (IoT) is bound to further increase the amount of data collected from devices. According to the United Nations, “the development and policy implications of data collection and use depend greatly on the type of data involved: personal or non-personal; private or public; for commercial or government purposes; volunteered, observed or inferred; sensitive or non-sensitive.” (UNCTAD, 2019) Value creation arises once the data becomes digital intelligence and it is traded commercially like any ordinary asset. However, there is not such a market for this type of data nowadays. In addition, traditional estimation models such as Capital Asset Pricing Model (CAPM) do not seem to work very well with this type of assets either.

In the past ten years, several digital platforms have merged worldwide through data-driven business models, disrupting existing industries in the process. According to (UNCTAD, 2019), seven of the world’s top eight companies by market capitalization use platform-based business models. Digital platforms allow different parties to come together and interact online. The so-called transaction platforms are particularly important from the standpoint of regulation, as they are two/multisided markets with on-line infrastructure supporting transactions between several different parties. Businesses oriented around transaction platforms play a major role in the digital economy, particularly when they collect and analyze digital data in order to monetize it to generate revenue.

According to (UNCTAD, 2019), measuring the digital economy is a difficult task. First of all, there is no widely accepted definition of digital economy. Second, reliable statistics on its key components and dimensions are difficult to gather or measure, particularly in developing countries. The impact of digital economy across different sectors can be estimated qualitatively, though. A summary of potential impacts of the data-driven economy by type of actor has been developed and it is shown in table I.1. Of particular importance for this study are the effects and potential impacts on Micro, Small and Medium Enterprises (MSMES).

Table I.1
Potential impacts on value creation and capture from an expanding digital economy, by its components and actors

Digital economy component	Actors				Economy-wide implications
	Individuals (as users / consumers and workers)	MSMEs	Multinational enterprises / digital platforms	Governments	
Core, digital sector	New jobs for building and installing ICT infrastructure. New jobs in telecom and ICT sector, especially ICT services	Greater inclusion under suitable circumstances or spillovers/domestic linkages. Increased competition from cloud-service providers	Investment opportunities for companies that meet high capital, technological and skills requirements	Attracting investment. Tax revenues from the economic activity created	Increased growth, productivity and value added. Employment creation. Investment and diffusion of technologies; R&D likely located in high-income countries. Mixed trade impacts
Digital economy	New jobs in digital services, especially for highly skilled people. New forms of digital work, including for the less skilled	New opportunities in digital ecosystems. Increased competition from foreign digital firms	Enhanced productivity from data-driven business models. Greater control of value chains using platform-based business models. New opportunities in the sharing economy	More tax revenue resulting from increased economic activity and formalization of enterprises. Lost customs revenue from digitalization of products	Higher growth, productivity and value added. Employment creation/ losses. Higher investment. Aggregation of digital firms in some locations. Mixed trade impacts. Market concentration
Digitalized economy	New jobs in ICT occupations across industries. Need for new skills as higher-value roles are redesigned using digital tools. Greater efficiency of services received. Job losses or transformation due to digitalization. Risk of worsened working conditions. Improved connectivity. More choice, convenience, customization of products for users and consumers. Lower consumer prices	Platform-enabled market access. Reduced transaction costs. Risk of "race to the bottom" in markets vs. ability to find a niche. Lost opportunities due to automation (e.g. logistics, business processes). New roles in service provision. New business opportunities for digitalized enterprises	Emergence of platform firms with data-driven models. Gains from efficiency, productivity and quality. Opportunities for the monetization of data. Increased competitive advantage of digital platforms. Increased market power and control of data value chain. Leading digitalization in different sectors	Increased efficiency of services through e-government. Increased revenue from customs automation. Unclear impact on tax revenue increases from higher economic activity; losses from tax optimization practices by digital platforms and MNEs. Data-driven opportunities to meet various SDGs	Growth through improved efficiency in sectors and value chains. Productivity improvements. Innovation impacts. Potential crowding out of local firms in digitally disrupted sectors. Potential automation in low and medium-skill jobs. Wider inequality. Mixed trade impacts. Impacts on structural change

Source: (UNCTAD, 2019).

(b) Competition in platform markets

The subject of competition in platform markets is not an easy one to tackle, due to the multiple dimensions in which digital platforms operate and their nature of multisided markets. A digital platform is characterized as being a facilitator or enabler for many-to-many (M2M) interactions; hence, transactions in this market become multisided. Multisided markets and multiple products are nothing new in the ICT industry, as broadcasters and internet service providers have been dealing with them for years (Shelanski, 2013). Platforms act as intermediaries between different sets of consumers that would find it difficult to reach each other without them. These different groups relate with each other vertically as buyers and sellers, while being users of the platform services at the same time.

The multisided nature of digital platforms creates several consequences for competition policy. A platform cannot set prices for one market facet without affecting supply and demand on other sides of the market (Shelanski, 2013). Market dominance on one side of the market doesn't necessarily imply that one platform is able to impose monopolistic prices on a specific market segment, as that pricing would have negative effects on the prices that the platform would charge on customers on other market segments.

Evans & Schmalensee (2007) make an interesting analysis on the driving forces that determine the process and level of concentration in two-sided markets, such as the digital platforms. Table I.2 shows the determinants of concentration on two-sided markets.

Table I.2
Determinants of concentration on two-sided markets

Driving Force	Effect on concentration
Strength of indirect network effects	+
Degree of economies of scale	+
Capacity constraints	-
Scope of platform differentiation	-
Multi-homing opportunities	-

Source: (Evans & Schmalensee, 2007).

Indirect network effects

Competition among two-sided platforms promote larger and fewer competitors, as platforms with more customers on one group are more valuable to the other group. For instance, more users of a social media platform make it more valuable to advertisers. This concentration effect tends to become a market-entry barrier for new platforms and yields consolidation of smaller platforms into larger ones. In addition, first movers have an inherent advantage, as new entrants have to build-up a large customer base on both sides in order to effectively compete.

Economies of scale

Digital platforms usually have relatively large fixed costs, such as the software development for managing the platform operations. Variable costs, on the other side, are quite small and the marginal cost of adding an additional customer on either side tends to become negligible. Large platforms such as eBay, Amazon and Airbnb incur in small additional costs with new customers, meaning that the larger they become, the easier it becomes to accommodate new customers. The notable exception to this rule would be the increasing needs for cybersecurity, as the larger a digital platform becomes, the more interest it will generate to hackers and cyberattackers.

Capacity constraints

On the side of negative externalities, capacity constraints play an important role as deterrents for market concentration. As opposed to two-sided markets such as shopping malls, digital platforms do

not have a constraint of physical space. But other forms of capacity constraints exist, such as limits on advertising space in digital markets, negative externalities caused by additional users, increased search cost due to user heterogeneity, and others (Haucap, 2019).

Product differentiation between platforms

Digital platforms can differentiate themselves through vertical differentiation (on the income and relative demand for quality) or horizontal differentiation (by choosing particular features and prices that appeal to particular groups of customers). The latter can also result in users choosing to join and use more than one platform, which is known as multi-homing (Evans & Schmalensee, 2007). For instance, many people choose to join more than one marketplace or social media platform. This would in turn yield to platform differentiation and act as an inhibitor for consolidation. Multi-homing can occur on both sides of a digital platform.

Switching costs and multi-homing

Users of digital platforms have to waive the pros and cons of switching costs involved in moving from one platform to another versus the costs of multi-homing. Switching costs might be considerable to users, particularly when migrating between social networks. Another factor is that items such as seniority and user's reputation cannot be easily migrated to another platform and as time passes, it becomes increasingly costly to switch. Multi-homing costs might be negligible on one side, as most platforms offer membership at no cost and the only expenses involved are those of keeping track of several accounts. On the other side, however, advertisers and similar users might find it expensive to use multi-homing and be naturally limited to just one or two platforms.

(c) New concepts in platform economy

As platforms evolve in today's digital economy, many new concepts arise due to the extensive use of the internet and the insertion of digital platforms in the economy. This is particularly challenging for governments, as they need to grasp the knowledge in record time in order to design proper sector policies and develop the legal/regulatory framework applicable to them. Key concepts are market definition and market power.

Market definition

Market definition in digital platforms can be difficult to grasp, as different markets can be identified, and the literature is not always consistent regarding them. A relatively straightforward conceptual model for digital platforms markets, as envisioned by Prof. Dr. Ron Meyer (Meyer, 2019), is shown in figure 1.4.

It should be evident that market definition becomes a challenge once companies like Amazon start to become players in several markets and the reach of the platform becomes ubiquitous. Competition authorities need to be careful when assessing the markets covered by digital platforms, as some of the boundaries between them become blurred.

Another matter regarding market definition is geographical reach. As digital platforms become global, their markets cover different geographies and some of them are able to reach entire continents and even most of the connected world. Google coverage, for instance, is almost global, except for a handful of countries that includes mainland China.¹ This adds another dimension to the challenge of market definition, particularly when considering applicability of local laws and competition issues that go across borders.

¹ Google restricts access to some of its business services in certain countries or regions, such as China, Crimea, Cuba, Iran, Myanmar, North Korea, Sudan, and Syria. (see <https://support.google.com/a/answer/2891389?hl=en>).

Figure I.4
Conceptual model for digital platforms



Source: (Meyer, 2019).

In the case of two-sided platforms, market definition raises a number of issues that do not arise on conventional markets. In market environments with two-sided platforms, the following questions arise:

- can the relationship between the platform and the respective market sides be considered separate markets or just a single market?
- are there circumstances under which a market can be viewed in isolation of the other side?
- should the interplay between both sides always be taken into account?
- how should a side on the platform that does not need to make a monetary payment to consume the platform's service ("zero price") be treated?

As in standard competition analysis, substitutability of the different services offered by a two-sided platform needs to be investigated for market definition. The economic concept to do so is through cross-price elasticities of demand (Franck & Peitz, 2019). However, when no monetary prices are charged, modified concepts need to be used.

Market power

Market power assessment in digital platforms is another key concept that needs close attention when dealing with competition in the new economy. (Franck & Peitz, 2019) develop an extensive analysis on market power in markets with platforms and conclude that "when dealing with two-sided platforms, particular care is needed, as the markets on the two sides are linked and an assessment of the overall market power of a platform has to take this link into account."

Table I.3 summarizes a set of indicators and the level to which the indicator applies, (i.e. whether there is such an indicator for the whole platform ("platform") or whether there is one on each side of the platform ("market")).

Table I.3
Indicators of platform market power

Indicator	Level
Revenue share	platform
User shares	market
User share relative to number of potential users	market
Share of usage volume	platform/market
Mark-up/Lerner index	market
Profits	platform
Barriers to entry	platform
Direct evidence	platform/market

Source: (Franck & Peitz, 2019).

- **Revenue shares**

Two-sided markets platforms serve two user groups on two separate but interdependent markets. One possibility to assess the relative position of a platform is to calculate its revenue shares derived on each side of the platform. If the price structure is neutral,² only overall shares are meaningful. If the price structure is non-neutral, the platform chooses its price structure to maximize the overall profitability of the platform and only overall shares are meaningful as well. For the case of “zero-price” markets, revenue shares are meaningless if all substitutes are priced at zero. All things considered, the only reasonable option is to use revenue on all sides.

- **User shares**

Rather than considering revenue shares, active users shares relative to the total number of active users might be considered. This means that market shares on both sides of the digital platform are to be considered separately. In case usage of a platform is heterogeneous, it is preferable to consider usage volumes rather than number of users.

- **User share relative to number of potential users**

When the number of users on one or both sides might be increasing over time, an approach would be to relate the actual size of the platform on one side to the potential overall market size. This relates to calculating market share based on a projected market size, which could be difficult to forecast sometimes. In this case, a large ratio of the number of active users to the total number of active and potential users may be seen as an indication of market power (Franck & Peitz, 2019).

3. The new antitrust environment

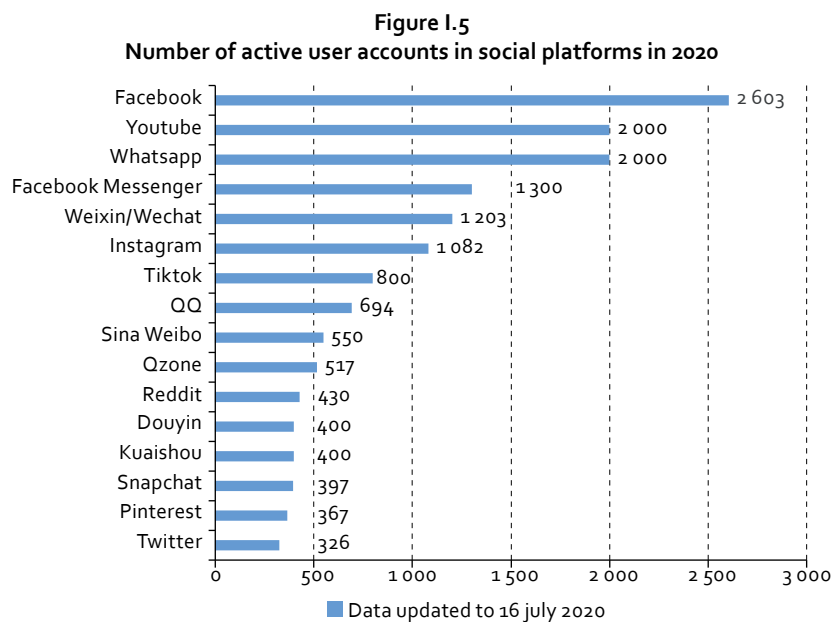
Antitrust law and current practices have normally worked quite well in different types of environments. The challenge nowadays is how to use past experience and knowledge acquired with technological markets, this time in dealing with digital platforms that do not quite behave like as expected in those markets. Even the issue of regulating them like traditional two-sided platforms becomes a learning experience, as digital platforms do not seem to follow some so-called “traditional” rules.

(a) Problems with current antitrust practices

Traditional antitrust regulatory practices have not been involved with privacy regulation. According to (Economides & Lianos, 2020), dominance in digital platforms nowadays blurs the border between antitrust and privacy regulations. Competition law usually takes a look at market failures and examines the impact on consumer or total welfare, whereas data protection and privacy regulations take a fundamental rights perspective, meaning that the issue of dominance in digital platforms is examined from different angles depending, on the priorities of the antitrust agency.

² Neutral Pricing, or pricing similar to competition is the preferred option when the market is characterized by intense competition and low differentiation among competing offers.

Personal privacy is substantially reduced by extensive acquisition of personal information through digital platforms. Social platforms in particular are extremely active in gathering personal information from their users and the number of active accounts worldwide is staggering, as verified in figure I.5. The Internet of Things (IoT) ecosystem will add further complications and challenges to the subject of keeping personal information gathered through machine-to-machine (M2M) interactions safe.



Source: Adapted from (DIGITAL, 2020).

Data gathered through digital platforms is used by the platforms themselves, but it is also traded to infomediaries. Uses can range from advertising to targeting specific user behavior for other purposes such as influencing political campaigns and like.³

Many issues arise regarding data protection, as antitrust authorities in many countries do not have any involvement with data privacy/security matters or have just started becoming acquainted with them. It is only recently that competition authorities have started to become more and more involved with the offshoots and implications of mergers in relation to security and privacy, sometimes prompted by the adoption of the European General Data Protection Regulation (GDPR). (EU, 2020).

In a normally functioning market for personal information, transaction prices would depend on the willingness of the digital platform to buy and the willingness of a user to sell his personal information (Economides & Lianos, 2020). According to them, “how much a user’s personal information is worth to himself differs in general from how much it is worth to a platform such as Google or Facebook”. Users are normally not aware of how much their personal data is valued and give it away easily. But the user doesn’t realize how vulnerable he/she becomes by losing personal privacy. In most cases, digital platforms collect personal information without providing any form of monetary compensation or other. Hence, almost all transactions in this market occur at a zero-nominal price, resulting in a market failure favorable to the owner of the digital platform. In addition, the user never realizes the destination of his/her personal data nor the uses that can be derived from it.

(b) Big data as an asset

Big data is defined as “high-volume, high-velocity and/or high-variety information assets that demand cost-effective, innovative forms of information processing that enable enhanced insight, decision

³ This last point is portrayed in a critical fashion by Netflix in the controversial documentary “The Social Dilemma” (Orlowski, 2020).

making, and process automation". (Gartner, 2020) The definition itself point to the fact that enterprises consider it as an asset, which requires collection and circulation, sometimes through a process called "data mining" but also through acquisition from the owners of a digital platform.

Sadowski (2019) contests the concept of data mining, pointing out to the fact that most data is actually manufactured, as it is not out there waiting to be discovered as if it already exists in the world like crude oil and raw ore. There is an emerging political economic shift in which data is created, collected, and circulated as capital. All things taken into account, big data is a valuable (and much valued) asset of any company involved with technology nowadays. (The Economist, 2017) is keen on pointing out that data is bound to become the "fuel of the future". This by itself points out to the need of having a renewed framework for handling issues regarding big data, be them the result from acquisition, collection, storage or usage.

(c) Need for a new framework

Sillanpää (2019) states that "regulators need not restructure antitrust from scratch in order to assess data-driven technology company (DDTC) mergers effectively". There is the potential to use the existing frameworks and maintain a reasonable concern for consumer welfare, as long as regulators do not aim for the narrowest market definitions and confine consumer welfare to price-based economic models. Other authors claim that data policy frameworks must balance trade-offs across many competing objectives, and doing so requires an integrated approach, as interventions that address a single facet of data are likely to generate suboptimal outcomes (Carrière-Swallow & Haksar, 2019). Granting data collectors extensive rights is likely to create strong incentives for data generation but might lead to data hoarding and preclude broader efficiency gains that could be achieved through wider access. An unintended result might be disregard for user privacy as well.

There is no global governance framework for data *per se* and approaches to data rights vary from country to country; hence, the need for coordination to develop international frameworks. The International Monetary Fund (IMF) prompts for an integrated approach to developing international frameworks that sets minimum standards, balancing interests of growth and competition with national and individual privacy concerns, with due respect to legitimate concerns over sovereignty, privacy, and national security (Carrière-Swallow & Haksar, 2019). The IMF further argues that four concerns about the status quo merit changes to data policy:

- Rights and obligations over data must be clarified for the market to function efficiently. The implications of data for growth and equity will be determined by who controls access to data in the economy and in providing clarity on the distribution of economic returns from use of this data.
- Large incumbents in the data economy appear to have gained substantial market power based on a strategy of hoarding customer data. This calls for policies that can encourage user control over data and complete more competitive markets, including mandates on data sharing across firms to boost competition.
- The proliferation of data is not being met with sufficient investment in cybersecurity, and this may be reducing the stability of the financial system. Other stability concerns arise from the over-the-cycle resilience of data-driven credit provision and third-party service providers housing critical data infrastructures.
- There is a risk of international fragmentation in data markets, which could reduce the potentially sizable efficiency gains from the economies of scale and scope inherent in free movement of data across borders, while also reducing financial resilience arising from the distribution of information on large, secure global networks.

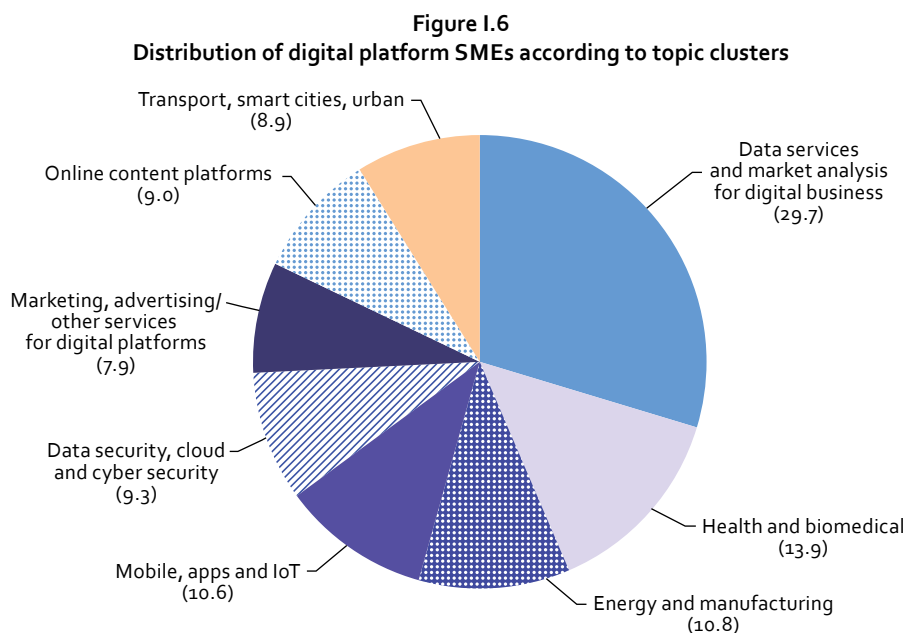
4. MSMEs in the context of a new competition environment

Micro-, small and medium enterprises (MSMEs) have a huge potential for benefiting from the new competition environment fostered by extensive use of digital platforms. Digital is redefining business and society at an astonishing pace and scale and the problem today is no longer the absence of data; in fact, companies are flooded with it. The key now for MSMEs is to collect the right data that is accurate and trusted, and to mine it for business value.

(a) Present use of ICTs by MSMEs

The potential for inclusive growth through MSME access to new data and digital capabilities is huge. eCommerce, for example, is proving to be a game changer for MSME participation in global value chains. eCommerce increases MSME access to overseas customers, enabling them to more efficiently promote their products and services and process payments (Morvan 2016). Internet access significantly increases MSMEs' access to finance through alternative financing mechanisms and by reducing the risks and costs of servicing MSMEs.

A study conducted by the European Commission (De Marco, et al. 2019) looked at the function and structure of the diverse digital platforms in which the small and medium enterprises (SMEs) operate in European countries. Figure I.6 shows the distribution of digital platform SMEs according to topic clusters, which include a variety of topics ranging from market analysis for digital business to online content platforms. It is conceivable that the distribution of topic clusters in other regions of the world might be different, but the analysis of the European Commission sheds some light into the relative importance of some topics, such as data and market analysis accounting for about one-third of the total number.



Source: Adapted from (De Marco, Di Minin, Marullo, & Nepelski, 2019).

(b) Privacy as a huge concern

As pointed out in the preceding section, issues regarding data protection arise with digital platforms. Privacy and security of data remains a primary concern for MSMEs, primarily due to the borderless nature of digital economy. MSMEs do not have the possibility of owning large digital platforms and their concerns about privacy are shared with the rest of the users. Digital platforms have yet to secure the trust and confidence from customers and governments that they will be using personal data responsibly. Security

and privacy breaches are of huge concern to users of digital platforms and to some degree even more to MSMEs, as data is not just theirs but could be data gathered from their own customers, which could eventually lead to potential lawsuits for private information mishandling and/or negligence.

(c) Need for legal/regulatory changes

"Governments must put in place the right framework and conditions to realize the potential of the digital economy for inclusive growth". (Morvan, 2016) Accenture concludes that Governments will need to take a strategic approach to regulation by limiting unnecessary costs and complexity for businesses, while inducing innovation and participation of MSMEs in the digital economy. In particular, they should:

- Facilitate access to finance, minimize red tape and work with business and educational institutions to develop a skilled digital workforce.
- Provide the necessary tools to facilitate the free flow of data, while ensuring an adequate level of protection.
- Ensure the interoperability of standards and mutual recognition of rules, particularly on data protection.
- Recognize international and industry-driven information security standards, with third-party audit and certification assessments to manage security risks.

B. COVID-19 pandemic effects

COVID-19 has impacted and reshaped the world's economies in so many different ways that governments and institutions alike are still trying to assess and project its negative effects. Another aspect of this pandemic is that the deep divides between North and South; developed and developing countries; connected versus unconnected; technologically advanced versus unadvanced; and economically strong versus weak; will become more evident as the number of Covid-19 cases keep rising.

The general economic effects in the Region have been estimated by the ECLAC and the prospects seem quite dire. "Based on the estimated effects of ongoing processes, ECLAC projects a regional average decline of 9.1% in GDP in 2020, with decreases of 9.4% in South America, 8.4% in Central America and Mexico, and 7.9% in the Caribbean excluding Guyana." (ECLAC COVID 5, 2020).

In this section the impact of the pandemic on the digital economy in the Region is examined, followed by a look at the specific effect on MSMEs and areas of concern, finishing with a prospective look at what happens when the pandemic is over.

1. Impact on the digital economy

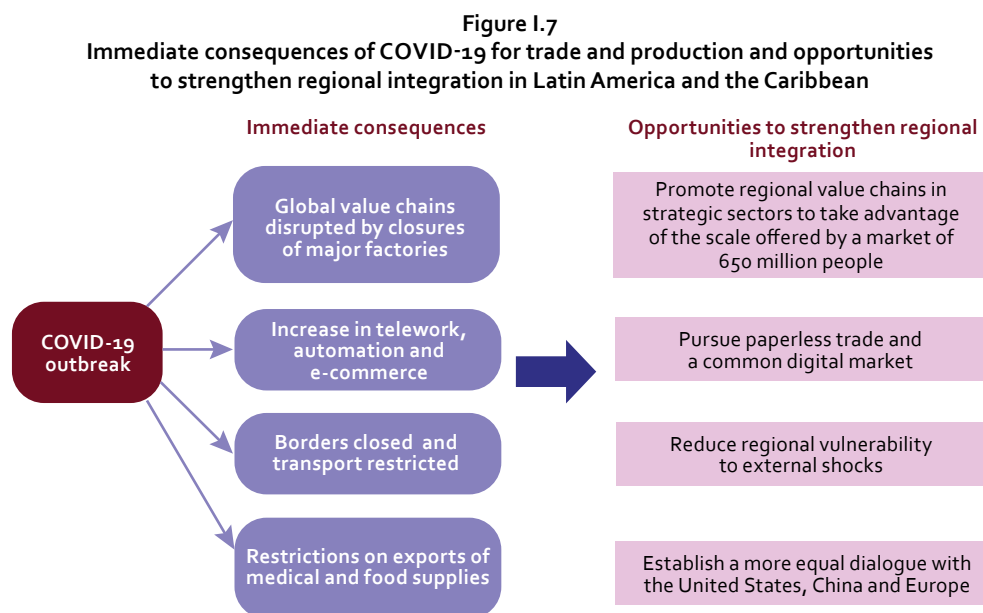
According to (ECLAC COVID 4, 2020), digital technologies will be key in the new operating model of firms. This will occur, firstly, in the promotion, sale and delivery of goods and services, and in the interaction with suppliers. Secondly, companies will have to develop capabilities to acquire and process large amounts of information (big data) for their decision processes (monitoring and adapting to changes in demand, but also redefining supply chains). Lastly, industry may be expected to use more digital interconnection devices in production processes, and to make more use of robotics to increase efficiency, especially considering that health security needs may lead to the employment of fewer workers in some phases of production.

Personal data privacy will have to be reconsidered in order to manage the health crisis efficiently. The security of digital infrastructure (for example, to prevent health care facilities being hacked) becomes a matter of life or death.

Digital technologies have been essential to the functioning of the economy and society during the crisis caused by the coronavirus disease (COVID-19) pandemic. Communications networks and infrastructure

are being used more and more intensively for productive, educational, health and entertainment-related activities and to keep in touch with friends and relatives. Progress that was expected to take years to materialize has been made in a few months. (ECLAC COVID 7, 2020).

The immediate consequences of the COVID-19 outbreak in trade and production can be observed in figure I.7, as well as some opportunities to strengthen regional integration. Of particular importance are those opportunities which demand a much more aggressive development of ICT tools, a phenomenon that has been observed lately, with most physical operations moving to online transactions nowadays as a direct consequence of the threats related to physical proximity and the transmission of the COVID-19 disease.



Source: (ECLAC COVID-19 6, 2020).

2. Effect on MSMEs

All businesses, regardless of size, are affected, especially those in the aviation, tourism and services such as retail. Many are already dealing with a significant decline in revenue, insolvencies and job losses in specific sectors, which will have a considerable impact on the labor market. Sustaining business operations will be particularly difficult for micro-, small and medium-sized enterprises (MSMEs).

The pandemic has been accelerating the digitalization's pace, meaning MSMEs had to suddenly go digital during this time. Most MSMEs did it by offering their products or services on digital platforms. In this sense, there is a concern about how much platforms are asking in this process (i.e., MSMEs could be paying abusive prices).

A concurrent process of premature deindustrialization prevents workers moving to cities from securing quality jobs, and they have to seek employment in the commerce sector, often in informal, low-productivity and low-income jobs. In practice, the commerce sector has served as a reservoir of employment of last resort, primarily through informal employment and in MSMEs, particularly microenterprises with very low productivity jobs (ECLAC, 2020).

The economic impact of the COVID-19 pandemic is expected to have the following effects on micro-, small and medium-sized enterprises (ECLAC COVID-19 1, 2020):

- Almost 99% of Latin American companies are micro, small or medium-sized enterprises (MSMEs), and they make up the majority of companies in almost all economic sectors. Although the crisis affects all businesses, the impact will be much greater for microenterprises and SMEs, owing to their large share in the business structure of the region, with widespread business closures and job losses.
- People employed by MSMEs are very vulnerable to the pandemic crisis. The temporary shutdown of economic activities and preventive quarantine measures will lead to a significant reduction in revenue. Sales could be insufficient for the survival of these companies, which would be unable to pay salaries, employee and social security contributions and could even go bankrupt.
- The economic impact on MSMEs will have a high social cost, as micro and small enterprises accounted for 47.1% of total employment in 2016, rising to 61.1% if medium-sized enterprises are included. Based on the diagnoses made by business chambers on the situation of MSMEs and the nature of the crisis, ECLAC estimates that more than 2.7 million formal businesses in the region will close with the loss of 8.5 million jobs, not including layoffs made by firms able to remain in business.
- The impact will be very different depending on the sector and type of firm. Several of the heavily affected sectors, such as commerce, hotels and restaurants, include large numbers of micro- and small enterprises, which will be the worst affected.

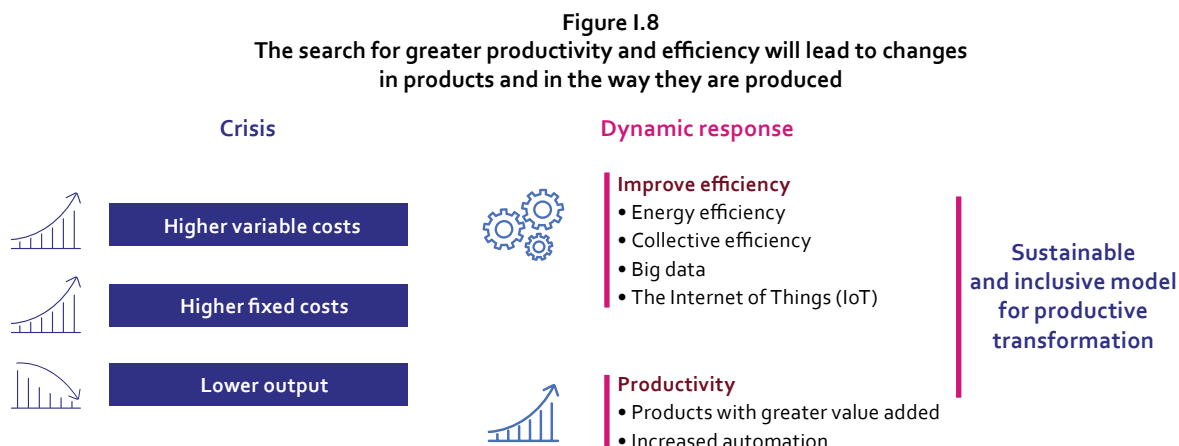
Among the measures some countries have implemented to help MSMEs survive the economic effects of the COVID-19 pandemic we find:

- Credit lines to provide liquidity to businesses, especially micro-, small and medium-sized enterprises (MSMEs), to protect the economy's productive capacity, and tax relief measures to provide short-term liquidity to taxpayers.
- Interest-free loans to small and medium-sized enterprises to allow them to pay wages, and deferrals of loan, mortgage and rent payments.
- Common measures seek to provide liquidity to firms and avoid disrupting the flow of payments in the economy. Deferral of obligations to the State and to financial institutions are the most widely used tools.
- Some direct support measures included programs to train MSMEs in digitization matters or provide them with online sales platforms, with a view to helping them to adapt given the heavy fall in face-to-face sales.

3. What happens when the pandemic is over?

Given the uncertainty of the economic situation in the Region at this junction, most governments are quite busy implementing measures to overcome today's hurdles until the pandemic starts to recede. However, at some point in time, they will need to plan the actions required to quickly move into recovery mode. Figure I.8 shows some of the changes envisioned as dynamic responses to improve efficiency in response to the pandemic and it is interesting to note that many of them are related to ICTs.

Regarding a post-pandemic world, the ECLAC has identified many challenges regarding digital technologies in general and online platforms in particular. Legislative and regulatory frameworks must be established to prevent abuse of market power as a result of concentration and to foster competition. "The regulatory model will depend on the type of platform in question: access to information or content through general search engines; access to personal data and other private content; access to goods or services offered by third parties or sharing economy platforms; access to labor or particular skills according to expertise; and access to money or capital, through crowdfunding sites, payment systems or cryptocurrencies" (ECLAC COVID-19 7, 2020). Table I.4 shows some key regulatory challenges that countries will need to face in order to tackle a post-Covid-19 world.



Source: (ECLAC COVID-19 4, 2020).

Table I.4
The key regulatory challenges of digital platforms

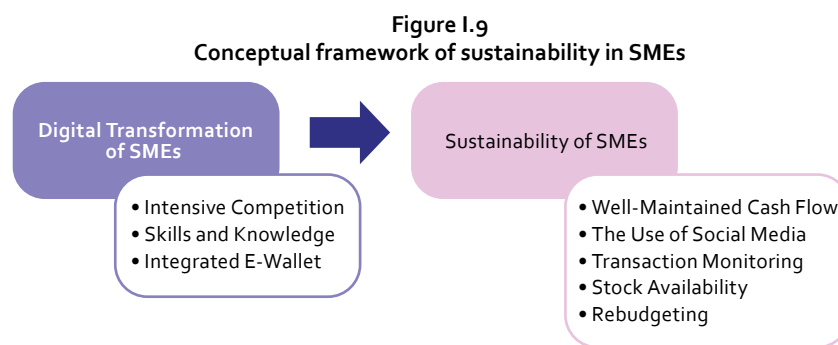
Areas	Objective	Level	Digitization challenges
Rights safeguards	Protecting the rights of workers, consumers and authors	International, national and local	<ul style="list-style-type: none"> - Ensuring the sustainability of social protection and rights protection systems - Balance between innovation and protection of rights
Competition	Market efficiency	National and local	<ul style="list-style-type: none"> - Definition of markets - Possible bottlenecks
Data governance	Data access and protection	International, national and local	<ul style="list-style-type: none"> - Definition of rules on data access, portability and ownership
Taxation	Compliance with tax policy	International, national and local	<ul style="list-style-type: none"> - Agreements to tax cross-border consumption of digital services

Source: (ECLAC COVID-19 7, 2020).

It should be recognized that after the pandemic is over, things will never be the same, particularly regarding ways of conducting business by MSMEs. e-Commerce, extensive use of digital platforms and adoption of tools to allow for remote interaction will become the norm for years to come. The need for increased connectivity will resurface, particularly among the MSMEs and their clients. Challenges remain ahead with respect to guarantees that governments will assure that universal coverage is reached, particularly with regards to internet access.

The road to recovery implies a substantial degree of modernization in the ways MSMEs manage businesses nowadays. It is envisioned that enterprises will undergo large digital transformation processes in order to grasp new business opportunities and larger target markets. According to (Winarsih, Indriastuti, & Fuad, 2020), digital transformation can work if there is a commitment of SMEs, such as in offering products through social media, giving discounts, and so on. There are four things that can be implemented for digital transformation: (1) ensuring business to remain competitive, (2) bringing efficiency in business processes. (3) Increasing customer satisfaction and (4) making it easier for business people to make various strategic decisions.

To ensure long-term sustainability, MSMEs need to achieve digital transformation first and then move into the implementation of steps required to keep the momentum. The conceptual framework for sustainability is shown in figure I.9, which can be used for guidance into the recovery path after the Covid-19 pandemic is over.



Source: (Winarsih, Indriastuti, & Fuad, 2020).

II. Competition policies in the region

With more and more economic activities taking place on the internet, competition policy is facing the problem of defining markets and assessing market power in environments in which network effects play an important role (Franck & Peitz, 2019). A rapidly changing pace of change in the markets associated to internet prompts for an important question for competition policy raised by (Shelanski, 2013): “whether antitrust enforcement in digital industries can protect consumers without ‘causing harm from interfering in complex businesses that are both rapidly moving and not fully understood’”.

The challenge for competition policy nowadays is to identify the characteristics that differentiate competition on the internet from competition as conventionally conceived in antitrust law. These differences might prompt for adaptations to the competition legal/regulatory framework and could take the form of new emphases, approaches and/or remedies.

This chapter examines the criteria used to select the countries for this study, followed by an assessment for each country of the following:

- Competition policy framework for ICTs
- Responsible authorities for competition enforcement
- Present situation of digital platforms in relation to MSMEs
- Adoption of measures due to the Covid-19 pandemic

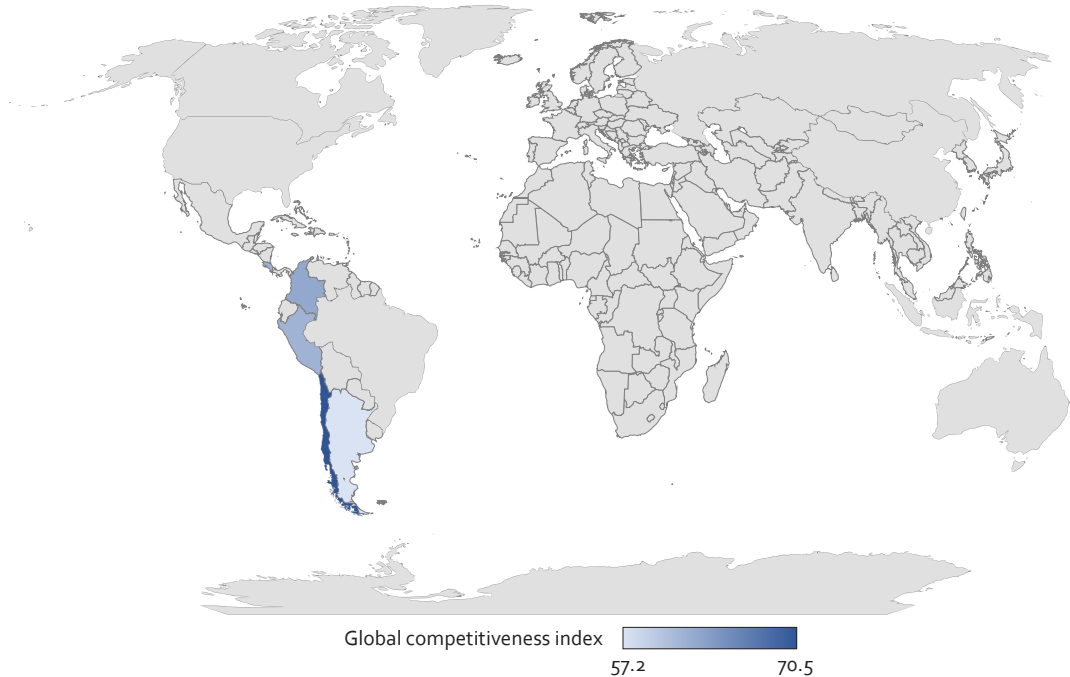
A. Country selection

The country selection criteria were based essentially in a combination of two factors: Population and competitiveness.⁴ Competitiveness is assessed through the Global Competitiveness Index 4.0 (GCI 4.0) calculated by the World Economic Forum (WEF, 2019). As a result, the following countries were selected for this study: Argentina, Chile, Colombia, Costa Rica and Peru.

Selected countries are shown in figure II.1, along with their competitiveness indexes shown in different hues of blue. It should be noted that Costa Rica is the only Central American country selected for this study and Chile ranks as the highest scoring country in the Region, with a GCI of 70.5.

⁴ Mexico and Brazil, the largest countries in the Region, were examined separately in another study.

Figure II.1
GCI 4.0 scores for countries selected for ICT competition analysis



Source: World Economic Forum (2019).
Note: The boundaries and names shown on this map do not imply official endorsement or acceptance by the United Nations.

1. Competition policies

Regarding competition policies and existing models in Latin America, (GSMA, 2020) identified several models for competition policy and they are shown in table II.1. The countries selected for the analysis are shown in boldface.

Table II.1
Existing models in competition policy - Latin America

Two agencies: Competition authority and separate sectoral regulator	Two agencies: Regulator with concurrent powers in competition law	Two agencies: Regulator with exclusive jurisdiction to apply competition law to telcos	One agency: Only the regulator which has only regulatory powers	One agency: The integrated model
Argentina Brazil Colombia Venezuela (Bol. Rep. of) El Salvador Dominican Republic	Chile Ecuador Paraguay Honduras	Mexico Panama Peru Uruguay Costa Rica Nicaragua	Guatemala Bolivia (Plur. State of)	None

Source: (GSMA, 2020).

2. Cooperation agreements

Since regional and sub-regional cooperation agreements have also an incidence in the competition framework for the countries under analysis, they also need to be accounted for, with due consideration to the fact that competition in the Digital Economy spans across borders. Such agreements and the signatory countries are found in table II.2.

Table II.2
Regional and sub-regional cooperation involving Latin American countries

Country	CAN	Caricom	SELA	ALADI	APEC	SICA	Mercosur	NAFTA	CAFTA-DR	Pacific Alliance	TPP
Year	(1969)	(1973)	(1975)	(1980)	(1989)	(1991)	(1991)	(1994)	(2005)	(2011)	(2016)
Argentina			✓	✓			✓				
Belize		✓	✓			✓					
Bolivia (Plur. State of)	✓		✓	✓			✓				
Brazil			✓	✓			✓				
Chile			✓	✓	✓					✓	✓
Colombia	✓		✓	✓						✓	
Costa Rica						✓			✓		
Cuba			✓	✓							
Dominican Republic			✓			✓			✓		
Ecuador	✓		✓	✓							
El Salvador			✓			✓					
Guatemala			✓			✓			✓		
Honduras			✓			✓			✓		
Mexico			✓	✓	✓			✓		✓	✓
Nicaragua			✓			✓			✓		
Panama			✓	✓		✓					
Paraguay			✓				✓				
Peru	✓		✓	✓	✓					✓	✓
Uruguay			✓	✓			✓				
Venezuela (Bol. Rep. of)			✓	✓			✓				

Source: (CAF-Cullen, 2019).

(a) Andean Community (CAN)

On May 26, 1969, five South American countries (Bolivia, Colombia, Chile, Ecuador and Peru) signed the Cartagena Agreement with the objective of improving, together, the life standards of their inhabitants through integration and economic and social cooperation. In this way, the Andean integration process, then known as the Andean Pact, the Andean Group or the Cartagena Agreement, was initiated.

Decision 285 of March 31, 1991 established that the Commission at the proposal of the Board shall review the regulations on trade competition. Likewise, Decision 281 established that the Commission, at the proposal of the Board, shall review the regulations on trade competition established in Decision 230. Decision 285 would have been considered a great success if it could have been applied, but the lack of promotion of the Andean regulation, combined with the absence of cross-border practices, made this Andean regulation impossible to apply.

In the context of the failure of Decision 285, on March 28, 2005 Decision 608 was passed. With a higher standard of objectivity, the third article established the principles that would guide the application of this Decision as well as the internal legislation of competition of each Member Country, resulting applicable in accordance that this will be based on the principles of non-discrimination, transparency and due process of law. (SELA, 2016).

Decision 608 has been rarely applied, due to applicability restrictions to cross-border cases and the preemptive application of other measures that prevent the real effects of anti-competitive practices.

(b) Latin American and Caribbean Economic System (SELA)

The Latin American and Caribbean Economic System (SELA) is an intergovernmental regional organization that groups 26 Latin American and Caribbean countries. With headquarters in Caracas, Venezuela, SELA was established on 17 October 1975 by the Panama Convention and its current membership includes Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Colombia, Cuba, Chile, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Suriname, Trinidad & Tobago, Uruguay and Venezuela.

SELA is primarily aimed at promoting a system of consultation and coordination for the Latin American and Caribbean region to adopt common positions and strategies on economic issues before countries, groups of countries, forums and international organizations, and at fostering cooperation and integration among Latin American and Caribbean nations. As such, no legally-binding decisions are taken at SELA and most work is aimed at sharing knowledge about certain areas, including competition. For the case of competition, a Working Group on Trade and Competition of Latin America and the Caribbean has been created which deals with the subject.

(c) Latin American Integration Association (ALADI)

ALADI aims at the gradual and progressive implementation of a common Latin American market, through the adoption of tariff preferences and the elimination of non-tariff barriers. The 1980 Montevideo Treaty undertakes to further the process of economic integration started in the Latin American region two decades ago and provides for the creation of the Latin American Integration Association (LAIA), in place of the Latin American Free Trade Association (LAFTA) established by the Montevideo Treaty concluded in 1960. This new juridical instrument was signed on 12 August 1980, at Montevideo (Uruguay), by the Ministers of Foreign Affairs of eleven Latin American states, namely: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Cuba, Mexico, Panamá, Paraguay, Peru, Uruguay and Venezuela.

Several economic complementation agreements address competition within the framework of ALADI's Economic Complementation Agreements. The provisions may simply contain a commitment to improve efforts or may define the design of competition regimes to be established in the signatory countries or even determine which anti-competitive practices should be addressed by the parties. The ones relevant to this study are shown in table II.3.

(d) Asia Pacific Economic Cooperation (APEC)

The Asia Pacific Economic Cooperation (APEC) is a multilateral economic forum between 21 economies bordering the Pacific Ocean, also integrated by three Latin American countries (Chile, Mexico and Peru). A "Multilateral Economic Forum", APEC is the only international intergovernmental grouping in the world committed to reducing barriers to trade and investment without requiring its members to enter into legally binding obligations. APEC achieves its goals by promoting dialogue and arriving at decisions on a consensus basis, giving equal weight to the views of all members. APEC has a track record of almost 30-year cooperation between 21 economies bordering the Pacific Ocean.

APEC recognizes the role of the "internet economy" to fulfil growth and development among its members. APEC has a commitment to the overarching goal of a seamlessly and comprehensively connected and integrated Asia Pacific region by 2025. Over the years, it has witnessed increased cooperation among its members as regards the lowering of trade barriers, including for e-commerce, privacy and data protection, and the fostering of paperless trade, ICT innovation, and standardization.

Despite the many regional and sub-regional efforts across Asia Pacific to harmonize rules and provide a better level of protection, intellectual property (IP) infringements, including counterfeiting and online piracy, remain controversial issues. Countries in the region have been intensifying their efforts by engaging in different forms of collaboration at both bilateral and multilateral levels. (CAF-Cullen, 2019).

Table II.3
Competition within the framework of Aladi's economic complementation agreements

Agreement	Articles about Competition
Economic Complementation Agreement No. 33 (Colombia, Mexico and Venezuela)	<p>Article 16-02: Monopolies and State-run enterprises.</p> <ol style="list-style-type: none"> 1. Each Party undertakes that its State-run enterprises grant to the legal or natural persons of the other Parties non-discriminatory treatment in its territory, with respect to the sale of goods and services for similar commercial operations. 2. Each Party undertakes that its government monopolies and its State enterprises should: a) act only in accordance with commercial considerations in the purchase or sale of a good or service to the monopolized market in the territory of that Party, including with regard to its price, quality, availability, sales capacity, transportation and other terms and conditions for purchase and sale; and b) do not use their monopoly position in their territory to carry out anti-competitive practices in a non-monopoly market, which may adversely affect persons of another Party. 3. Paragraph 2 does not apply to the acquisition of goods or services by government monopolies or State enterprises for official purposes, and: a) without the purpose of commercial resale; b) without the purpose of using them in the production of goods for commercial sale; or c) without the purpose of using them in the provision of services for commercial sale. 4. As regards the sale price of a good or service, paragraph 2, section a), applies only to the sale by government monopolies and State enterprises of: a) goods or services to persons engaged in the production of industrial goods; b) services to persons engaged in commercial resale; or c) services to companies producing industrial goods. 5. Paragraph 2, section a) shall not apply to those activities of a governmental monopoly carried out in accordance with the terms of a designation and respecting the principles enshrined in paragraphs 1 and 2, section b). Article 16-03: Committees. <p>Within three months of the entry into force of this Agreement, the Commission shall establish the following committees: a) a competition committee made up by representatives of each Party, which shall submit reports and recommendations to the Commission as regards further work on relevant issues within the relationship between competition laws and policies and trade in the free trade area; a committee which, in order to identify practices of State enterprises that may be discriminatory or contrary to the provisions of this Chapter, shall draw up reports and recommendations with respect to such practices.</p>
Economic Complementation Agreement No. 35 (Argentina, Brazil, Chile, Paraguay and Uruguay)	<p>Article 18.- The Contracting Parties shall promote actions to agree, as soon as possible, on a regulatory mechanism based on internationally accepted provisions and practices, which constitute the appropriate framework for disciplining possible anti-competitive practices.</p> <p>Article 19.- The Contracting Parties shall take joint actions aimed at establishing specific rules and commitments, so that their products enjoy treatment no less favorable than that granted to similar domestic products, in aspects related to consumer protection.</p> <p>Article 20.- The organs competent in these matters in the Signatory Parties shall implement a cooperation scheme to achieve in the short term a first level of understanding on these issues and a methodological scheme for the consideration of concrete situations that may arise.</p>
Economic Complementation Agreement No. 41 (Chile and Mexico)	<p>Article 14-02: Legislation on the subject of competition.</p> <ol style="list-style-type: none"> 1. Each Party shall adopt or maintain measures prohibiting anti-competitive business practices and shall take appropriate action, recognizing that these measures will help to achieve the objectives of this Agreement. To this end, the Parties shall, from time to time, consult on the effectiveness of the measures taken by each Party. 2. Each Party recognizes the importance of cooperation and coordination between its authorities in charge of promoting the effective implementation of competition law in the free trade zone. The Parties shall also cooperate on matters relating to compliance with competition law, including mutual legal assistance, communication, consultation and exchange of information relating to the application of competition laws and policies in the free trade zone. 3. None of the Parties may resort to the dispute settlement procedures of this Agreement with respect to any matter arising under this Article. 4. No investor of a Party may submit a dispute under Section C (Dispute Settlement between a Party and an Investor of another Party) of Chapter 9 (Investment) for any matter arising under this Article.
Economic Complementation Agreement No. 72 (Argentina, Brazil, Uruguay, Paraguay and Colombia)	<p>A special title (Title VI) dedicated to free competition is incorporated and states: "Article 17.- The Contracting Parties shall promote actions as may be necessary to have an adequate framework for identifying and sanctioning possible practices restricting free competition.</p>

Through the Competition Policy and Law Group (CPLG), APEC, works to encourage market discipline, promote economic efficiency and eliminate distortions. The group promotes understanding of regional competition laws and policies, examines their impact on trade and investment flows, and identifies areas for technical cooperation and capacity building among member economies. (APEC, 2020).

(e) Central America Integration System (SICA)

The Central American Integration System (SICA) was created by the Protocol of Tegucigalpa in December 1991. It came into force in February 1993 and has been ratified by all Member States. The countries of El Salvador, Honduras, Nicaragua, Guatemala, Costa Rica, Panama and Belize created a Central American Customs Union by January 1, 2004. Integration efforts date back to 1960 when the Central American Common Market (MCCA) was launched and sought to create a common market based on a free trade zone, the union of customs houses and common foreign tariffs.

The SICA currently integrates eight countries of Central America, with the founding purpose being to achieve the integration of Central America in order to “transform the area into a region of peace, liberty, democracy and development, based firmly on the respect and promotion of human rights”. Since 1993, SICA's countries have committed to create, in a voluntary, gradual, progressive and complementary way, the Economic Union of Central America. Until today, SICA's agenda and activities have seen limited cooperation in the digital economy sectors.

(f) MERCOSUR

On 26 March 1991, the Treaty of Asuncion was signed. With four member countries, a continuous founding process started in 1986, with the bilateral agreements between Argentina and Brazil. In turn, the agreements culminated in a preparatory phase initiated following the tripartite agreement (Argentina, Brazil and Paraguay) on water resources signed in October 1979. In its founding Treaty, MERCOSUR proposed establishment of a Common Market as of 31 December 1994.

In 2010, the “Protection of Competition Agreement of MERCOSUR” (MERCOSUR/CMC/DEC. No 43/10) was established based on the fact that after 14 years, the Protocol of Strengthening had not come into effect. The objective is significantly less ambitious. In its clauses it is acknowledged that there is need for a common instrument that preserves and promotes free competition since the cooperation on matters of free competition contributes to objectives established by the Treaty. At the same time, it indicates that “It is important to institutionalize and strengthen the mechanisms of consultation and exchange of information already implemented by authorities on competition of the Member States”.

The objectives of the Agreement are the following:

- Promote cooperation and coordination between the Member States in the activities of application of the law on national competition within MERCOSUR.
- Provide mutual assistance on any query relating to the policy on competition that is considered necessary.
- Ensure careful examination by the Member States of their relevant reciprocal interests, in the application of their laws on competition.
- Eliminate anticompetitive practices with the application of the respective law on competition.

The new model of cooperation on matters of competition was intended to be based on consultations between the authorities on competition of the Member States. In addition, the idea of harmonizing the anticompetitive regulations, applicable to all member states is abandoned, and rather rests on the agreements of cooperation and coordination signed in 2004 and 2006. (SELA, 2016).

(g) Central America Dominican Republic Free Trade Agreement (CAFTA-DR)

The United States, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua signed the U.S.-Central American-Dominican Republic FTA (CAFTA-DR) in August 2004. CAFTA-DR entered into force for El Salvador, Honduras, Nicaragua and Guatemala.

CAFTA-DR does not include competition provisions. However, the chapter on telecommunications, which refers to competition, (prohibiting suppliers from engaging in anticompetitive practices) specifically addresses the case of Costa Rica. This country approved CAFTA-DR in an October 2007 referendum.

(h) Pacific Alliance

The Pacific Alliance is an initiative of regional integration comprised by Chile, Colombia, Mexico and Peru, officially established on April 28th, 2011.

On February 10, 2014, member countries signed an Additional Protocol to the Framework Agreement ("*Protocolo Adicional al Acuerdo Marco*"), which aims to deepen on bilateral trade agreements between the four countries members of the Alliance.

The Pacific Alliance SME Technical Group is the work space in which the issues of promotion, encouragement and inclusion of SMEs are addressed, establishing support mechanisms to ensure that smaller companies benefit from regional Alliance opportunities, through the exchange of best practices and the strengthening of public policies of the member countries.

(i) Trans-Pacific Partnership (TPP)

The Trans-Pacific Partnership (TPP) puts forward new principles, objectives and functioning criteria to deal with free trade and investment mechanisms. Twelve countries are signatories of the TPP Agreement, including, for Latin America, Chile, Mexico and Peru. The TPP Agreement includes obligations designed to promote the digital economy through a free and open internet, and commerce without borders. Specific provisions for the digital environment include security and privacy, distance selling of digital goods and services, as well as copyright trademark and patent regulation and enforcement.⁵

Among the 30 chapters covering trade- and non-trade-related issues in the TPP Agreement, some explicitly include reference to electronic commerce, intellectual property and competitiveness. The TPP Agreement includes obligations designed to promote the digital economy through a free and open internet, and commerce without borders. Specific provisions for the digital environment include security and privacy, distance selling of digital goods and services, as well as copyright trademark and patent regulation and enforcement.

B. Argentina

1. Competition policy framework

The competition policy framework in Argentina is made of the legal, regional and the regulatory frameworks, which for the case of digital platforms involve the specific frameworks for ICT as well.

(a) Legal framework

Law for the defense of competition

Law No. 27.442 for the Defense of Competition sets the conditions for markets to operate efficiently. Furthermore, it details practices that may hamper, limit, restrict or distort the competition playing field, as well as impede access to free markets.

⁵ The TPP is a trade agreement signed in February 2016 by twelve countries bordering the Pacific Ocean (Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Vietnam). The agreement has not come into force yet.

Law No. 27.442 creates the National Competition Authority (NCA), a decentralized and self-sufficient agency with wide-ranging national competency. The law also provides directions to create the National Tribunal for the Defense of Competition under the umbrella of the competition authority. (OECD, 2019).

Telecommunications Law

Telecommunications are governed by Telecommunications Law 27.078 and audio-visual media distribution is subject to Media Law 26.522. Both statutes have been modified by Decree 267/15. (ICLG, 2019).

Price controls

Argentina has a long history of applying price control laws and regulating supply, in line with its recurrent economic crisis. Currently, these issues are contemplated in the Supply Law (Law No. 20,680 of 1974) and enforced by the Secretariat of Domestic Trade (*Secretaría de Comercio Interior* or 'SCI'). (BOMCHIL, 2020).

(b) Regional framework

The relevant regional framework for Argentina is composed of the Latin American and Caribbean Economic System (SELA), the Latin American Integration Association (ALADI) and MERCOSUR.

(c) Regulatory framework

New Fair-Trade regime

On April 22nd, 2019, presidential emergency decree No. 274/2019 was enacted, creating a new fair-trade regime (repealing Fair Trade Act No. 22.802), including a new section called "unfair competition acts" and introduces material changes in advertising regulation, incorporating legal provisions for comparative advertisements.

Security and privacy

The issue of data is subject to the Data Protection Law. The Data Protection Law, which is in the process of being amended to comply with the GDPR, sets forth the obligation of registering databases (of customers, suppliers and employees) and maintaining the data by updating it. Section 17.7 of the Data Protection Law sets forth that personal data should be kept as long as applicable laws establish (i.e., tax laws impose a five-year term) or for the term contractually agreed between the party responsible for the database and the data owner. (ICLG, 2019).

Digital platforms

The Argentine government has enacted Law 27.541 that levies an 8% tax on all foreign platforms and apps providing digital services. The list includes OTTs operating in Argentina such as Netflix, Apple TV+ and Amazon Prime Video, as well as apps such as Spotify, Airbnb and Tinder.

Argentina intends to regulate work performed on digital platforms as well, by passing a law that will protect the rights of all those using a digital platform for working purposes. (Argentina, 2020).

Tax regulations

The Argentine government levied taxes for digital services under law 27,430 and on a general basis. This regulation includes services carried out through the Internet network or any adaptation or applications, platforms or technology used by the Internet or other networks through which equivalent services are provided. By their nature, these services are basically automated and require minimal human intervention, regardless of the device used for its download, display or use.

The regulation of digital services in Argentina has been in place since June 27, 2018 and the entity, the AFIP (*Administración Federal de Ingresos Públicos*), is in charge of regulating this matter. (Biz Latin Hub, 2020).

(d) Market definition and market power

Market definition rules

According to Argentine legislation and usual practices (Corvalán, 2020), the analysis of anticompetitive acts, conduct or behavior follows a procedure in which, as a first issue, the definition of the scope of the relevant product and geographic market involved in the investigation is highlighted. Following this, the antitrust authorities focus mainly on the analysis of market power and market shares of the companies involved in the case. Further to the analysis of the market shares of the companies, the antitrust authorities also focus their attention on barriers to entry, efficiency gains, technological advantages, chains of commercialization and market power, among other things.

The relevant market in an investigation will comprise two basic dimensions: the relevant market of the product involved, and the relevant geographical market where the conduct, act or behavior is taking place. The assessment of the impact of an investigation will be largely determined by the relevant market definition, the market power involved, and the market shares of the companies involved in the case.

The relevant market of the product shall comprise all products and services that consumers consider interchangeable or substitutable by reason of their characteristics, price and intended use. More precisely, sets of products or services constitute the same relevant market when said services or products are substitutes from both the demand and supply side.

Having reached the stage of defining the relevant market for a product, the next step is to do the same in geographical terms. Defining a geographic market involves the same considerations mentioned above for the definition of the relevant market for the product, with the difference that the substitution estimate, in this case, is in terms of physical distances or capabilities of displacement, for the users as well as the producers.

Market power assessment

The previous definitions will be followed by the analysis of market power and market shares of the companies involved in the investigation, as well as the analysis of barriers to entry into the market defined in the preceding subsection.

2. Responsible authorities

(a) Competition authority

The new competition law enacted in May 2018 (Law No. 27.442) replaces the current Competition Commission that had the two-fold purpose of authorizing mergers and penalizing anticompetitive activities. The new law creates a new decentralized and autarchic entity within the National Executive Branch of the National Competition Authority, the National Antitrust Commission called the (*Comisión Nacional de Defensa de la Competencia*, CNDC). No other governmental entity would be allowed to apply the competition law, although in the telecom and media regulations there are provisions on significant market participants. (ICLG, 2019).

(b) Regulatory authority

National Entity of Telecommunications

As per Decree 267/15, there is a sole regulatory entity for telecoms, internet and denominated media: National Entity of Communications (*Ente Nacional de Comunicaciones*, ENACOM), under the authority of the Ministry of Modernization. (ICLG, 2019).

(c) Coordination at government level

ENACOM is the regulatory entity that governs telecoms, ICT and the media. ENACOM is responsible for the general oversight and supervision of telecommunications services. The *Comisión Nacional de Defensa de la Competencia* (National Antitrust Commission) is the only authority allowed to apply the competition law, although in the telecom and media regulations there are provisions on significant market participants. Law No. 27.442 has the two- fold purpose of authorizing mergers and penalizing anticompetitive activities. (ICLG, 2019).

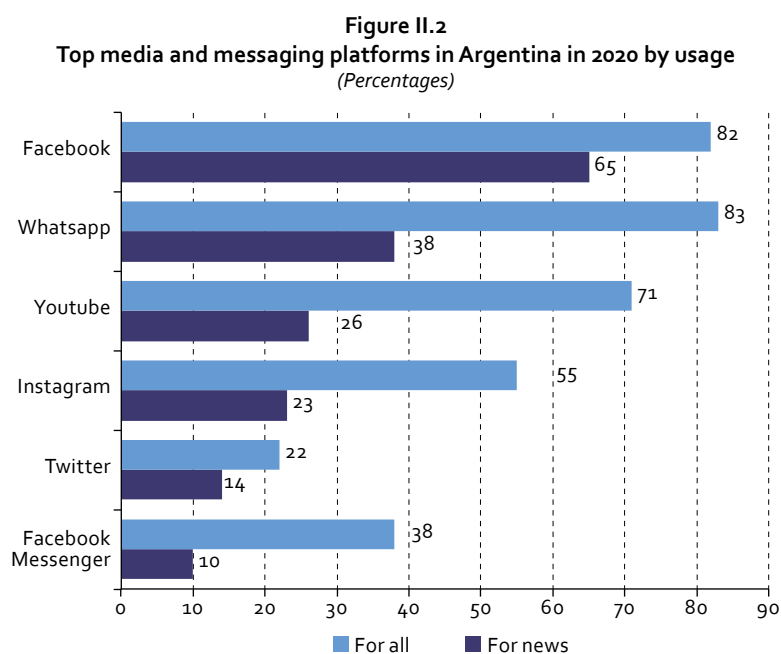
3. Present situation

(a) Role of Digital platforms

ICT platforms comprise search, social and the so-called commercial or marketplace platforms, amongst others, as seen in figure I.4. In Argentina, emphasis has been placed in those three categories from the standpoint of attempts to regulate them.

Regarding social and search platforms, the role of digital media and use of social networks as means of gaining access to news and staying connected increased during the pandemic, as the traditional media (printed newspapers and magazines) were not easily available. Figure II.2 shows which platforms people used to gain access to Covid-19 information and news in Argentina during the pandemic.

Regarding social media specifically, the trend for people to use media and messaging platforms to gather news and exchange information has been increasing in Argentina, as shown in figure II.2. Argentines spend, on average, more than three hours a day on social media, which could explain, at least partly, the growing reliance on these platforms for information.



Source: (Reuters, 2020).

Commercial platforms operating in Argentina are not very many. Early in 2016 there were five domestic capital platforms operating in Argentina: *Mercado Libre*, *Zolvers*, *Workana*, *Iguanafix*, and *Nubelo*. Seven new firms were established during the two following years, among them some globally leading companies: *Airbnb*, *Cabify*, *Uber*, *Glovo*, *Freelancer*. There was also an increase of local users, both consumers and companies. Argentine platforms also carry out transactions in other countries; that is, there are multinational firms with headquarters in Argentina. *Mercado Libre* stands out among them as the one of the five biggest tech companies in the region. (Madariaga, Buenadicha, Molina, & Ernst, 2019).

Most platforms in Argentina operate in traditional sectors, supporting activities performed in a physical space, subject to operational qualification requirements. In addition, another three platforms present in Argentina operate in virtual spaces: Workana, Freelancer, and UpWork.

(b) MSMEs access to ICTs

Argentinian firms tend to make good use of the internet, and the country's medium-sized firms perform well. Given the country's level of development, small firms score higher than expected in their capacity to change and could further improve their competitiveness by reducing the gap with large firms in their capacity to connect. (ITC, 2018).

The following funds/projects have been enacted by the Argentinian government to foster the development of MSMEs under the ICT framework:

- The Fiduciary Fund for Promotion of the Software Industry (*Fondo Fiduciario de Promoción de la Industria de Software* or FONSOFT).
- The Argentinian Technological Fund (*Fondo Tecnológico Argentino* or FONTAR).
- The program of MSMEs Digital Transformation (*Programa de Transformación Digital PyMEs*). (Heredia, 2020).

4. Adoption of measures due to the pandemic

(a) Policy framework changes

The Argentinian NCA, the National Antitrust Commission (*Comisión Nacional de Defensa de la Competencia* or CNDC), has not issued any new regulations during the pandemic. No new laws regarding competition have been passed by Parliament either during this pandemic.

Regarding any guidelines or comments being issued as regards the application of competition laws in the context of the pandemic, (BOMCHIL, 2020) replies as follows: "To date, neither the CNDC nor the SCI have issued any recommendations, guidelines or opinions on the application of competition laws in the context of Covid-19, although CNDC officials have unofficially announced that, faced with a competition offence related to the pandemic—including the investigations mentioned above- the agency would apply the Competition Law as it would in any other situation. The shutting of CNDC's offices due to the pandemic, however, has accelerated the implementation of digital access to competition files, to date limited to merger proceedings."

(b) MSME support⁶

In Argentina, the government created a specific allocation fund of 30 billion pesos, that will be transferred to the Argentine Guarantee Fund (FOGAR), increasing its available capital to 91.920 billion pesos (equivalent to 0.5% of GDP). (ECLAC ES, 2020).

(c) Other measures

To combat the coronavirus, the government launched the Coronavirus Argentina app *Cuidar* for citizens to self-assess symptoms. Additionally, the Ministry of Public Innovation, along with the Ministry of Health and Facebook, launched a chatbot to provide official information and updates. (OECD, 2020).

As elsewhere in the world, online stores and platforms have generally benefitted during the pandemic, with the result of price gouging practices becoming widespread in them, at least in the early stages of the lockdown. Against this backdrop, the consumer protection agency—also acting under the auspices of the SCI—announced the regular monitoring and auditing of publications posted on online retailers' platforms. Also, the authorities have been investigating consumer's complaints regarding delivery terms of online purchases.

⁶ The complete list of measures supporting MSMEs during the pandemic can be found in <https://cepalstat-prod.cepal.org/forms/covid-countrysheet/index.html?country=ARG>.

C. Chile

1. Competition policy framework

(a) Legal framework

Competition Law

The general Competition Law Decree was enacted in 1973, with major modifications in 2003 and 2016. Decree Law No. 211 of 1973, as amended ("Competition Law"), provides general merger provisions. mergers are subject to the general rule of article 3 of the Competition Law, which prohibits every act that impedes, restricts, or tends to produce those effects. Law No. 20,945, which entered into force as of 1 June 2017, establishes a new pre-merger control regime by means of which concentration operations, performed by two or more economic agents, must be notified to the National Economic Prosecutor (*Fiscalía Nacional Económica*, FNE). Concentration operations that are not equal to or greater than the thresholds established by the FNE may, nevertheless, be voluntarily notified.

Telecommunications Law

The General Telecommunications Law (*Ley General de Telecomunicaciones*, LGT) rules on the following matters: the principle of free and equal access to telecoms; a classification of telecommunications services; a general regulatory framework for the installation, operation and exploitation of such services and rules for the interpretation, application and control of the LGT and its complementary rules; telecoms concessions, permits and licenses needed to provide telecoms services and the requirements and procedures applicable to their granting; tariffing procedures for certain telecoms services; the fees for the use of spectrum; and breaches and sanctions.

(b) Regional framework

The relevant regional framework for Chile is composed of the Latin American and Caribbean Economic System (SELA), the Latin American Integration Association (ALADI), the Asia Pacific Economic Cooperation (APEC), the Pacific Alliance and the Trans-Pacific Partnership (TPP).

(c) Regulatory framework

Security and privacy

The Personal Data Protection Law establishes, as a general principle, that save for certain specific exceptions (e.g., data available from sources accessible to the public), it is mandatory to obtain prior written consent of the data subject to gather and process personal data. If not, the breaching party may be forced to indemnify the data subject for any damages caused by such breach. In fact, the LGT establishes that the user's personal data obtained by the providers can only be used for the specific purposes related to the provision of relevant service. However, under certain statutes (e.g., the Criminal Procedural Code, the Anti-Terrorist Law and the Anti-Drug Law) Chilean criminal courts may instruct a telecoms operator to intercept communications from or to any person, so as to determine such person's eventual liability in criminal offences. (Law Business Research, 2019).

Cybersecurity

In April 2017, the Chilean government presented a new National Policy on Cybersecurity that aims to promote and ensure a free, open, safe and resilient cyberspace by 2022. To achieve this, this policy sets several targets, including:

- the establishment of a resilient information infrastructure in the country, prepared to face and recover from cybersecurity incidents, under a risk management approach;
- the protection by the Chilean state of the citizens' rights in cyberspace;
- the development of a cybersecurity culture based on education, good practices and accountability in the management of digital technologies; and
- the promotion of the cybersecurity industry.

Digital platforms

Digital platforms have not yet been regulated. However, two new digital media bills are currently being discussed before the National Congress, which intends to modify the Press Law. The new bills aim to expand on the traditional media and press regulations and requirements for digital platforms.

Big data

The concept of big data and the legal challenges it raises have not been addressed by the Chilean authorities yet and, therefore, no specific regulations have been issued in this regard yet and the general personal data protection regime is the only available regulation in this regard.

Tax regulations

According to Law 21.210 that upgrades the tax system in Chile, foreign companies that provide digital services must collect and remit 19% in value-added tax (VAT) to the SII (*Servicio de Impuestos Internos*). The SII has enabled a 100% online system that allows taxpayers to register with the entity and comply with the tax obligation. Providers of digital foreign service have the obligation to declare VAT declarations since June 1, 2020. (Biz Latin Hub, 2020).

(d) Market definition and market power

Market definition rules

Rules for identifying and measuring factors of economics-based analysis are not found in the Competition Act. There is no general procedure for defining markets. There is no market share presumption as an indicator of dominance, no threshold for evaluating market concentration, no reference to entry barriers and no indication of the scope of an efficiency defense. The FNE has issued guidelines to explain economic concepts, such as its Internal Guide for the Analysis of Horizontal Concentration Operations (FNE, 2012). The TDLC is not bound by these guidelines. The Guide defines the following analysis criteria:

- the study of the relevant market for the product under consideration,
- the respective market shares of participating enterprises,
- the concentration indexes,
- the feasibility of entering the particular market,
- the risks for competitors and their counterbalancing factors, among others.

Market power assessment

In Chile, the competition authority applies economic analysis. Among new powers for the FNE, we find the setting of the turnover thresholds for mandatory merger control and the power to perform market studies, among others (Latin Lawyer, 2020). Chilean legislation establishes that in the event that existing market conditions are not enough to hold the regime of free tariffs, the sector-specific regulator may establish the tariffs of a service qualified as non-competitive.

2. Responsible authorities

(a) Competition authority

The antitrust authorities are the Antitrust Court (*Tribunal de Defensa de la Libre Competencia*, TDLC) and the National Economic Prosecutor (*Fiscalía Nacional Económica*, FNE). Both are responsible for enforcing Chile's Antitrust Law. The TDLC is an independent entity (jurisdictional) with the fundamental mission of ruling on all cases filed by the FNE or private individuals. It is also in charge of issuing specific or, occasionally, general guidelines for the enforcement of antitrust regulations. The FNE is an independent administrative agency in charge of investigating any violations of the Antitrust Law, representing the public interest and seeking the enforcement of resolutions, decisions and instructions issued and passed by the TDLC or the courts of justice in antitrust cases. (Law Business Research, 2019).

(b) Regulatory authority

The Ministry of Transport and Telecommunications (MTT) through the Undersecretary of Telecommunications (Subtel) is in charge of proposing and developing telecoms policies in Chile, which must then be approved by the President. Subtel's policy development procedure is the standard procedure contemplated in Chilean law for the issuance of any regulation. Telecoms policies, therefore, are established by the authority through the issuance of supreme decrees, exempt decrees or exempt resolutions.

In connection with the regulatory framework for the media sector in Chile, the main law to take into account is the National Television Council Law (*Consejo Nacional de Televisión*, CNTV).

(c) Coordination at government level

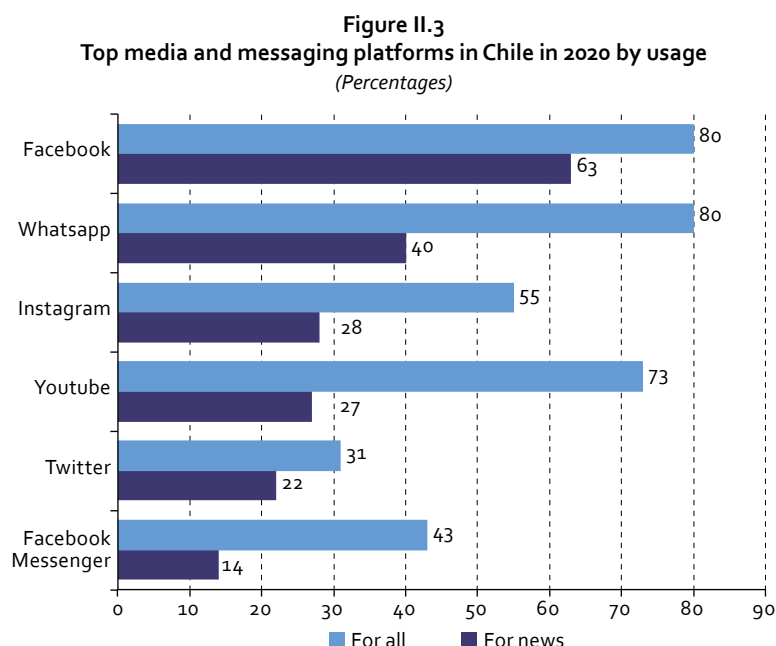
Subtel is competent to dictate fundamental technical plans (e.g., use of spectrum), technical standards (e.g., technical standards that regulate the use of the band 700 MHz-4G services), and to interpret technical regulations. With respect to television, Subtel's authority is limited to technical aspects, while the CNTV regulates content and grants both broadcasting and cable licenses. Neither Subtel nor CNTV have competition law powers. The communications regulator Subtel is a separate body from the antitrust regulators (TDLC and FNE) and there are no jurisdiction conflicts because each body has specific duties and powers. The final decisions of the antitrust authorities are subject to review by the Supreme Court of Justice ensuring the consistent application of the law.

Competition law is enforced by two separate two bodies, which have the respective powers of: a prosecutor (*Fiscalía Nacional Económica* FNE) and a tribunal (*Tribunal de Defensa de la Libre Competencia*, TDLC). All transferences of control of communications companies under the public concession regime must be submitted to FNE, regardless of turnover thresholds, which represents an expansion of the general merger review system in this sector. The most recent regulatory changes have been driven by decisions of the NCA (i.e., the regulation of IP telephony, number portability, differentiation of the off-net/on-net rates, service bundling, facilities for virtual mobile operators). (Alexiadis & da Silva Pereira Neto, 2019).

3. Present situation

(a) Role of Digital platforms

Social media, especially Instagram, is mainly used in Chile as a way of drawing attention to content which is produced on other platforms. It is used more for advertising than for journalism, with content often condensed to help comprehension. There is little original material produced for these platforms, and there is limited interaction, though MEGA and Paula have made some attempts to do this. Live streams with user comments have been used by some publishers. (Reuters, 2020) Online and social media in 2020 are used by the vast majority for news each week, with both WhatsApp and YouTube becoming more influential and Facebook losing some ground, as seen in figure II.3.



Source: (Reuters, 2020).

(b) MSMEs access to ICTs

The Chilean government conducts periodic reviews of ICT usage by MSMEs through the Ministry of Economy, Promotion and Tourism (*Ministerio de Economía, Fomento y Turismo*) (Chile, 2019). The results of the last survey conducted on 339,022 SMEs in year 2018 are shown in table II.4.

Table II.4
Use of ICT by micro-, small and medium enterprises in Chile in 2018

Use	Percentage
Use some type of software	85.59
Use internet	92.28
Are engaged in some activity related to internet	91.25
Use internet to liaise with government	84.25
Own a website	32.11
Make use of social networks	24.35
Use e-Commerce for electronic purchases	20.68
Use e-Commerce for electronic sales	7.45

Source: (Chile, 2019).

4. Adoption of measures due to the pandemic

(a) Policy framework changes

Although there has been an academic debate and some judgments issued well before the pandemic discussing the possibility of sanctioning excessive prices in Chile under the Competition Law (Decree-Law No. 211), there are no pending litigations before the Competition Court (*Tribunal de Defensa de la Libre Competencia*, 'TDLC'), or any current investigation led by the FNE for excessive pricing prompted by the Covid-19 pandemic.

According to the Competition Law, the TDLC may hear under a non-contentious procedure, consultations by interested parties or the FNE about acts or contracts and their compliance with the Competition Law. Under a regulation issued by the TDLC (*Auto Acordado No. 5*) consulting parties must suspend and therefore not execute the deal under consultation until the TDLC issues its decision. Nevertheless, under the current pandemic the TDLC issued a new regulation (*Auto Acordado No. 218*) allowing consulting parties to proceed (despite the existence of a pending consultation) with cooperation agreements among competitors which may be needed to maintain the supply chain of goods or services which are essential. (Cariola, 2020).

Likewise, the FNE issued a public statement setting out the criteria that must be met to fulfil the requirements of a lawful cooperation among competitors. The agency also stated its willingness to prosecute those who abuse of the current emergency context to undermine competition, whether by means of collusion or other conducts (that could potentially include cases of excessive pricing).

(b) MSME support⁷

In Chile, the one-off capitalization of the small businesses credit guarantee fund (FOGAPE) for US\$ 3 billion (1.2% of GDP) is expected to allow credit guarantees to be provided up to a total of US\$ 24 billion (10% of GDP). (ECLAC ES, 2020).

(c) Other measures

Cariola (2020), when asked if the authorities enforced competition or price control laws in the context of digital platforms during the Covid-19 pandemic, they replied: "The lack of public statements by the antitrust authorities regarding price controls has been the rule, and this situation also applies to online stores and digital platforms, despite its relevance during the health crisis."

Chile's antitrust regulator announced on May 29, 2020, it had approved "without conditions" Uber's purchase of Chilean online grocery provider Cornershop, clearing a key hurdle for the ride-hailing company as it seeks to expand into the delivery of groceries and other goods.

To respond to the coronavirus (Covid-19) crisis on aspects related to telecommunications, the government launched the *Plan Solidario de Conectividad* (Solidarity connectivity plan), which allows families with limited resources to connect to the Internet for free. The Ministry of Education, along with the Ministry of Transport and Telecommunications, is promoting a plan that provides 3 million students with free access to education sites through mobile devices. The online platforms cater to students in pre-kindergarten to grade 4. (OECD, 2020).

The FNE has created the *Unidad de Inteligencia* (Intelligence Unit), dependent from the *División Anticarteles* (Antitrust Division) responsible for running and constantly updating a cartel detection system based on data collection techniques, and to oversee the improvement of available investigative techniques, including: (i) preparing and executing intrusive measures; (ii) intelligence development based on open sources (both public and private); and (iii) foster cooperation with international organization in this matter. (FNE, 2020).

⁷ The complete list of measures supporting MSMEs during the pandemic is found in <https://cepalstat-prod.cepal.org/forms/covid-countrysheet/index.html?country=CHL>.

D. Colombia

1. Competition policy framework

(a) Legal framework

Competition Law

Colombia's competition laws are contained in Law 155 of 1959, Decree 3307 of 1963, Decree 1302 of 1964, Decree 2153 of 1992, Law 256 of 1996 and Law 1340 of 2009. Decree 2153 of 1992 introduced a list of anticompetitive conduct and behaviors, which is still valid and implemented today. This reform also included new legislation that created sectorial commissions with general competition powers, together with a Superintendence of Industry and Commerce (SIC). This competition law, amongst others, established the SIC as the unique competition authority, included a leniency program as one of the tools at its disposal, made some procedural adjustments and brought a substantive increase of the applicable fines. (GSMA, 2020).

ICT Law

Colombia's telecommunications sector has been one of the most regulated sectors in the country over the last few years. The most important law is Law 1341 of 2009, it contains global principles and concepts on ICT, and establishes rights for the users, rules for the firms and guidance for the government. Furthermore, Law 1341 creates the National Spectrum Agency (ANE) and the Communications Regulation Commission (CRC); the former is an agency in charge of conducting and planning national radio spectrum and the latter is an entity in charge of promotion of free competition, fighting against market abuse and designing an appropriate regulation for the sector.

(b) Regional framework

The relevant regional framework for Colombia is composed of the Andean Community (CAN), the Latin American and Caribbean Economic System (SELA), the Latin American Integration Association (ALADI) and the Pacific Alliance.

(b) Regulatory framework

Security and privacy

The Colombian privacy and data protection legislation and standards are contained mainly in:

- Article 15 of the Colombian Constitution;
- Law 1266 of 2008 (financial privacy rules) and Law 1581 of 2012 (general privacy rules), together with the corresponding regulatory decrees;
- Instructions and guidelines issued by the Superintendence of Industry and Commerce (SIC), the data protection authority; and
- Resolution 462 of 2019, regarding compliance with data protection regulation by public authorities.

Although Law 1581 was passed almost eight years ago and many organizations and entities began complying with the law, it was not until a couple of years ago that most organizations started implementing a real culture around data protection. This change was fostered by the obligation to register databases in the National Registry of Databases, which requires companies to assess and declare the level of compliance with the law. (Law Business Research, 2019).

Big Data

The National Council for Economic and Social Policies (CONPES) has recently issued a paper that recommends that the government makes a plan of action in order to: (1) increase the availability of data of public entities in order for the data to be accessible, usable and of quality; (2) provide legal certainty for the mining of personal data; (3) increase the available qualified professionals to process data; and (4) generate a data culture in the country.

Regarding the legal framework, the CONPES recommends that the country creates a better classification of personal data and defines more clearly the conditions of data processing in light of the new technological advances and the principle of accountability. (Law Business Research, 2019).

Cybersecurity

The Colombian Criminal Code punishes several crimes related to cybersecurity and data protection infractions. Among them, the Criminal Code punishes abusive access to computing systems, illegitimate blocking or hindering of computing systems or telecommunication networks, interception of computing data, computing damages, use of malicious software, illegitimate use of personal data and phishing, among others.

Digital platforms

The Colombian Congress has two bills in discussion for the regulation of mobility platforms in the country. Both congressmen and the Executive power wanted to come up with a solution for the car sharing apps by March 2020, but the Covid-19 pandemic got in the way. The first project (292/2019), which has the support of the country's Executive branch, recognizes the provision of private transportation services through digital platforms, with the creation of a national register for vehicles used in these services as well as specific policies and obligations. The second bill (296/2019) has broader applicability to digital platforms. It is not only limited to transport services, but also proposes social security for workers on technology platforms and regulates digital work, which covers other types of applications. It establishes the contractual regulation of those who provide services through digital platforms, allowing the access to the Social Security System, among other things.

Tax regulations

Colombia is one of the leading countries in terms of digital tax developments in Latin America by establishing that providers of digital services must pay 19% VAT over the digital services provided. The law allowing this was published on July of 2018 and its application initiated in January of 2019.

The application of taxes to digital services in Colombia was established in 2016 for nationals, and in 2018 they extended this obligation to non-residents. This tax is now mandatory for all digital service providers from abroad. If not implemented, the National Administration of Taxes and Customs (*Dirección de Impuestos y Aduanas Nacionales* or DIAN) can order the different payment methods that exist in the country (credit and debit cards, prepaid cards, and collectors of cash, among others) to withhold correspondent VAT directly. (Biz Latin Hub, 2020).

(d) Market definition and market power

Market definition rules

The test for market definition is demand side substitution within the geographic area in which products compete with one another, with supply side substitution being used in entry analysis, but not in market definition.

Market power assessment

There is no market share threshold to establish dominance in the general competition regime. The public utility law establishes a threshold of 25 per cent, above which a company will be understood to be dominant. (Law Business Research, 2019).

2. Responsible authorities

(a) Competition authority

The Superintendence of Industry and Commerce (*Superintendencia de Industria y Comercio*, SIC) is the competition authority and consumer protection agency, responsible for enforcing antitrust regulations, promoting competition and protecting consumer rights. The SIC mandate covers all economic sectors including telecommunications and broadcasting with the exception of financial services, television (content issues) and airline services. SIC is therefore in charge of approving or dismissing mergers, monitoring potential anti-competitive practices, imposing conditions and penalties, conducting investigations and issuing preliminary injunction orders.

(b) Regulatory authority

The Ministry of Information and Communication Technology (*Ministerio de Tecnologías de la Información y las Comunicaciones*, MINTIC) is responsible for telecommunications policy making and also has the main responsibility for overseeing the ICT industries. Its role is not limited to policy, however. It has a number of other bodies under its tutelage, such as the Communications Regulation Commission (*Comisión de Regulación de Comunicaciones*, CRC) and the National Spectrum Agency (*Agencia Nacional de Espectro*, ANE), as well as powers over key areas, such as spectrum assignment or enforcement of regulation, that go beyond setting policy objectives and measuring progress. The Minister is a member of the CRC's board and acts as its Chairman.

The ANE is tasked with spectrum planning, management and control, and has a degree of technical autonomy (as does the CRC), although none of its board members is independent from the government.

The National Television Authority (*Autoridad Nacional de Televisión*, ANTV) was responsible until 2019. A modification to Law 1341 consolidated regulation of telecommunications and broadcast television services under a single regulator, the MINTIC.

(c) Coordination at government level

Telecommunications regulation, originally part of the regulatory regime established by Law No. 142 of 1994, was substantially overhauled by the enactment of Law No. 1341 of 2009. Also, from 2009, the Colombian Competition Law (Law No. 1340) establishes, in Article 6, first paragraph, that the Colombian NCA (SIC) shall exercise the exclusive power for investigating, sanctioning and taking other administrative decisions related to infringements to the legislation for the protection of competition. The Competition Law expressly sets forth the technical support that NRAs shall provide when it makes such an assessment. (Alexiadis & da Silva Pereira Neto, 2019).

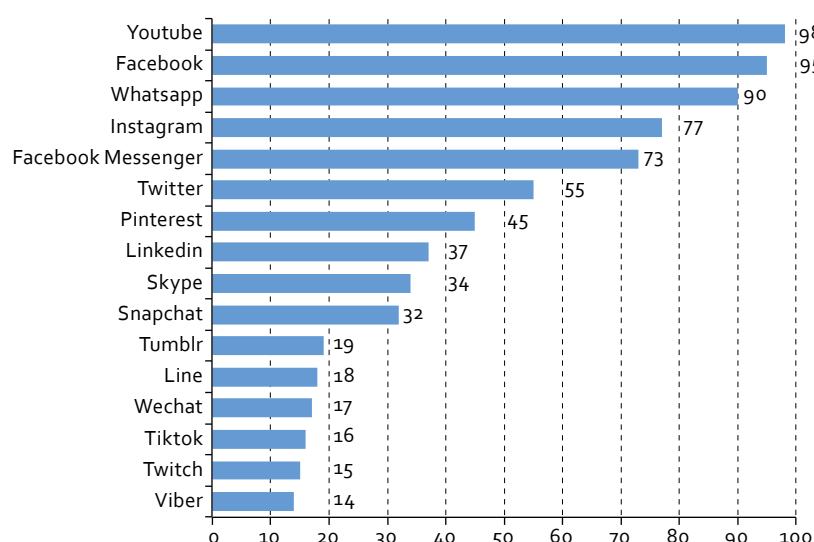
3. Present situation

(a) Role of Digital platforms

A look at the most-used social media platforms in Colombia reveals that YouTube ranks first in the list, followed closely by Facebook and WhatsApp, as shown in figure II.4.

Colombia is the fourth country in the world whose citizens spend more time in digital platforms, with an average of nine hours a day, way above the global average of two hours. According to the MINTIC, 63% of the Colombians have access to internet and there are more than 31 million active users in social media.

Figure II.4
Most-used social media platforms in Colombia in 2020
 (Percentages)



Source: (Yi Min Shum Xie, 2020).

(b) MSMEs access to ICTs

As part of the National Development Plan (*Plan Nacional de Desarrollo* [PND]), the government is promoting the use of ICTs in firms in order to raise productivity. Although ICT statistics show that adoption is in line with other OECD countries for medium-sized enterprises, this masks the fact that Colombia has a large number of microenterprises (firms with less than ten employees), which are not reported in OECD statistics.

Low competitive pressure seems to weaken incentives for firms to adopt ICTs. Over 90% of microenterprises that do not make use of ICTs report a lack of necessity as the reason for not using them. In addition, the particularly large dispersion of productivity between large and small firms and among subnational regions, as well as the low share of medium-sized firms, suggest inefficient allocation of resources and a lack of competitive forces to push out less-productive firms. (OECD, 2019).

Some suggestions from the (IDB, 2017) regarding measuring the digitalization of the economy are: "Define a series of general and sectoral indicators, such as the use and adoption level of ICT by small- and medium-sized enterprises, to measure and monitor the digital economy and ecosystem, which could support the definition of public policies. Likewise, define both the frequency of measurements and the responsibilities of public sector entities that will participate in this measurement."

4. Adoption of measures due to the pandemic

(a) Policy framework changes

Due to the sanitary emergency caused by the Covid-19, on May 12, 2020, the SIC issued Resolution No. 20,490 allowing that an agreement among competitors aimed at attending the emergency caused by COVID-19 or to overcome its negative effects on the economic system as a result of the emergency just needs to be informed to the SIC, under the presumption that efficiency is achieved. (Esguerra, 2020).

The SIC recently ordered some digital platforms (e.g., *Mercado Libre*) to stop marketing Covid-19 rapid tests considering that those tests only can be manipulated by health professionals. Likewise, it ordered some digital platforms (e.g., *Mercado Libre*, *Linio* and *OLX*) to remove from their digital channels any publication of products that uses the words "Covid-19", "Coronavirus" and other similar or equivalent words to promote or commercialize their products.

The MINTIC issued Decree 464 of 2020, with Article 3 regulating e-commerce as follows: "During the state of economic, social and ecological emergency, companies that provide e-commerce services, deliveries and logistic operators should give priority to the delivery of products and services requested on-line comprised of food, beverages, first necessity goods and services, pharmaceutical products, medical products, optical shops, orthopedic products, cleaning and personal hygiene, food and medicine for pets and from terminals that allow access to telecommunications (cell phones, computers, tablets, TVs)." (Avante, 2020).

(b) MSME support⁸

In Colombia, the government created three new lines of credit in the National Guarantee Fund (FNG) for MSMEs and independent workers for a total of 16 billion pesos (1.5% of GDP). (ECLAC ES, 2020).

(c) Other measures

To respond to the coronavirus (Covid-19) crisis on aspects related to telecommunications, the government issued a decree to guarantee the maintenance and operation of telecommunications services. It provides the necessary and exceptional conditions to ensure that users, especially the most vulnerable, will not have services restricted, even if they have difficulties with payment, by extending invoices for 30 days. The decree provides authorization to prioritize access to the content and apps of health services, emergency care, government, and labor or education information. (OECD, 2020).

E. Costa Rica

1. Competition policy framework

(a) Legal framework

Competition Law

In Costa Rica, the first competition law (Law 7472) was adopted in 1994. It was directed at the promotion of competition and free market participation. More specifically, the law was adopted as a result of the Free Trade Agreement Costa Rica signed with Mexico and of a structural adjustment program the country negotiated with the International Monetary Fund at that time. On 29 August 2019, Costa Rica's Legislative Assembly adopted Law 9736 (the 'Competition Reform Act'), which significantly reformed the competition regime. This law seeks to implement the Competition Committee's recommendations and to thereby further align Costa Rica with international standards in the competition field. (OECD, 2020).

Telecommunications Law

Costa Rica passed its General Telecommunications Law in 2008, together with a series of sector-specific norms and regulations aiming at strengthening and modernizing the telecommunications sector. The General Telecommunications Law states that the operation of networks and telecommunications services in the country will be subject to a sectorial competition regime ruled by that law, and that overall general competition law is auxiliary. SUTEL was henceforth given the power to apply the regulations regarding competition in the telecommunications sector. Nonetheless, in general terms, the regulations governing competition in the telecoms sector are very similar to those included in the General Competition Law.

(b) Regional framework

The relevant regional framework for Costa Rica is composed of the Central American Integration System (SICA) and the Central America Dominican Republic Free Trade Agreement (CAFTA-DR).

⁸ The complete list of measures supporting MSMEs during the pandemic is found in <https://cepalstat-prod.cepal.org/forms/covid-countrysheet/index.html?country=COL>.

(c) Regulatory framework

Security and privacy

The Law on the Protection of Individuals from the Processing of their Personal Data (Law No. 8968), created the Data Protection Agency of Inhabitants (PRODHAB) in 2011 to ensure compliance with data protection rules. The Regulations on Measures to Protect the Privacy of Communications also develop data protection provisions under article 42 of the General Telecommunications Law (Law No. 8642).

Cybersecurity

The 2012 Law on Computer Crimes (Law N° 9048) and 2012 amendments of the Penal Code on Computer Crime and related crimes (Section VIII) established a comprehensive criminal legal system covering offenses committed by technological means. In May 2017, Costa Rica gave final approval to adhere to the Convention on Cybercrime (known as the “Budapest Convention”).

The Deputy Ministry (Vice Ministry) of Telecommunications from the Ministry of Science, Technology and Telecommunications (MICITT), with the support of the Organization of American States (OAS), developed Costa Rica’s National Cybersecurity Strategy that was adopted in October 2017. The strategy is aligned with the main objectives of Costa Rica’s long-term vision for national development “Costa Rica 2030” (OECD, 2020).

Digital platforms

Other than the tax regulations related to use of digital services, Costa Rica has not issued regulations directed at digital platforms *per se*. However, regarding digital innovation and creativity, policies to promote digital innovation and creativity in Costa Rica have been enacted to (1) facilitate business operations and (2) to promote innovation in technology firms. (OECD, 2020).

Tax regulations

The Costa Rican government also considers the importance of digital tax developments, it recently issued the resolution DGT-R-13-2020 of 11 June 2020 establishing the procedure for the value-added tax (VAT) collection regarding digital services. Foreign companies must collect and remit the 13% VAT from 1 October 2020.

Similar to Colombia, Costa Rican companies will be able to declare the valued added tax directly or through credit cards. (Biz Latin Hub, 2020).

(d) Market definition and market power

Market definition rules

Merger Control Guidelines issued in 2014, while not formally binding, guide COPROCOM’s approach to matters such as the concept of transaction; economic control; types of mergers (horizontal, vertical and conglomerate); market definition; market power; determination of market shares and levels of concentration; analysis of horizontal, vertical and conglomerate mergers; buying power; barriers to entry and expansion; efficiency gains; failing firms; ancillary restrictions; and remedies.

International considerations are also taken into account by the competition authorities of Costa Rica in a number of ways. One such way is market definition (e.g., when the market is defined as regional or international, or when market shares are calculated according to the sales or production of international markets). Even if the geographic market is limited to Costa Rica, the competition authorities can take into account foreign elements (such as supply substitutability, distribution networks, possibilities for consumers to make purchases from foreign markets) when defining and analyzing the relevant markets. Another way through which international considerations are taken into account is by assessing the effects of foreign conduct on Costa Rican markets. (OECD, 2020).

Market power assessment

COPROCOM shall approve concentrations that do not have the object or effect of creating a significant obstacle to competition. The government must issue the executive regulations of the Law before the end of 2020, which must include the ways to determine whether a concentration will create an obstacle to competition. With regard to market power and the calculation of market shares, COPROCOM will generally use annual sales. However, in certain markets this may not be appropriate, such as very dynamic markets or markets in which transactions are rather sporadic (i.e., wind turbines); therefore, different periods of sales might be used. In some cases, units sold, or production capacity will also be used in the place of sales. The general standard based on the Herfindahl–Hirschman Index (HHI) will be (Law Business Research, 2020):

- (a) no anticompetitive effects: HHI variation of less than 100 and HHI of less than 1,500;
- (b) potential anticompetitive effects:
 - in markets with moderate concentration: HHI of between 1,500 and 2,500 and HHI variation greater than 100; and
 - in highly concentrated markets: HHI greater than 2,500 and HHI variation of 100 to 200; and
- (c) where market power can be increased: in highly concentrated markets: HHI greater than 2,500 and HHI variation greater than 200, particularly if market share exceeds 50 per cent.

For the case of the telecommunications sector, SUTEL applies the principles outlined in the Guidelines for Analysis of Anticompetitive Conducts (SUTEL, 2015) to ascertain the existence of an operator with significant market power. The assessment factors in the Guidelines are:

- (a) Market share in this market and the possibility of unilaterally fixing prices or restricting, in substantial form, the provision in the relevant market, without the other economic agents, now or in the future, being able to counterbalance that power.
- (b) Existence of entry barriers and elements that, foreseeably, could alter these barriers as well as the offers from other providers.
- (c) Existence and power of the competitors.
- (d) Possibility of access from the economic agent and his competitors to the supply sources.
- (e) His recent behavior.
- (f) Additional factors recommended in the economic literature.

2. Responsible authorities

(a) Competition authority

The Costa Rican Competition Law also created the competition authority (*Comisión para Promover la Competencia* or COPROCOM) to oversee its enforcement. SUTEL has exclusive jurisdiction to apply competition law and merger control in the telecommunications market. Still, SUTEL must request the non-binding opinion of COPROCOM in competition matters. If it decides differently from COPROCOM's opinion, SUTEL is required to offer detailed reasoning as to why, as well as to obtain a qualified majority within SUTEL's Directorate.

(b) Regulatory authority

The Telecommunications Superintendence (SUTEL) is the sector-specific regulator in charge of implementing telecommunications policy and legislation, with powers to impose access and interconnection obligations, approve retail tariffs and contracts with end users. The regulator has exclusive powers to apply competition law and merger control in the telecommunications sector. However, the regulator must

request the non-binding opinion of the competition authority on competition law and merger reviews. Notably, SUTEL has explicit powers to determine when operations based on foreign soil may impact effective competition in the Costa Rican market. (GSMA, 2020).

(c) Coordination at government level

SUTEL shall consult to the Commission to Promote Competition (COPROCOM) for technical evaluation of market concentration and competition matters. The ability of SUTEL of applied ex-post competition law rules is a model that is not present in many other countries in Latin America. SUTEL applies fines for monopolization conducts, and in 2015 has fined in ₡2.157 million to the *Instituto Costarricense de Electricidad (ICE)*, for its conducts in 2011 and 2012. ICE however, argues that there is a regulatory asymmetry in comparison to the other operators that are not considered to have significant market power under the framework of telecom regulation in the country. The data used to determine that other operators do not have significant market power is not updated, according to ICE, and this causes an undue asymmetry. SUTEL argues that its decisions are upheld at the administrative level and this shows that they are reliable. (A4AI, 2016).

3. Present situation

(a) Role of Digital platforms

Since 2015, digital platforms in Costa Rica have been burgeoning, and its use has been incremented during the Covid-19 pandemic. According to (ECLAC/GIZ, 2020), around 783,000 active users/consumers of digital platforms exist nowadays in the country. The general profile of them is shown in table II.5.

Table II.5
General profile of the most important digital platforms operating in Costa Rica

Name of the company	Service	Country of origin	Cities and countries of operation	Main markets	Number of direct employees in Costa Rica	Number of service providers	Active users of the platform in Costa Rica
Uber	Transportation of people	United States	700 cities, 70 countries	United States, Mexico, Brazil	750	22,000	783,000
Beego	Transportation of people	France	Europe, Costa Rica	France, Belgium, Costa Rica	7	3,800	133,800
Indriver	Transportation of people	Russia	300 cities, 26 countries	Mexico, Colombia, Russia	0	Not disclosed	Not available
Uber Eats	Delivery of products	United States	50 cities, 13 countries	Not available	Uber drivers also provide Uber Eats service	10,000	Not available
Glovo	Delivery of products	Spain	270 cities, 26 countries	Argentina, Ecuador, Costa Rica	25	1,000	50,000
Onux	Delivery of products and <i>in situ</i> repairs	Costa Rica	Costa Rica	Costa Rica	4	18,000	45,000
WorkRide	Collaborative transportation	Costa Rica	Costa Rica	Costa Rica	7	Corporate model	Corporate model
Dame Ride	Collaborative transportation	Costa Rica	Costa Rica	Costa Rica	0	Corporate model	Corporate model

Source: (ECLAC/GIZ, 2020).

Up to now, almost every digital platform is operating without an institutional framework backing them or within the limits of legality (except for Airbnb which already has a Law that regulates its operation). This legal limbo is largely associated with the definition of whether or not the users/providers are employees of the digital platforms.

(b) MSMEs access to ICTs

The Program on Innovation and Human Capital for Competitiveness (*Programa de Innovación y Capital Humano para la Competitividad*) funded by the Inter-American Development Bank has, since 2013, stimulated productivity growth by supporting innovation and strengthening human capital in strategic sectors. It is administered by MICIT, with the support of COMEX. The program aims to stimulate innovation in Costa Rican companies and to foster entrepreneurship based on new technologies, by offering technical assistance to small and medium enterprises (SMEs) and technologically-based entrepreneurs and co-financing SME or entrepreneur innovation projects. (OECD, 2020).

4. Adoption of measures due to the pandemic

(a) Policy framework changes

The only notorious change during the pandemic in relation to digital platforms policy has been the issuance of resolution DGT-R-13-2020 of 11 June 2020, establishing the procedure for the VAT collection regarding digital services.

(b) MSME support⁹

The Government of Costa Rica made 900 billion colones available to the financial system and, in particular, the State-owned bank, for productive sector loan securities and guarantees, and on 12 August it announced the creation of a National Securities and Guarantees Fund in an effort to reactivate the economy and provide support to those in debt affected by the COVID-19 pandemic, with a total envelope of around 180 billion colones, which in total is equivalent to 3.0% of GDP. (ECLAC ES, 2020).

(c) Other measures

To respond to the coronavirus crisis on aspects related to telecommunications, the Ministry of Science, Technology and Telecommunications and the Council of the Superintendency of Telecommunications made agreements with mobile operators in the country to provide continuity and maintenance of services. This agreement enables the Ministry of Health to establish a systematic method of sending text messages with sanitary recommendations. It also provides free browsing on Ministry of Education, Social Security Fund, Ministry of Health, Presidency of the Republic and *Pura Vida Digital* websites. (OECD, 2020).

Costa Rica recently developed *Bola de Cristal* (Crystal ball), a smart digital platform matching jobs and skills supply and demand. It also informs users on skills needed in the knowledge economy and careers in high demand; promotes training and certification customized to user profiles; supports financial products for access to training and certification; and creates job opportunities with firms in the knowledge economy.

On March 25, 2020, the Ministry of Economy, Industry and Commerce made available several digital platforms to MSMEs and entrepreneurs for distribution of products to homes during the pandemic.

⁹ The complete list of measures supporting MSMEs during the pandemic is found in <https://cepalstat-prod.cepal.org/forms/covid-countrysheet/index.html?country=CRI>.

F. Peru

1. Competition policy framework

(a) Legal framework

Competition Law

Peru adopted competition law in 1991, mainly focusing on preventing anti-competitive agreements and tackling abuses of dominant positions. However, Peruvian Competition Law did not preview a merger control mechanism and included specific exemptions for otherwise anti-competitive agreements. Thus, Peru is one of the few countries in the Region that has no merger review system in force. On the contrary, telecoms concessionaires are only obliged to notify the Ministry of Transport and Communications of any change of ownership of 10% or more within 30 days from the date in which the operation comes into effect.

Peru's competition authority, INDECOPI, has implemented a new merger control regime, dictated by the executive power, to enter into force in August 2020. As well as this, a new Legislative Decree was introduced in 2018, which included the incorporation of rewards for useful information to detect, investigate and sanction cartels. In addition, INDECOPI issued guidelines for public officials in 2018 for combating collusion in public procurement. (Latin Lawyer, 2020).

Telecommunications Law

Legislative Decree No. 702 of 7 November 1991 promulgated the Telecommunications Act allowing private investment in telecommunications and free competition and created the telecommunications regulator (OSIPTEL). Supreme Decree (*Decreto Supremo*) No. 003-2007 sets out the general legal framework for telecommunications in Peru. OSIPTEL is also the competition authority for this sector. OSIPTEL has investigative and sanctioning powers, and carries out market studies and advocacy initiatives as well. According to Art. 2 of Law N° 27332 (Regulatory Agencies Framework Law), OSIPTEL has administrative, functional, economic and financial autonomy.

(b) Regional framework

The relevant regional framework for Peru is composed of the Andean Community (CAN), the Latin American and Caribbean Economic System (SELA), the Latin American Integration Association (ALADI), the Asia Pacific Economic Cooperation (APEC), the Pacific Alliance and the Trans-Pacific Partnership (TPP).

(c) Regulatory framework

Security and privacy

The Peruvian Law 29733 the Personal Data Protection Act (PDPA) was published in order to protect natural persons and their personal data. Organizations must acquire resources, implement controls, and develop processes to protect their assets. In the private sector, firms located in Peru whose parent companies belong to international economic groups are taking the European General Data Protection Regulation (GDPR) – currently in force since May 2018 – as a reference. Some other firms are implementing measures to comply with what Law No. 29,733, sets forth.

Cybersecurity

In February 2019, Congress approved the Budapest Convention on Cybercrime, though it issued certain statements and restrictions related to its applicability. The Convention aims at harmonizing the characteristics and elements of crimes in a context of technological breaches and unlawful access to digital information. The approval of the Convention complements the introduction of cybercrimes into the Peruvian Penal Code back in 2000. (Muñiz Olaya Melendez Castro Ono & Herrera, 2019).

Digital platforms

In June 2019 two congress representatives proposed a draft law that would include workers in digital platforms under the Labor Law. In November 2019 a ministerial commission in the Ministry of Labor and Employment Promotion (*Ministerio de Trabajo y Promoción del Empleo*, MTPE) was assembled to analyze the implications of including around 18,000 people in Lima under the labor regime, working mostly in the delivery business for companies like Glovo, Rappi, Uber Eats and Urbaner.

Tax regulations

Legislative Decree No. 945 of December 2003 was modified by Legislative Decree No. 970 in December 2006 and by Supreme Decree No. 159 of 2007 thereafter. This modification to the Tax Law to income expanded the definition of Peruvian income source, adding those “obtained through digital services provided through internet or any adaptation or application of protocols, platforms or technology used through internet or any other network through which equivalent services are provided, when the service is used with an economic purpose, utilized or consumed in the country”. The interpretation of “used with an economic purpose” entails use for the economic activities of other companies. That means, income for the provision of digital services is taxed only when it comes from business-to-business (B2B) operations, but not when digital services are contracted by the end users (B2C). (ECLAC/AECID, 2019).

(d) Market definition and market power

Market definition rules

INDECOPI's and OSIPTEL's competences are delimited according to which market is affected by the conducts under analysis. When behavior relates to the telecommunications market, OSIPTEL is the authority in charge; business conduct in any other economic sector will fall under the purview of INDECOPI. INDECOPI makes use of market studies in order to assess the degree of competition in different sectors it is responsible for. The legal framework for market studies is set forth in Article 14(2) of the Peruvian Competition Act. According to this disposition, the Commission is empowered to recommend the implementation of measures that promote free competition to any entity of the Public Administration.

Market power assessment

Article 7 of the Peruvian Competition Act defines the concept of dominant position (OECD-IDB, 2018). According to the law, an economic agent has a dominant position in a relevant market when it has the possibility to restrict, affect or distort substantially the conditions of supply or demand in said market, without its competitors, suppliers or customers being able, in that moment or in the immediate future, to counteract this possibility, due to factors such as:

- a significant market shares in the relevant market;
- the characteristics of the supply and demand of the goods or services;
- the technological development or services involved;
- the access of competitors to sources of financing and supply as well as to distribution networks;
- the existence of legal, economic or strategic barriers to entry; and
- the existence of suppliers, customers or competitors and the power of negotiation that they have.

2. Responsible authorities

(a) Competition authority

Peru has two competition agencies: The Supervisory Agency for Private Investment in Telecommunications (*Organismo Supervisor de Inversión Privada en Telecomunicaciones*, OSIPTEL), which is competent in all matters concerning the telecommunications sector, and the Institute for the Defense of Competition and Intellectual Property (*Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual*, INDECOPI) for all other sectors of the economy. (OECD-IDB, 2018).

INDECOPI has an independent legal status of internal public law and enjoys functional, technical, economic, budgetary and administrative autonomy. This institutional arrangement is expected to provide a safeguard against political and public pressures, and particularly those that might arise from individual Ministries responsible for individual economic sectors.

(b) Regulatory authority

The Supervisory Agency for Private Investment in Telecommunications (OSIPTEL) is in charge of the oversight and regulation of the telecoms industry. The Telecommunications Supreme Decree, adopted in 1993, serves as the legal framework for these services. In the telecommunications sector, the application of the relevant competition laws is the responsibility of the sectorial regulator OSIPTEL (the Supervisory Agency for Private Investment in Telecommunications). A collegiate body created ad hoc within OSIPTEL takes decisions on competition matters in the telecoms sector. Once an administrative decision is reached, the collegiate body is disbanded. An administrative dispute resolution tribunal, also established within OSIPTEL, and whose members are appointed by the Transport and Communications Ministry, issues appeal decisions.

(c) Coordination at government level

OSIPTEL shares with INDECOPI a role as National Competition Authority but is restricted to the telecoms sector. OSIPTEL has the power to investigate, prosecute, and resolve competition cases in the telecommunications sector. As a result, INDECOPI is the sole authority with competences to promote and enforce the Peruvian Competition Act in all economic sectors, including regulated sectors other than the telecommunications sector.

The legal framework foresees extensive powers conferred onto OSIPTEL (Peruvian NRA), including the important role of promoting competition in the telecoms sector. Besides its regulatory responsibilities, OSIPTEL is responsible for the application of the Peruvian Competition law (Legislative Decree No. 1034) to telecoms services, thereby excluding the authority of INDECOPI (Peruvian NCA) in this sector. OSIPTEL has its own set of procedural rules in the application of competition law. INDECOPI is responsible for the enforcement of competition rules in all other markets, except for telecoms. (Alexiadis & da Silva Pereira Neto, 2019).

3. Present situation

(a) Role of digital platforms

Figure II.5 shows the result of a survey on social media usage carried out in Lima, Peru. Almost 73 percent of respondents used Facebook, making it the most popular social network in the Peruvian capital. The second most used platform was WhatsApp, with nearly 69 percent of respondents.

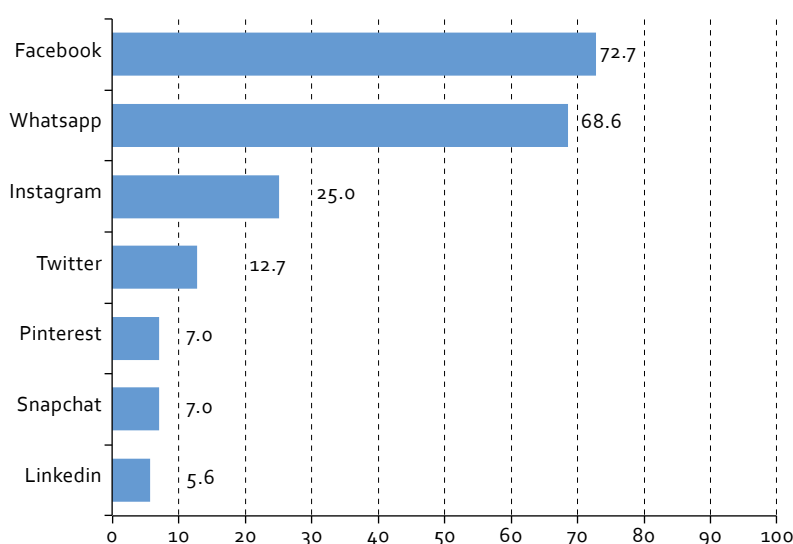
The largest commerce digital platforms in Peru, ranked by (ECOMMERCE NEWS, 2020), are: Shopify; Wix; Samishop; Simbel ecommerce; VTEX; WooCommerce; Prestashop; and Magento.

(b) MSMEs access to ICTs

There are significant existing efforts to build on MSMEs access to ICT, including the country's e-government services and citizen services centers (MACs), which could be developed into one-stop shops for future company registration. (OECD/CAF, 2019).

Given the vast numbers of MSMEs in Peru, the Peruvian Congress approved in 2003 a law to promote micro and small firms, and designated PROMPYME (The Small and Micro Enterprise Promotion Commission) as the government entity in charge of executing the law. PROMPYME then implemented a Program of Public Sector Purchases from SMEs to promote participation in public procurement through improved access to information and web-based training. It served as a market development program, collecting and arranging public procurement data online enabling registered SMEs to quickly and easily access relevant procurement information on available tenders. In a study it was found that those participating in the PROMPYME program achieved 20% higher total and per worker profits and sales. (WB/DCED, 2017).

Figure II.5
Most-used social media platforms in Peru in 2020
(Percentages)



Source: (Statista, 2020).

4. Adoption of measures due to the pandemic

(a) Policy framework changes

The competition agency, INDECOPI has so far not enforced competition laws against conducts related or originated in the Covid-19 pandemic. However, it has conducted some actions specifically related to it in its role as consumer protection and unfair competition agency.

The authorities have not issued any competition or price control law in the context of digital platforms during the Covid-19 pandemic, nor online marketplaces have taken any measures against sellers using their platforms. However, as the authority in charge of supervising unlawful advertising, INDECOPI recently declared that it managed to take down 144 advertisements in digital platforms which announced false claims related to the efficiency of certain products or services to prevent, treat or even cure Covid-19. (Bullard Falla Ezcurra, 2020).

(b) MSME support¹⁰

In Peru, an additional 70.300 billion soles (9.2% of GDP) were injected into the various State credit line guarantees (namely, *Reactiva Perú* and business support funds. (ECLAC ES, 2020).

¹⁰ The complete list of measures supporting MSMEs during the pandemic is found in <https://cepalstat-prod.cepal.org/forms/covid-countrysheet/index.html?country=PER>.

(c) Other measures

In the context of the Covid-19 pandemic, INDECOPI published a press release underlining the legality of agreements that maximize the efficiency of production and distribution for the benefit of consumers, especially in the market of the supply of essential inputs. Thus, economic agents can join efforts to reduce technological or distribution costs. However, INDECOPI strongly emphasized that this type of agreements cannot be used as an excuse for the creation of cartels or other practices that restrict competition as these conducts are prohibited under the Peruvian Competition Law even in crisis scenarios. (Bullard Falla Ezcurra, 2020).

To mitigate the impact of the coronavirus, the government announced that public and private sector employers must adapt to remote working as long as the state of emergency is in effect. Additionally, the Ministry of Transport and Communications donated 2 000 Internet-connected tablets to the Ministry of Health to collect and analyze data. (OECD, 2020).

G. Summary

1. Competition policy framework across countries

Table II.6 lists the main features of the competition administration in the five countries under analysis, with a particular emphasis on the digital platforms. The table details the main features regarding the legal and regulatory framework about competition, followed by the market definition and market power assessment methods used by the competition authorities.

2. Responsible authorities for competition in digital platforms

Table II.7 outlines the competition authorities for matters related to digital platforms for the five countries being analyzed. It also provides a description of the competition and regulatory authorities' roles regarding digital platforms, and a description of the coordination at government level.

3. Present situation of digital platforms and MSMEs access to ICT

Table II.8 looks at the present situation of digital platforms in five countries and the level of access to ICT that MSMEs enjoy at the present time. This has been condensed showing the results for all countries under analysis.

4. Changes prompted by the pandemic

Regarding changes prompted by the Covid-19 pandemic in the competition framework and the effects on MSMEs, the situation was compared with respect to competition policy framework changes that might have been observed as a consequence of the outbreak. Then, measures adopted to help MSMEs in this difficult junction are compared, and finally other measures that governments took to face the pandemic with help of ICTs are examined. The results are displayed in table II.9.

Table II.6
Competition policy framework across countries

	Argentina	Chile	Colombia	Costa Rica	Peru
Legal Framework	<ul style="list-style-type: none"> - Law No. 27.442 for the Defense of Competition. - Telecommunications Law 27.078. - Supply Law No. 20,680 of 1974¹ 	<ul style="list-style-type: none"> - Decree Law No. 211 of 1973, General Competition Law. - General Telecommunications Law (<i>Ley General de Telecomunicaciones</i> or LGT) 	<ul style="list-style-type: none"> - Competition Law (Law 1340 of 2009). - ICT Law (Law 1341 of 2009) 	<ul style="list-style-type: none"> - Competition Law (Law 7472) and 2019 Competition Reform Act (Law 9736). - General Telecommunications Law 	<ul style="list-style-type: none"> - Competition Law. - Telecommunications Law (Legislative Decree No. 702)
Regional framework	<ul style="list-style-type: none"> - Latin American and Caribbean Economic System (SELA). - Latin American Integration Association (ALADI). - MERCOSUR 	<ul style="list-style-type: none"> - Latin American and Caribbean Economic System (SELA). - Latin American Integration Association (ALADI). - Asia Pacific Economic Cooperation (APEC) - Pacific Alliance. - Trans-Pacific Partnership (TPP) 	<ul style="list-style-type: none"> - Andean Community (CAN) - Latin American and Caribbean Economic System (SELA). - Latin American Integration Association (ALADI) - Pacific Alliance 	<ul style="list-style-type: none"> - Central American Integration System (SICA) - Central America Dominican Republic Free Trade Agreement (CAFTA-DR) 	<ul style="list-style-type: none"> - Andean Community (CAN), the Latin American Caribbean Economic System (SELA). - Latin American Integration Association (ALADI). - Asia Pacific Economic Cooperation (APEC). - Pacific Alliance. - Trans-Pacific Partnership (TPP).
Regulatory Framework	<ul style="list-style-type: none"> - New Fair-Trade Regime (decree No. 274/2019). - Data Protection Law. - New Law on Digital Platforms Work 	<ul style="list-style-type: none"> - Personal Data Protection Law. - National Policy on Cybersecurity. - New digital media bills. - Tax regulations 	<ul style="list-style-type: none"> - Law 1266 of 2008 (Financial Privacy Rules) and Law 1581 of 2012 (General Privacy Rules). - Big Data Action Plan. - Cybersecurity: Colombian Criminal Code. - Draft Digital Platforms Bills: - Tax Regulations on Digital Platforms 	<ul style="list-style-type: none"> - Law on the Protection of Individuals from the Processing of their Personal Data (Law No. 8968). - Law on Computer Crimes (Law N° 9048). - Digital Platforms Policies. - Tax Regulations (Resolution DGT-R-13-2020) 	<ul style="list-style-type: none"> - Personal Data Protection Act (PDPA) (Law 29733): - Cybercrimes Law (Law No. 30,096). - Draft Digital Platforms Laws. - Tax regulation Legislative Decree No. 945

	Argentina	Chile	Colombia	Costa Rica	Peru
Market Definition and Market Power	<ul style="list-style-type: none"> - Market Definition Rules: - Geographic scope of relevant product and is highlighted - Analysis of market power and market shares - Impact determined by the relevant market definition, the market power involved and the market shares - Analysis considers all interchangeable or substitutable products and services - Market Power Assessment: - Follows the analysis of market power/ shares - Analyzes barriers to entry into the market 	<ul style="list-style-type: none"> - Market Definition Rules: - No general procedure for defining markets - No threshold for evaluating market concentration - No reference to entry barriers - Non-legally binding Internal Guide for the Analysis of Horizontal Concentration Operations defines analysis criteria - Market Power Assessment: applies economic analysis - Turnover thresholds for mandatory merger control and the power to perform market studies - Sector-specific regulator may establish the tariffs of a service qualified as non-competitive 	<ul style="list-style-type: none"> - Market Definition Rules: - Test is demand side substitution within the geographic area in which products compete with one another - Supply side substitution used in entry analysis, but not in market definition - Market Power Assessment: No market share threshold to establish dominance in the general competition regime - Public Utility Law establishes a threshold of 25 per cent for dominance 	<ul style="list-style-type: none"> - Market Definition Rules: - International considerations are also taken into account - Market is defined as regional or international - Market shares are calculated according to the sales or production of international markets - Authorities can take into account foreign elements when defining and analyzing the relevant markets - Market Power Assessment: Market power and the calculation of market shares, will use annual sales - General standard based on the Herfindahl–Hirschman Index (HHI) - Possibility of unilaterally fixing prices 	<ul style="list-style-type: none"> - Market Definition Rules: - INDECOPI's and OSIPTEL's competences are delimited according to which market is affected by the conducts under analysis - When behavior relates to the telecommunications market, OSIPTEL is in charge - INDECOPI uses market studies in order to assess the degree of competition in different sectors - Market Power Assessment: Significant market shares in the relevant market - Characteristics of the supply and demand - Technological development or services involved - Access of competitors to sources of financing - Existence of barriers to entry

Source: ECLAC.

Table II.7
Responsible authorities for competition in digital platforms

	Argentina	Chile	Colombia	Costa Rica	Peru
Competition Authority	- National Antitrust Commission (<i>Comisión Nacional de Defensa de la Competencia</i> , CNDC)	- Antitrust Court (<i>Tribunal de Defensa de la Libre Competencia</i> , TDLC) and the National Economic Prosecutor (<i>Fiscalía Nacional Económica</i> , FNE)	- Superintendence of Industry and Commerce (<i>Superintendencia de Industria y Comercio</i> , SIC)	- Costa Rican Competition Authority (<i>Comisión para Promover la Competencia</i> , COPROCOM)	- OSIPTEL: Competent in all matters concerning the telecommunications sector. - Institute for the Defense of Competition and Intellectual Property (<i>Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual</i> , INDECOPI).
Regulatory Authority	- National Entity of Communications (<i>Ente Nacional de Comunicaciones</i> , ENACOM)	- Ministry of Transport and Telecommunications (MTT) through the Undersecretary of Telecommunications (Subtel). - National Television Council Law (<i>Consejo Nacional de Televisión</i> , CNTV)	- Ministry of Information and Communication Technology (<i>Ministerio de Tecnologías de la Información y las Comunicaciones</i> , MINTIC). - Communications Regulation Commission (<i>Comisión de Regulación de Comunicaciones</i> , CRC). - National Spectrum Agency (<i>Agencia Nacional de Espectro</i> , ANE)	- Telecommunications Superintendence (SUTEL)	- Supervisory Agency for Private Investment in Telecommunications (<i>Organismo Supervisor de Inversión Privada en Telecomunicaciones</i> , OSIPTEL)
Coordination at Government Level	- ENACOM is the regulatory entity that governs telecoms, ICT and the media - The CNDC is the only authority allowed to apply the competition law	- Subtel is competent to dictate fundamental technical plans - With respect to television, Subtel's authority is limited to technical aspects - CNTV regulates content and grants both broadcasting and cable licenses - Neither Subtel nor CNTV have competition law powers - Competition law enforced by two separate bodies: a prosecutor (FNE) and a tribunal (TDLC)	- Colombian Competition Law (Law No. 1340) establishes that the SIC shall exercise the exclusive power for investigating, sanctioning and taking other administrative decisions related to infringements to the legislation for the protection of competition	- SUTEL shall consult to the Commission to Promote Competition (COPROCOM) for technical evaluation of market concentration and competition matters - SUTEL applies fines for monopolization conducts	- OSIPTEL shares with INDECOPI a role as National Competition Authority, but is restricted to the telecoms sector - INDECOPI is the sole authority with competences to promote and enforce the Peruvian Competition Act in all other economic sectors

Source: ECLAC, 2020.

Table II.8
Present situation of digital platforms and MSMEs access to ICT

	Argentina	Chile	Colombia	Costa Rica	Peru
Role of Digital Platforms	<ul style="list-style-type: none"> - Role of digital media and use of social networks as means of gaining access to news and staying connected increased during the pandemic. - The trend for people to use media and messaging platforms to gather news and exchange information has been increasing in Argentina 	<ul style="list-style-type: none"> - Social media, especially Instagram, is mainly used in Chile as a way of drawing attention to content which is produced on other platforms. - Online and social media in 2020 are used by the vast majority for news each week 	<ul style="list-style-type: none"> - Colombia is the fourth country in the world whose citizens spend more time in digital platforms (an average of nine hours a day). - According to the MINTIC, 63% of the Colombians have access to internet and there are more than 31 million active users in social media 	<ul style="list-style-type: none"> - Since 2015, digital platforms in Costa Rica have been burgeoning, and its use has been incremented during the Covid-19 pandemic. - Almost every digital platform is operating without an institutional framework or within the limits of legality 	<ul style="list-style-type: none"> - Regarding social media usage, almost 73 percent use Facebook, making it the most popular social network. - The second most used platform is WhatsApp, with nearly 69 percent preference
MSMEs Access to ICTs	<ul style="list-style-type: none"> - Argentinian firms tend to make good use of the internet, and the country's medium-sized firms perform well. - Small firms score higher than expected in their capacity to change, and could further improve their competitiveness 	<ul style="list-style-type: none"> - Most MSMEs use some type of software, use internet, are engaged in some activity related to internet, and use internet to liaise with government. - Some MSMEs own a website, make use of social networks, and use e-Commerce for electronic purchases. - Few MSMEs use e-Commerce for electronic sales 	<ul style="list-style-type: none"> - Colombia has a large number of microenterprises (firms with less than ten employees), which are not reported in the statistics. - Low competitive pressure weakens incentives for firms to adopt ICTs. - Over 90% of microenterprises that do not make use of ICTs report a lack of necessity as the reason for not using them 	<ul style="list-style-type: none"> - The Program on Innovation and Human Capital for Competitiveness (<i>Programa de Innovación y Capital Humano para la Competitividad</i>) has stimulated productivity growth by supporting innovation and strengthening human capital in strategic sectors 	<ul style="list-style-type: none"> - Given the vast numbers of MSMEs in Peru, the Peruvian Congress approved in 2003 a law to promote micro and small firms, and designated PROMPYME as the government entity in charge of executing the law. - PROMPYME implemented a Program of Public Sector Purchases from SMEs to promote participation in public procurement through improved access to information and web-based training

Source: ECLAC.

Table II.9
Changes prompted by the pandemic

	Argentina	Chile	Colombia	Costa Rica	Peru
Policy Framework Changes	<ul style="list-style-type: none"> - CNDC has not issued any new regulations during the pandemic. - No new laws regarding competition have been passed by Parliament either during this pandemic 	<ul style="list-style-type: none"> - The TDLC issued a new regulation (<i>Auto Acordado No. 218</i>) allowing consulting parties to proceed with cooperation agreements among competitors which may be needed to maintain the supply chain of goods or services which are essential. - The FNE issued a public statement setting out the criteria that must be met to fulfil the requirements of a lawful cooperation among competitors. 	<ul style="list-style-type: none"> - The SIC issued Resolution No. 20,490 establishing that agreements among competitors to attend the Covid-19 emergency or to overcome its negative effects on the economic system have to be informed to the SIC, but under the presumption that efficiency is achieved. - MINTIC issued Decree 464 of 2020, regulating e-commerce 	<ul style="list-style-type: none"> - The only change during the pandemic in relation to digital platforms policy has been the issuance of resolution DGT-R-13-2020 of 11 June 2020, establishing the procedure for the VAT collection regarding digital services 	<ul style="list-style-type: none"> - INDECOPI has so far not enforced competition laws against conducts related or originated in the Covid-19 pandemic. However, it has conducted some actions specifically related to it in its role as consumer protection and unfair competition agency
MSME Support	<ul style="list-style-type: none"> - Government created a specific allocation fund of 30 billion pesos, that will be transferred to the Argentine Guarantee Fund (FOGAR), increasing its available capital to 91.920 billion pesos (equivalent to 0.5% of GDP) 	<ul style="list-style-type: none"> - The one-off capitalization of the small businesses credit guarantee fund (FOGAPE) for US\$ 3 billion (1.2% of GDP) is expected to allow credit guarantees to be provided up to a total of US\$ 24 billion (10% of GDP) 	<ul style="list-style-type: none"> - Government created three new lines of credit in the National Guarantee Fund (FNG) for MSMEs and independent workers for a total of 16 billion pesos (1.5% of GDP) 	<ul style="list-style-type: none"> - Government made 900 billion <i>colones</i> available to the financial system for productive sector loan securities and guarantees, and announced the creation of a National Securities and Guarantees Fund to reactivate the economy and provide support to those in debt affected by the pandemic, with a total envelope of around 180 billion <i>colones</i>, equivalent to 3.0% of GDP. 	<ul style="list-style-type: none"> - In Peru, an additional 70.300 billion soles (9.2% of GDP) were injected into the various State credit line guarantees (namely, <i>Reactiva Perú</i> and business support funds
Other Measures	<ul style="list-style-type: none"> - Price gouging practices from online stores and platforms prompted the consumer protection agency to regularly monitor and audit publications posted on online retailers' platforms. - Authorities have been investigating consumer's complaints regarding delivery terms of online purchases 	<ul style="list-style-type: none"> - The lack of public statements by the antitrust authorities regarding price controls has been the rule, and this situation applies to online stores/digital platforms. - The FNE created the Intelligence Unit dependent from the Antitrust Division to watch for cartel formation 	<ul style="list-style-type: none"> - To respond to the Covid-19 crisis, government issued a decree to guarantee the maintenance and operation of telecommunications services. - The decree provides authorization to prioritize access to the content and apps of health services, emergency care, government, and labor or education information 	<ul style="list-style-type: none"> - Costa Rica recently developed <i>Bola de Cristal</i> (Crystal ball), a smart digital platform matching jobs and skills supply and demand. - The Ministry of Economy, Industry and Commerce made available five digital platforms to MSMEs and entrepreneurs for distribution of products to homes during the pandemic 	<ul style="list-style-type: none"> - INDECOPI published a press release underlining the legality of economic agents joining efforts to reduce technological or distribution costs, especially in the market of the supply of essential inputs. - Government announced that public and private sector employers must adapt to remote working as long as the state of emergency lasts

Source: ECLAC.

III. Conclusions

Some of the conclusions that can be drawn from this study about changes prompted by the pandemic on the competition framework for digital platforms are as follows:

- The multisided nature of digital platforms creates several consequences for competition policy. A platform cannot set prices for one market facet without affecting supply and demand on other sides of the market.
- Market definition in digital platforms can be difficult to grasp, as different markets can be identified and the literature is not always consistent regarding them. When dealing with market power in two-sided platforms, particular care is needed, as the markets on the two sides are linked and an assessment of the overall market power of a platform has to take this link into account.
- Dominance in digital platforms nowadays blurs the border between antitrust and privacy regulations. Competition law usually takes a look at market failures and examines the impact on consumer or total welfare, whereas data protection and privacy regulations take a fundamental rights perspective.
- Data policy frameworks must balance trade-offs across many competing objectives, and doing so requires an integrated approach, as interventions that address a single facet of data are likely to generate suboptimal outcomes.
- IMF argues that four concerns about the status quo merit changes to data policy:
 - Rights and obligations over data must be clarified for the market to function efficiently.
 - A strategy by large incumbents of hoarding customer data calls for policies that can encourage user control over data and complete more competitive markets.
 - The proliferation of data is not being met with sufficient investment in cybersecurity, and this may be reducing the stability of the financial system.
 - There is a risk of international fragmentation in data markets, which could reduce the potentially sizable efficiency gains from the economies of scale.

- Micro-, small and medium enterprises (MSMEs) have a huge potential for benefiting from the new competition environment fostered by extensive use of digital platforms.
- Privacy and security of data remains a primary concern for MSMEs, primarily due to the borderless nature of digital economy. MSMEs do not have the possibility of owning large digital platforms and their concerns about privacy are shared with the rest of the users.
- Regarding Access to and use of the Internet as a result of the pandemic:
 - Measures to stop the spread of the coronavirus have accelerated the pace at which work and education are going digital.
 - Broadband penetration has increased sharply and the greater use of digital technologies can exacerbate inequalities in access among countries and among income groups.
 - There are also marked inequalities in the connectivity rate among income segments.
- The economic impact of the Covid-19 pandemic is expected to have the following effects on MSMEs:
 - Although the crisis affects all businesses, the impact will be much greater for microenterprises and SMEs, with widespread business closures and job losses.
 - People employed by MSMEs are very vulnerable to the pandemic crisis.
 - The economic impact on MSMEs will have a high social cost, as micro- and small enterprises accounted for 47.1% of total employment in 2016, rising to 61.1% if medium- sized enterprises are included.
 - The impact will be very different depending on the sector and type of firm.
- MSMEs will require a continued support from governments through these difficult times in order to tackle the negative economic effects and measures such as fiscal relief and others are urgently required in order to keep them in business.
- After the pandemic is over, things will not be the same regarding ways of conducting business by MSMEs. e-Commerce, extensive use of digital platforms and adoption of tools to allow for remote interaction will become the norm for years to come.
- It is envisioned that enterprises will undergo large digital transformation processes in order to grasp new business opportunities and larger target markets.
- Since regional and sub-regional cooperation agreements have also an incidence in the competition framework for the countries under analysis, they also need to be accounted for. Such agreements are: Andean Community (CAN), Latin American and Caribbean Economic System (SELA), Latin American Integration Association (ALADI), Asia Pacific Economic Cooperation (APEC), Central America Integration System (SICA), MERCOSUR, Central America Dominican Republic Free Trade Agreement (CAFTA-DR), Pacific Alliance, and Trans-Pacific Partnership (TPP).
- Regarding influence in shaping up competitive frameworks for digital platforms, the influence of the regional and sub-regional cooperation agreements for the countries under study has been quite limited.
- **Legal framework:** The degree of development of the legal framework for the five countries regarding applicability to digital platforms is not homogeneous. Some of them, like Chile and Colombia, are well-developed for dealing with digital platforms when needed. However, the existence of specific provisions to ICT services in the telecommunication laws of Costa Rica and Peru provide them with effective tools for addressing the competition matters regarding digital platforms.
- **Regulatory framework:** The regulatory framework for ICT regarding competition is quite profuse and shows different characteristics across the countries under study. Personal data

protection, a main concern regarding digital platforms, is addressed via similar mechanisms in all countries. Specific regulation aiming at digital platforms in particular takes different approaches. Argentina intends to regulate work in digital platforms, as well as Peru. All countries in this study have some sort of tax obligations imposed on the owners of digital platforms, with value-added taxes ranging from 8% to 19%.

- **Market definition:** Market definition rules are defined in all countries of the study, with the notable exception of Chile, where no general procedure exists:
 - Argentina uses scope of relevant product and an analysis of interchangeable or substitutable products and services.
 - Colombia tests for demand-side substitution within the geographic area, with supply-side substitution in entry analysis.
 - Costa Rica places much emphasis in geographical considerations for market definition, including taking into account foreign elements when analyzing and defining relevant markets.
 - In Peru, competences are delimited according to which market is affected by the conduct under analysis, with the possibility of the regulatory authority to resource to market studies to assess the degree of competition.
- **Market power:** Market power assessment follows different paths, depending on the country:
 - Colombia does not establish a priori a market share threshold in order to determine the existence of significant market power.
 - Turnover and not market shares is used in Chile when analyzing mandatory merger control and the competition authority is obliged to apply economic analysis.
 - In addition to market shares, Argentina also analyzes barriers to entry into the market, as well as Peru.
 - Peru does take into account factors like supply and demand characteristics, technological development and access to sources of financing by competitors as well.
 - The Costa Rican competition authority explicitly uses general standard thresholds based on the Herfindahl–Hirschman Index (HHI) in order to assess market power.
- **Competition authority:** The competition authority for matters related to ICT and to digital platforms in general is different, depending on aspect of competition is being analyzed:
 - In countries like Argentina and Chile, the competition authority is vested with full powers to apply the Competition Law, meaning that any competition issue related to digital platforms will fall under its jurisdiction.
 - In the case of Colombia, as the competition authority (the SIC) has a mandate for all but a handful of sectors, and competition issues with digital platforms would end-up being forwarded to it.
 - The competition authorities of Costa Rica and Peru have no direct jurisdiction over competition involving digital platforms. However, digital platforms competition issues eventually would fall back to them if matters such as delivery of goods or transportation matters are being considered.
- **Regulatory authority:** ICT Regulatory authorities in the countries being examined have different responsibilities regarding competition matters and some of them have no authority to intervene in competition cases:
 - ICT regulators from Argentina and Chile have no powers to examine competition matters and issues dealing with digital platforms would fall outside their jurisdiction.

- The CRC in Colombia is a competent regulator regarding its technical capacity, but lacks independence to develop its regulatory functions due to its dependence from the Ministry.
- Costa Rica and Peru have both quite strong regulators empowered to make decisions regarding competition in the telecommunications sector. Competition issues with digital platforms are not clear-cut, as they span across several sectors and the limitations (both technical and jurisdictional) of the regulatory bodies would become evident in competition cases.
- **Coordination at government level:** Different institutions might need to be involved, particularly when competition issues regarding digital platforms are considered:
 - In Argentina and Chile, competition authorities have all powers to review competition issues of any kind regarding digital platforms.
 - In Costa Rica, the regulator is required to consult the competition authority for technical evaluation of market concentration and competition matters before ruling in that matter. However, when the consequences of an anticompetitive behavior span more than one sector, the regulatory authority would need to resource to the competition authority (COPROCOM) or work jointly in the resolution of the issues.
 - Peru has a similar situation than that of Costa Rica, as the telecommunications regulatory authority has powers to resolve competition issues regarding the sector, but lacks jurisdiction to decide on competition matters outside its scope.
- **Role of Digital platforms:** The evaluation of digital platforms in five countries shows that platforms for delivery of goods and services, work opportunities, transportation services and others belonging to the “shared economy” are emerging and have not been operating in the Region for too long.
- **MSMEs access to ICTs:** In all countries, MSMEs are found to use internet and ICT tools as part of their array of competitive resources. Chile is one country that conducts periodic reviews of ICT usage by MSMEs.
- **Policy framework changes:** Competition policy framework changes regarding the use of digital platforms have not been observed to a large degree, mainly because competition and regulatory authorities were mostly engaged in urgent matters:
 - In Chile and Colombia agreements and mergers among competitors, which under normal circumstances would have been deemed as anticompetitive or at least suspicious, have been authorized by competition authorities under the presumption of good faith and in the interest of social benefit.
 - Costa Rica managed to pass a resolution establishing the procedure for the VAT collection regarding digital services.
- **MSME support:** All countries invariably implemented some kind of support for MSMEs during the pandemic. However, the key for overcoming some of the struggles for small enterprises would be the provision of financial support to migrate operations to digital platforms in a relatively short period of time.
- **Other measures:** There is a mix of various measures that governments in all countries took in order to fight the negative consequences of the Covid-19 outbreak, which do not directly deal with competition issues in any particular field:
 - In Argentina, authorities have been closely watching developments of announcements in digital platforms that might impact consumers negatively.
 - Chile announced in the midst of the pandemic that it approved “without conditions” Uber’s purchase of Chilean online grocery provider Cornershop.

- Colombia authorized prioritization of access to the content and apps for certain applications related to the pandemic.
- In Costa Rica, the telecommunications authorities made agreements to guarantee continuity of communication services during the pandemic. Two interesting developments by government were:
 - the launch of a smart digital platform matching jobs and skills supply and demand, and
 - making available five digital platforms to MSMEs and entrepreneurs for distribution of products to homes during the pandemic.

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The intensive use of platforms —and the multi-sided nature thereof— in the wake of the lockdown forced by the coronavirus disease (COVID-19) pandemic has widespread repercussions for national policies on privacy, cybersecurity and competition the world over. The pandemic has highlighted the shortcomings in regulatory frameworks governing data protection, cybersecurity and competition policy, as well as the need to face the new challenges posed by the increased digitization of economies.

The aim of this paper is to analyse the measures taken by competition authorities in Latin America and the Caribbean in support of small and medium-sized companies (SMEs) during the pandemic to facilitate their recovery process. It focuses on the main policy actions implemented in Argentina, Chile, Colombia, Costa Rica and Peru to address the economic crisis caused by the COVID-19 pandemic and to stimulate economic recovery in a context of increasing digitization.



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