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Product Market Regulation in Brazil

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ABSTRACT/RÉSUMÉ

Product Market Regulation in Brazil

Appropriately designed and implemented regulations are powerful tools for enhancing economic performance. A strong and sound regulatory framework can mitigate threats to health, safety, and the environment and address market imperfections. However, regulation can also create barriers to the entry and expansion of firms, which may limit and distort competition. Some of these barriers are necessary, but others may go beyond what is needed to address the policy objectives and the market failure(s) regulation is intended to remedy. The OECD developed in the late 1990s a set of Product Market Regulation (PMR) Indicators to assess how competition-friendly the regulatory framework of a country is across a range of sectors and regulatory areas. A regulatory framework that facilitates competition, for example, can stimulate productivity by encouraging the efficient allocation of resources and promoting innovation and growth. This paper examines a range of product markets, services, and network industries in Brazil, relying on the results of the PMR indicators, and identifies areas where country's regulations could be brought more in line with international best practices. These include the governance of state-owned enterprises, interaction between policy makers and interest groups, network sectors, and professional services.

This Working Paper relates to OECD Report on Regulatory Reform in Brazil, 2022
https://www.oecd.org/governance/regulatory-reform-in-brazil-d81c15d7-en.htm

JEL codes : D4, K230, L1, L2, L3, L5, L8, L9

Keywords: Regulation, Competition, Product Market Regulation, Productivity, Brazil, Professional Services, Governance of State-Owned Enterprises, Public Procurement, Network Sectors

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Réglementation du marché des produits au Brésil

Des réglementations correctement conçues et mises en œuvre sont des outils puissants pour améliorer les performances économiques. Un cadre réglementaire solide peut atténuer les menaces pour la santé, la sécurité et l'environnement et remédier aux imperfections des marchés. Toutefois, la réglementation peut également créer des obstacles à l'entrée et à l'expansion des entreprises, qui peuvent limiter et fausser la concurrence. Certaines de ces barrières sont nécessaires, mais d'autres peuvent aller au-delà de ce qui est nécessaire pour atteindre les objectifs politiques et remédier aux défaillances du marché la réglementation est censée remédier. À la fin des années 1990, l'OCDE a élaboré une série d'indicateurs de réglementation des marchés de produits (PMR) afin d'évaluer dans quelle mesure le cadre réglementaire d'un pays est favorable à la concurrence dans une série de secteurs et de domaines réglementaires. Un cadre réglementaire qui facilite la concurrence, par exemple, peut stimuler la productivité en encourageant l'allocation efficace des ressources et en favorisant l'innovation et la croissance. Ce document examine une série de marchés de produits, de services et d'industries de réseau au Brésil, en s'appuyant sur les résultats des indicateurs PMR, et identifie les domaines dans lesquels les réglementations du pays pourraient être davantage alignées sur les meilleures pratiques internationales. Il s'agit notamment de la gouvernance des entreprises publiques, de l'interaction entre les décideurs politiques et les groupes d'intérêt, des secteurs de réseau et des services professionnels.

Ce Document de travail a trait au OECD Report on Regulatory Reform in Brazil, 2022, il est disponible uniquement en anglais https://www.oecd.org/governance/regulatory-reform-in-brazil-d81c15d7-en.htm

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Mots clés : Réglementation, Concurrence, Réglementation du marché des produits, Productivité, Brésil, Services professionnels, Gouvernance des entreprises d'État, Marchés publics, Secteurs des réseaux

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By Cristiana Vitale, Pedro Caro de Sousa, Alexis Durand and Paul Yu[1]

The OECD Product Market Regulation Indicators

Reforming product market regulation to yield a regulatory framework that fosters competition can spur productivity growth by encouraging the efficient allocation of resources across the economy, encouraging experimentation, innovation and the diffusion of existing innovations (Andrews and Cingano, 2014[1]) (Andrews, Criscuolo and Gal, 2016[2]). Evidence from a wide range of firm, industry and macro-level studies shows that a regulatory framework that creates unnecessary obstacles to competition induces significant negative effects on productivity and growth by reducing investment and weakening multi-factor productivity performance (Égert, 2018[3]) (Égert, 2017[4]) (Égert and Wanner, 2016[5]). Lower barriers to entry supported by measures allowing new firms to compete effectively can reduce consumer prices and facilitate greater job creation, especially in services where there is pent-up demand, and can deliver long-term gains in living standards (Bouis et al., 2012[6]).

The OECD Product Market Regulation (PMR) indicators are a unique and globally-recognised set of policy indicators that measure the presence of regulatory barriers to firm entry and growth that impede the efficient working of competition in product markets. These are barriers to competition that go beyond what may be needed to address the policy objectives and the market failure(s) regulation may be intended to address.

Over time, the PMR indicators have become an essential element of the OECD's policy analysis toolkit. These indicators and their underlying database are also widely employed by national governments and other international organisations to determine areas for regulatory change.

[1] Cristiana Vitale and Paul Yu are members of the OECD Economics Department, Alexis Durand is a member of the OECD Directorate for Public Governance, and Pedro Caro de Sousa is a member of the OECD Directorate for Enterprise and Financial Affairs. The authors acknowledge valuable comments and inputs received from Manuel Flores Romero and Gloriana Madrigal (Directorate for Public Governance), and from Luiz de Mello, Douglas Sutherland, Jens Arnold and Falilou Fall (Economics Department). The OECD thanks the Ministry of Economy of Brazil for its support during the development of the project. In particular, Marcelo Guaranys and Kélvia Alburquerque from the Executive Secretariat and Geanluca Lorenzon, Alexandre Messa, Natasha Miranda, and Carolina Aragão from the Secretariat for Competition Advocacy and Competitiveness. Additionally, the Secretariat thanks the officials from the different administrative areas of the Ministry of Economy who participated in the review and offered valuable inputs and feedback, as well as to public officials of the federal and sub-national administrations of Brazil, who provided critical insights for this report. Special thanks are due to Sisse Nielsen (OECD Economics Department) for her editorial assistance.

Structure of the OECD Product Market Regulation Indicators

The PMR indicators rely on an extensive database on laws and regulation based on answers provided by national authorities to a detailed questionnaire.

A key feature of the PMR database is that it captures the "de jure" policy settings. This means that the answers are not based on "subjective" assessments by market participants, but on the laws in force in the country. It also implies that the answers do not reflect the level of enforcement of these laws. These two aspects of the data improve the comparability across countries by insulating them from context-specific assessments and by allowing the OECD to verify the accuracy of information provided.

The information included in this database is used to build two sets of indicators: an economy-wide indicator, which provides a general quantitative measure of how competition-friendly a country's regulatory framework is, and a group of sector indicators that perform a similar assessment at the level of specific network and service industries.

To calculate the indicators, the qualitative information is transformed into quantitative information by assigning a numerical value to each answer. This coding is based on accepted international best practices. The coded information is normalised over a zero to six scale, where a lower value reflects a more competition-friendly regulatory stance. This information is then incorporated through a bottom-up approach into the two sets of indicators. This bottom-up approach permits to trace the indicators' scores back to individual policies.[2]

The Economy-wide indicator

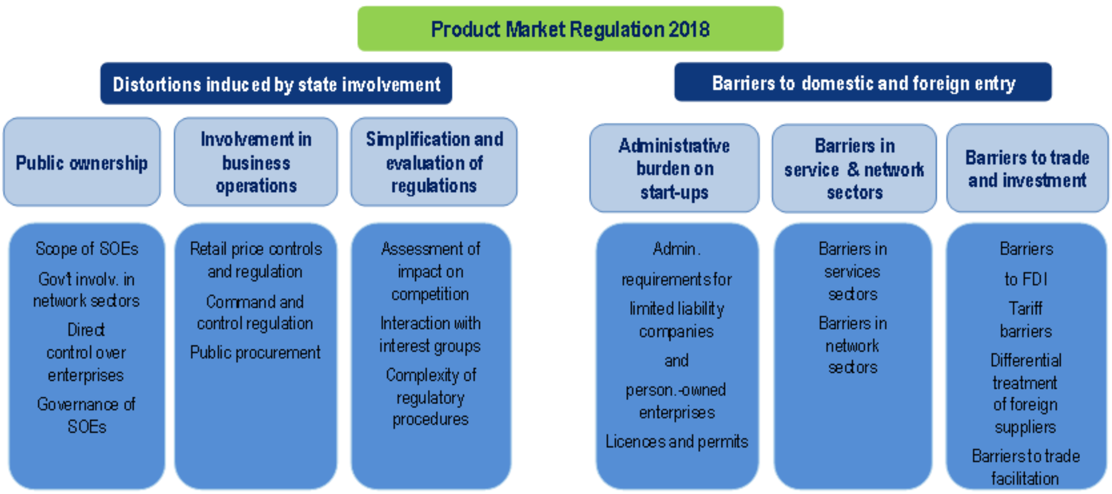
The economy-wide PMR indicator is constructed from two high-level indicators capturing two potential sources of barriers to competition in the economy:

i) those that may arise from state involvement in the economy, and

ii) those that may arise from regulations on the entry and expansion of domestic and foreign firms.

Each of these two high-level indicators is composed of three sub-indicators, which are in turn composed of a number of low-level indicators that refer to specific regulatory domains (Figure 1).

Figure 1. The structure and content of the 2018 economy-wide PMR indicator



Source: (Vitale et al., 2020[7]).

[2] A more detailed description of the PMR methodology can be found in the paper "2018 PMR indicators: the methodology", which is available on the PMR webpage (http://oe.cd/pmr).

a. Indicators of distortions induced by state involvement in the economy

This high-level indicator captures distortions that can be caused by the state's involvement in the economy through the activity of state-owned enterprises (SOEs) and other forms of controls and obligations imposed by the state on private firms. It covers three key regulatory domains, represented by the three medium level indicators (the light blue left hand side in Figure 1). Ten low-level indicators (i.e. the dark blue boxes in the left hand side of Figure 1) focus on specific and detailed regulatory areas. These indicators are:

1. Presence of state-owned enterprises in the economy and their governance (*Public Ownership*)
   - a *Scope of SOEs*: measures whether the government controls at least one firm in a number of business sectors, with a higher weight given to the key network sectors on which the PMR exercise focuses.
   - b *Direct Control over Enterprises*: measures the existence of special voting rights by the government in privately owned firms, and constraints to the sale of government stakes in publicly controlled firms (based on same sectors and weights as the indicator above).
   - c *Government Involvement in Network Sectors*: measures the size of the government's stake in the largest firm in key network sectors.
   - d *Governance of State-owned Enterprises*: measures the degree of insulation of state-owned enterprises from market discipline and the degree of political interference in the management these firms. This sub-indicator is based on some of the principles underlying the *2015 OECD Guidelines on Corporate Governance of State Owned Enterprises* (from hereon the *2015 OECD Corporate Governance Guidelines*) (OECD, 2015[8])
2. Controls and obligations imposed on private firms, including the rules regulating public procurement (*Involvement in Business Operations*):
   - a *Retail Price Controls*: measures the extent and type of retail price controls in key network and service sectors.
   - b *Command and Control Regulation*: measures the extent to which the government uses this type of regulations, as opposed to incentive-based ones, across key network and service sectors.
   - c *Public Procurement*: measures the degree to which procurement rules ensure a level playing field in access to public contracts for the provision of goods, services and public works.
3. Rules in place to evaluate new and existing regulations and efforts to simplify the administrative burden businesses face when interacting with the government (*Simplification and Evaluation of Regulations*).
   - a *Assessment of Impact on Competition*: measures the level of assessment of the impact of new and existing regulations on competition to minimise distortions to competition.[3]
   - b *Interaction with Interest Groups:* measures the existence of rules for engaging stakeholders in the design of new regulation with the goal of reducing unnecessary restrictions to competition and for ensuring transparency of lobbying activities.[4]
   - c *Complexity of regulatory procedures*: measures the government's efforts in reducing and simplifying the administrative burden of interacting with the government.

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[3] For OECD countries, half of the information used in calculating this indicator comes from the OECD Indicators of Regulatory Policy and Governance (iREG) database, which presents in-depth evidence on countries' regulatory policy and governance practices: www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm. Since Brazil is not included in this database, even though the iREG for Latin America 2016 covered Brazil, the information was collected directly from the Brazilian authorities

[4] As above.

b. Indicators of barriers to domestic and foreign entry

This high-level indicator captures barriers to firms' entry and expansion across various sectors of the economy. It covers three key regulatory domains represented by the three medium level indicators (the light blue boxes in the right-hand side of Figure 1. Eight low-level indicators (i.e. the dark blue boxes on the right hand side of Figure 1) focus on specific regulatory areas:

1. The administrative burden that new firms have to face when starting their business (*Administrative Burden on Start-ups*)
   - *a* *Administrative Requirements for Limited Liability Companies and Personally-Owned Enterprises: measures the extent of the administrative requirements necessary to set up new enterprises, with a focus on two specific legal forms: limited liability companies and personally owned enterprises.*
   - *b* *Licences and Permits: measures the existence of initiatives to simplify licensing procedures, such as 'one-stop-shops' for licences and notifications, "silence is consent" rule, and programs to review and reduce number of licences.*
2. The qualitative and quantitative barriers firms face to enter and operate in specific key economic sectors (*Barriers in Service and Network Sectors*),
   - a *Barriers in Services Sectors*: measures the extent of the qualitative and quantitative barriers to competition arising from existing incentive-based regulation in key service sectors.[5]
   - b *Barriers in Network Sectors*: measures the extent of the qualitative and quantitative barriers to competition arising from existing incentive-based regulation in network sectors.[6]
3. The barriers that could limit access to domestic markets by foreign firms and foreign investors (*Barriers to Trade and Investment*)
   - a *Differential Treatment of Foreign Suppliers*: measures the level of discrimination that foreign firms may experience when participating in public procurement processes, and the barriers to entry that foreign firms may experience relative to domestic firms in key network and service sectors.
   - b *Barriers to Foreign Direct Investment (FDI):* measures the restrictiveness of a country's FDI rules, which shape cross-border investment in which a foreign investor establishes a lasting interest with significant influence in an enterprise of a different economy in 22 sectors. It gauges the restrictiveness of rules in terms of foreign equity limitations, screening or approval mechanisms, restrictions on the employment of foreigners as key personnel, and operational restrictions. This indicator reflects the value of the FDI Regulatory Restrictiveness Index developed by the OECD Directorate for Financial and Enterprise Affairs.[7]
   - c *Tariff Barriers:* reflects the value of a cross-product average of effectively applied tariffs. The source of the relevant information is the UNCTAD Trade Analysis Information System database.[8]
   - d *Barriers to Trade Facilitation:* measures the level of complexity of the technical and legal procedures for international trade, ranging from border procedures to the simplification and

[5] This indicator captures the barriers to competition that can exist in service sectors that are related to incentive-based regulation. The sub-indicator Command and Control Regulation measures the barriers created by the government's use of coercive regulations in the same sectors.

[6] As above, but with reference to network sectors.

[7] More information on the FDI restrictiveness index can be found at https://www.oecd.org/investment/fdiindex.htm.

[8] The UNCTAD Trade Analysis Information System database can be accessed at https://wits.worldbank.org/.

harmonisation of trade documents. This indicator reflects the value of the average of a subset of the Trade Facilitation Indicators developed by the OECD Trade and Agricultural Department.[9]

Sector PMR indicators

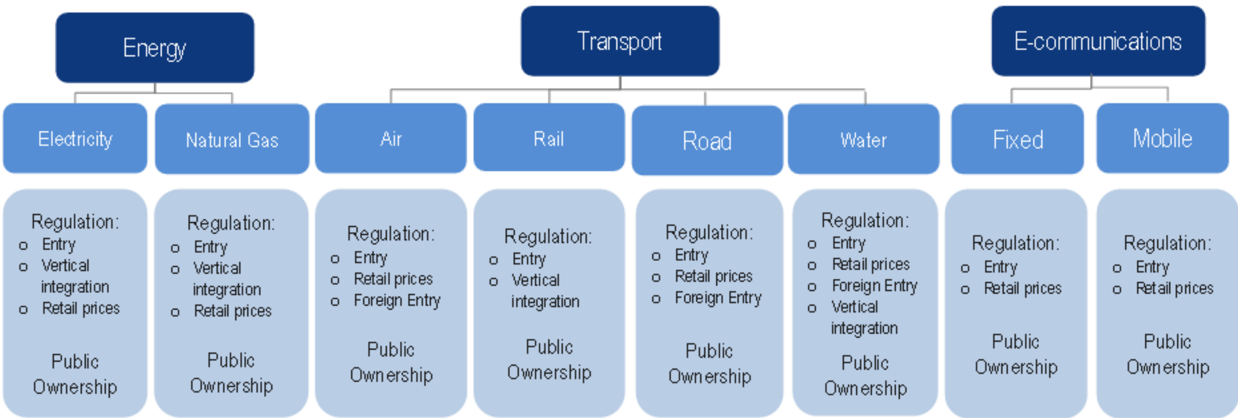
The sector PMR indicators summarise information by sector, and not by regulatory domain as in the economy-wide indicator. These indicators cover three broad sectors: network industries, professional services, and retail distribution.

a. Network sectors

The indicators for network sectors assess eight sectors: electricity, natural gas, air transport, rail transport, road transport, water transport, as well as fixed and mobile e-communications.[10] Each of these indicators include information on how entry and conduct in the relevant sector is regulated, and on the level of public ownership.

These eight indicators are then aggregated into three indicators, one for each industry (energy, transport, and e-communications), and into one single overall indicator covering all network sectors (Figure 2).

Figure 2. Structure of the 2018 PMR indicators for network sectors



Source: (Vitale et al., 2020[7]).

b. Professional services and retail

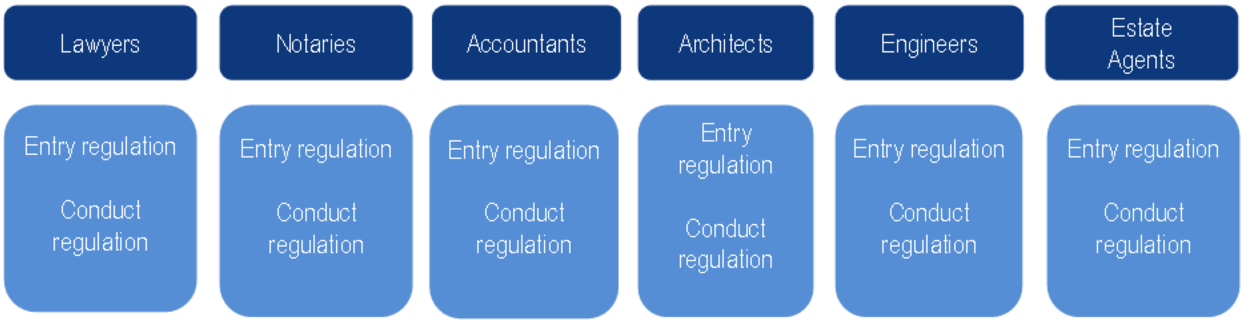
The service sector indicators cover six professions (accountants, architects, civil engineers, real estate agents, lawyers, and notaries), as well as general retail distribution and retail sales of medicines. The indicators for professional services include information on entry requirements and conduct constraints (Figure 3), whereas the retail trade indicators cover a broad set of regulatory issues, ranging from shop opening hours to licensing and retail price regulation (Figure 4).

There is no aggregate indicator covering these eight sectors because of their very different nature. In addition, there is no single indicator on the regulation of all professional services because some professions do not exist in all countries; hence, a single average would distort comparisons.

[9] More information on the OECD Trade Facilitation Indicators can be found at http://www.oecd.org/trade/topics/trade-facilitation/.

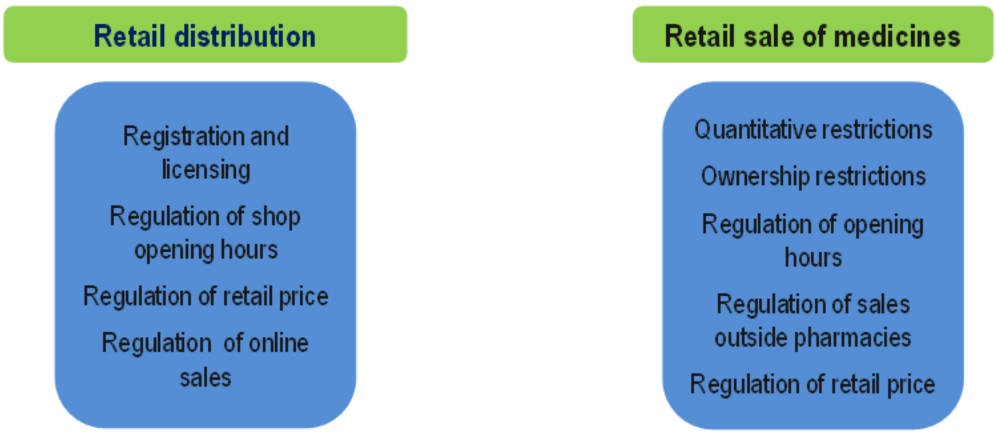
[10] E-communications are traditionally referred to as telecommunications, but to highlight the relevance of data transmission in the PMR questionnaire this indicator is referred to as e-communications.

Figure 3. Structure of the 2018 PMR indicators for professional services



Source: (Vitale et al., 2020[7]).

Figure 4. Structure of the 2018 PMR indicators for retail trade



Source: (Vitale et al., 2020[7]).

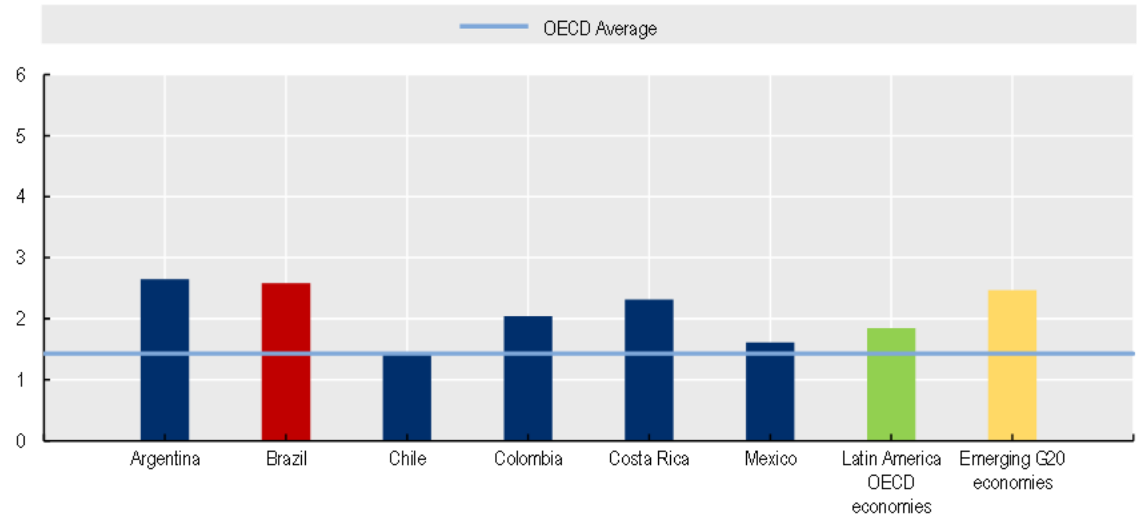
Results for the economy-wide PMR indicator

Brazil's regulatory framework is changing rapidly, and recent developments in the areas covered by the economy-wide PMR indicator reflect some of these changes. Privatisations have reduced public ownership in key sectors. At the same time, Brazil has seen the introduction of new measures to assess the impact of proposed new regulations, lessen the administrative burdens on start-ups, reduce barriers in service and network sectors, and relax barriers to trade and investments. These changes have occurred since the 2018 PMR indicators were calculated, hence these values provide a partial picture of the regulatory environment. To provide a more complete snapshot of the country's regulatory framework, the next pages provide an analysis of the 2018 results integrated with information on more recent reforms.

The values of the 2018 economy-wide PMR indicator suggest that the regulatory framework currently in place in Brazil is considerably less competition friendly than those reflecting international best practice in many domains and sectors. Indeed, Brazil's PMR indicator values often compare unfavourably with the OECD average, and at times markedly so. They also compare unfavourably with the average PMR values for Latin American OECD economies – some of which have values for their PMR indicators close to or, in some cases, even better than the OECD average (Vitale et al., 2020[7]). By contrast, Brazil's economy-wide PMR indicators are broadly in line with those of G20 emerging economies (Figure 5). Recent reforms are likely to improve Brazil's results, but not in a substantial manner. However, these reforms may be paving the way for more substantial changes that could bring Brazil in line with OECD economies.

Figure 5. Results for the economy-wide PMR indicator, 2018

Index scale 0 to 6 from most to least competition-friendly regulatory framework



Note: The OECD average includes all OECD member countries. Latin America OECD economies is the average of Chile, Colombia, Costa Rica and Mexico. Emerging G20 economies is the average of eight countries: Argentina, Brazil, China, Indonesia, Mexico, Russia, South Africa and Turkey. For most countries, the indicators are based on laws and regulation in force on 1 January 2018. For Costa Rica, Estonia and the US, the information refers to 1 January 2019 and, for Indonesia and China, to 1 January 2020, as these countries provided their answers to the 2018 PMR questionnaire at a later date.
Source: OECD 2018 PMR database; and OECD-World Bank Group 2018 PMR Database.

The result for the economy-wide PMR indicator is the average of the values of the high-level indicator of *Distortions Induced by State Involvement*, and the high-level indicator on *Barriers to Domestic and Foreign Entry* (Figure 6). Sections Results for the Economy-wide PMR indicators and Results for Barriers to Domestic and Foreign Entry below discuss the results of these two high level indicators separately.

Figure 6. High-level indicators within the economy-wide PMR

Source: (Vitale et al., 2020[7]).

Results for distortions induced by state involvement

This high-level indicator capturing potential sources of barriers to competition that may arise from state involvement in the economy.

In 2018 Brazil’s result for this high-level indicator was relatively high when compared with the OECD average. It also compared unfavourably with the average of OECD Latin American economies, even if it was broadly in line with those of the average of G20 emerging economies. Recent reforms are likely to improve Brazil’s performance in this indicator to a limited extent.

These include:

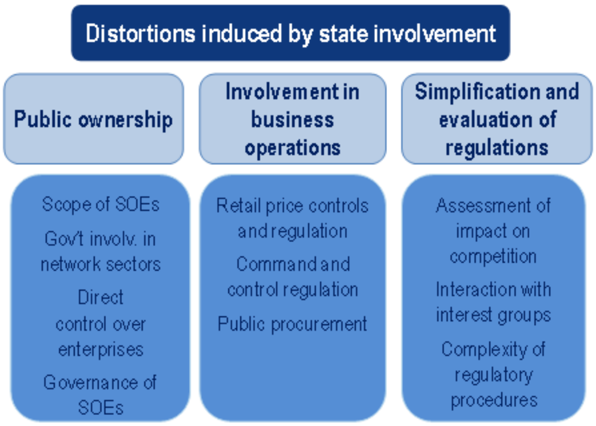
- Recent and ongoing privatisation in some sectors, including notably the electricity and gas sectors.
- A recent law reducing the scope for political appointments to SOEs.
- A public procurement law, which is currently being rolled out, that should improve the design of public tenders and facilitate participation by domestic and foreign bidders.
- Ongoing efforts to reduce the complexity of regulatory procedures.
- Steps towards a systematic requirement for *ex ante* regulatory impact assessment when new laws and regulations have to be introduced.

Reforms, however, address only partially the weaknesses the country shows in the areas of public ownership and involvement in business operations. Despite privatisation efforts, Brazil still reflects significant state ownership, and the corporate governance of SOEs lags behind international best practice. The country has made some inroads towards alleviating retail price controls and regulation, but high level of retail price controls relative to the OECD persists in the economy. Public procurement remains an area of attention despite a new public procurement law, with room for further improvements to, for example, increase the use of e-procurement. In addition, Brazil can go further to reduce compliance costs and administrative burdens on enterprises and to ensure clear communication of laws and regulation.

Similarly, efforts to simplify and better evaluate regulations have thus far remained limited. Requirements to assess of the impact of new laws and regulations remain limited to subordinate regulations issued by a subset of regulators. In addition, Brazil has limited requirements for authorities to engage stakeholders in the development of new laws and regulations. Finally, the country lacks a comprehensive framework on the interaction between public officials and interest groups in the regulatory and legislative process, and very little guidance on how to deal with conflict of interests concerning public officials.

The next sub-sections discuss Brazil's result in each of the 10 low-level indicators included in *Distortions Induced by State Involvement* (Figure 7), highlighting the improvements made since 2018, but also the remaining weaknesses.

Figure 7. Low-level indicators under the high-level distortions induced by state involvement indicator



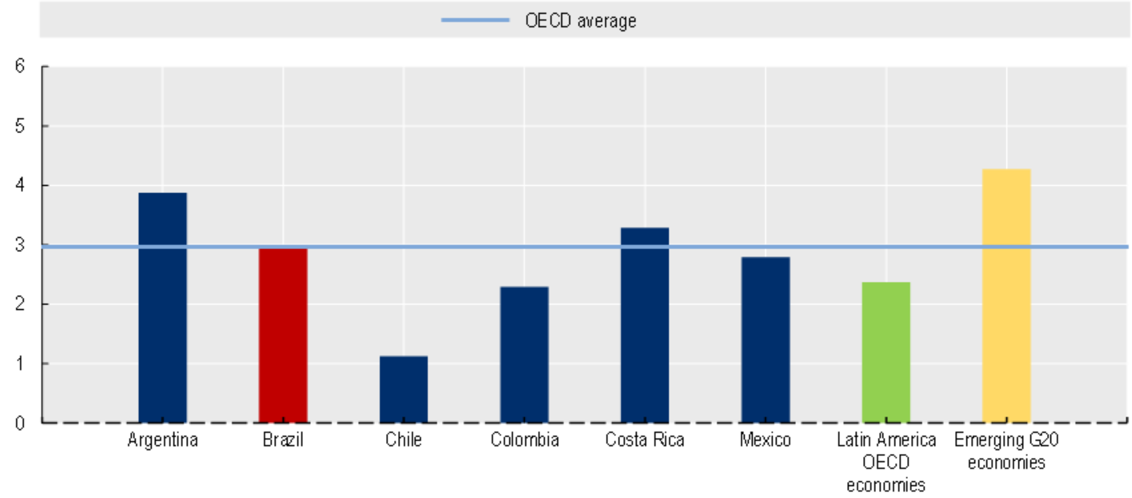
Source: (Vitale et al., 2020[7]).

Scope of SOEs

According to data collected through the 2018 PMR questionnaire, the value of the sub-indicator ***Scope of SOEs*** reflects extensive state presence across many sectors of the economy. However, it is not much higher than the OECD average and compares favourably with its G20 peers (Figure 8).

Figure 8. PMR low-level indicator: Scope of SOEs, 2018

Index scale 0 to 6 from most to least competition-friendly regulatory framework



Note: The OECD average includes all OECD member countries. Latin America OECD economies is the average of Chile, Colombia, Costa Rica and Mexico. Emerging G20 economies is the average of eight countries: Argentina, Brazil, China, Indonesia, Mexico, Russia, South Africa and Turkey. For most countries, the indicators are based on laws and regulation in force on 1 January 2018. For Costa Rica, Estonia and the US, the information refers to 1 January 2019 and, for Indonesia and China, to 1 January 2020, as these countries provided their answers to the 2018 PMR questionnaire at a later date.
Source: OECD 2018 PMR database; and OECD-World Bank Group 2018 PMR Database.

Recent ongoing privatisations in some sectors may slightly improve Brazil's performance in this area, but Brazil still has 155 directly and indirectly owned SOEs across a wide range of economic activities[11]. While it might be justified for a country to retain a certain level of participation in specific, more strategic, sectors, this indicator shows that there may be room for further reducing the presence of SOEs in others.

As discussed below, reforms that took place since 2018 mean that Brazil's state ownership has declined to some extent compared to what is measured in the 2018 PMR indicators portrayed above. Following the announcement of a privatisation package, some subsidiaries of SOEs were sold to private investors during 2019 and BNDESPar, the private equity arm of the national development bank BNDES, reduced its participation in several companies. Privatisation of Eletrobras will likely continue to reduce state presence in the electricity segments, as will Petrobras divestments in the transmission and distribution segments of the gas sector. Further privatisations of smaller SOEs are planned, but the political consensus for privatising key public enterprises, such as large public banks, which would require congressional approval, appears limited (OECD, 2020[9])

Governance of SOEs

State ownership of firms is not necessarily a concern *per se*. However, Brazil's public enterprises are bound by stringent budget rules and lack the flexibility to adapt to changing market conditions that private companies could have. Moreover, while the 2016 SOE law[12] reduced the scope for political appointments, the context has not otherwise changed. At the subnational level, political parties have maintained strong influence over local SOEs (OECD, 2020[9]). Further, competition could be distorted and allocative efficiency weakened because SOEs are exempt from some of the rules that apply to private companies, e.g. SOEs

[11] Federal Government of Brazil (2022), *State-owned Panorama*, http://www.panoramadasestatais.planejamento.gov.br/QvAJAXZfc/opendoc.htm?document=paineldopanoramadasestatais.qvw&lang=en-US&host=QVS%40srvbsaiasprd07&anonymous=true.

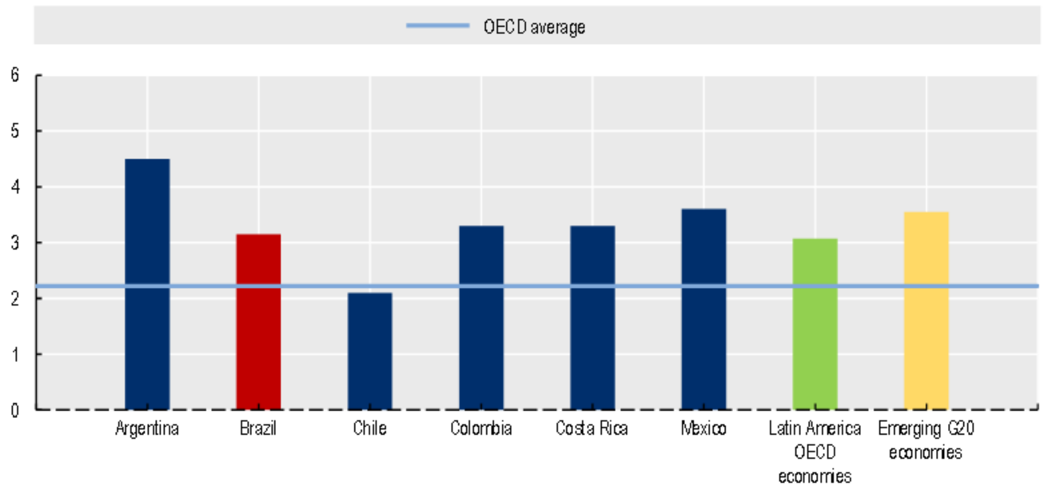
[12] Law 13.303 of 30 June 2016.

are exempt from insolvency procedures. Hence, it is crucial that the framework governing SOEs guarantees that these firms compete on a level playing field with privately owned firms, i.e. that it ensures competitive neutrality among SOEs and privately owned firms.

Indeed, in the low-level indicator that measures the quality of the ***Governance of SOEs***, Brazil scores compare very unfavourably with the OECD average, as well with the OECD Latin American average. However, Brazil fares better than the average of G20 emerging economies (Figure 9).

Figure 9. PMR low-level indicator: Governance of SOEs, 2018

Index scale 0 to 6 from most to least competition-friendly regulatory framework



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Source: OECD 2018 PMR database; and OECD-World Bank Group 2018 PMR Database.

This comparison shows there is room to improve the SOEs governance rules and to align them and their implementation to OECD best practices, as presented in the *2015 OECD Corporate Governance Guidelines* (OECD, 2015[8]).

In Brazil, the ownership rights of the federal government over SOEs are exercised concurrently by the Ministry of the Economy and the line ministries responsible for individual SOEs.[13] Both are represented on SOE boards of directors. In cases where the Ministry of the Economy exercises sole ownership rights (the case in financial SOEs), it typically has the authority to nominate individuals to all board and fiscal council seats that the Federal Government has the right to fill. Where ownership is shared with a line ministry, the Ministry of Economy typically appoints one member of the board of directors and one member of the fiscal council, and the line ministry nominates all the other members of the board of directors that the federal government has the right to elect (OECD, 2020[10]). This means that even in the cases where boards of SOEs select their CEOs, public authorities are heavily involved given their heavy presence in the boards.[14]

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[13] Since 1 January 2019, several line ministries merged into the Ministry of Economy, which continues to play a central co-ordination role.

[14] The Brazilian Corporations Act (art. 142) establishes that shareholders elect the board members who, in turn, appoint senior executives. In the case of national SOEs, this general rule does not apply, according to the Ministry of the Economy's interpretation, because art. 26 of Decree-Law 200/1967 would allow line ministers to appoint the CEO and other senior executives of the SOE. The board of directors still has formally to appoint the senior executives

In addition, ownership rights over SOEs are often exercised by the same body that regulates the sector in which the SOE operates – since the line ministries overseeing SOEs play a role in both policy formulation and ownership. While some ministries have departments or teams dedicated to exercising ownership on behalf of the state, there is no clear separation between public officials responsible for ownership functions and others responsible for sectorial public policies (OECD, 2020[10]). Further, in Brazil, the government does not set clear financial and public policy targets for SOEs. There is only a statutory requirement for SOEs to report *ex post* the costs implementing public policies.

Other weaknesses in the governance of SOEs, in Brazil, include the fact SOEs are subject to different sets of rules when compared to private enterprises. First, as already mentioned above, Ministers responsible for the supervision of a SOE can directly appoint senior executives, including the CEO. Likewise, in the specific case of Banco do Brasil, Law No. 4.595/1964 (article 21) states that the CEO of the bank should be appointed by the President of the Republic. Second, SOEs are excluded from procedures of insolvency or bankruptcy of private companies (Law No. 11.101/2005). Instead, SOEs that are not financially sustainable can face three scenarios: becoming dependent on the public purse, being privatised or being liquidated.

Brazil could seek to adopt policies that promote a level playing field between state-owned and private companies, and limit political interference in the management of SOEs. In so doing, Brazil could draw inspiration from recent OECD work on the corporate governance of SOEs in Brazil (Box 1).

Box 1. OECD Review of the Corporate Governance of State-Owned Enterprises in Brazil and its recommendations

The Brazilian authorities have taken some steps to improve the corporate governance in the SOE sector, including the establishment of the Inter-ministerial Commission on Corporate Governance and Management of Equity Interests of the Union (CGPAR), the introduction of the Corporate Governance Code in 2015 and, notably, the issuance of the 'SOE Statute' (Law No. 13.303/2016) and its implementing regulation.[1] Despite these improvements, concerns remain about the potential use of SOEs for political purposes. This is especially relevant considering the role of political influence over such companies. Board members and CEOs are appointed to SOEs by the Executive Branch without a structured process to select nominees, leading to suspicions of political patronage even after the SOE Statute introduced appointment criteria to reduce such risks.

The 2020 *OECD Review of the Corporate Governance of State-Owned Enterprises in Brazil* provides a number of recommendations, including:

- Reduce the dispersion of decision-making power among many different ownership public entities, and develop a single formal public ownership policy for SOEs.
- The President of the Republic and his ministers should refrain from intervening in the management of SOEs and define their objectives in a transparent manner.
- Strengthen boards of directors in SOEs by preventing conflicts of interest in all committees to the board and to the fiscal council, improving appointment procedures for board directors, and empowering boards to appoint their CEO.
- All relevant Brazilian public authorities and senior leadership in SOEs should ensure the implementation of the SOE Statute by correcting rules and practices that are not compliant with it and its regulatory decree.
- Enhance the professionalisation and independence of corporate officers.

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nominated by the ministers or the President, but there is no known case where the board has denied appointing an executive nominated by a minister or the President.

These recommendations, if implemented, would improve the corporate governance of these firms, and ensure fairer competition between state-owned and privately owned firms.

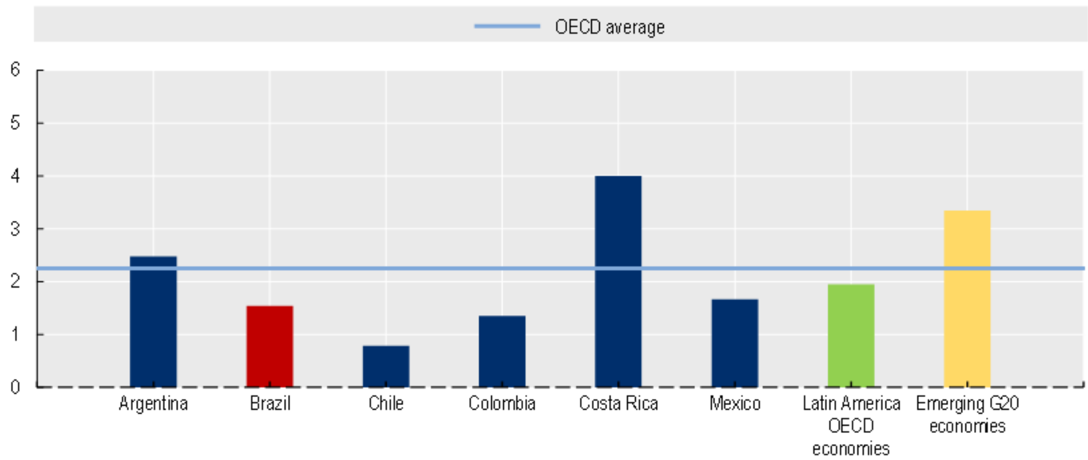
1. It should be noted that these reforms, while very positive, would not affect Brazil's performance in the PMR low-level indicator on the Governance of SOEs.
Source: (OECD, 2020[10])

Government involvement in network sectors

Brazil fares better than both the OECD and OECD Latin American average in the indicator on ***Government Involvement in Network Sectors*** (Figure 10), which measures the size of the government's stake in the largest firm in key network sectors. This score is the result of the largest players in some network sectors being privately owned, and of the government having smaller equity stakes in incumbents than in many of those countries. Recent divestments of Petrobras' assets in the gas sector further enhance Brazil's performance in this indicator, and additional progress is expected as a result of the ongoing privatisation of Eletrobras in the electricity sector.

Figure 10. PMR low-level indicator: Government Involvement in Network Sectors, 2018

Index scale 0 to 6 from most to least competition-friendly regulatory framework



Note: The OECD average includes all OECD member countries. Latin America OECD economies is the average of Chile, Colombia, Costa Rica and Mexico. Emerging G20 economies is the average of eight countries: Argentina, Brazil, China, Indonesia, Mexico, Russia, South Africa and Turkey. For most countries, the indicators are based on laws and regulation in force on 1 January 2018. For Costa Rica, Estonia and the US, the information refers to 1 January 2019 and, for Indonesia and China, to 1 January 2020, as these countries provided their answers to the 2018 PMR questionnaire at a later date.
Source: OECD 2018 PMR database; and OECD-World Bank Group 2018 PMR Database.

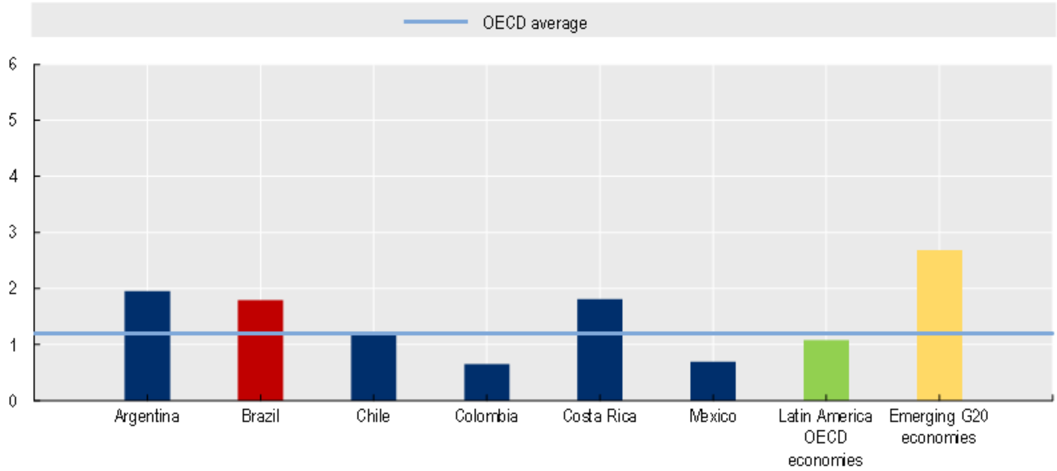
Direct control over enterprises

The indicator of ***Direct Control over Enterprises*** measures the existence of special voting rights held by the government and of constraints to privatisation of its shares. In this indicator (Figure 11), Brazil's PMR indicator compares unfavourably with the OECD average and the OECD Latin American average, reflecting a higher level of government clout over SOEs. However, Brazil scores better than the average of G20 emerging economies.

This score is mainly driven by the presence of constraints on privatisations in networks sectors, such as energy and transport (e.g. rail freight transport, airport and port operations, urban/suburban passenger transport, etc.), and in other sectors such as finance, motion picture production and distribution, building and repairing of ships and boats, the manufacture of chemicals and computer products. According to the *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, constraints on the sale of SOEs should be kept only in strategic sectors, while for all other SOEs the decision should be left to the board (OECD, 2015[8]). Recent decisions to privatise many SOEs have made this issue less pressing.

Figure 11. PMR low-level indicator: Direct Control over Enterprises, 2018

Index scale 0 to 6 from most to least competition-friendly regulatory framework



Note: The OECD average includes all OECD member countries. Latin America OECD economies is the average of Chile, Colombia, Costa Rica and Mexico. Emerging G20 economies is the average of eight countries: Argentina, Brazil, China, Indonesia, Mexico, Russia, South Africa and Turkey. For most countries, the indicators are based on laws and regulation in force on 1 January 2018. For Costa Rica, Estonia and the US, the information refers to 1 January 2019 and, for Indonesia and China, to 1 January 2020, as these countries provided their answers to the 2018 PMR questionnaire at a later date.
Source: OECD 2018 PMR database; and OECD-World Bank Group 2018 PMR Database.

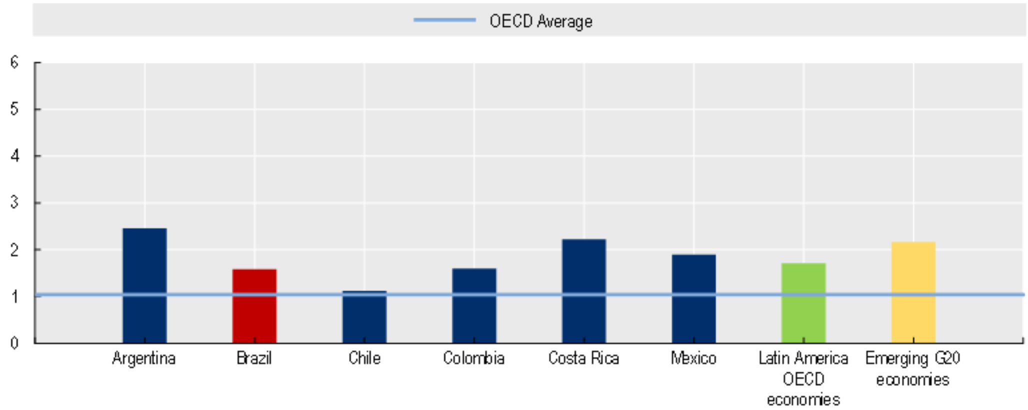
Retail price controls and regulation

The indicator of ***Retail Price Controls and Regulation*** captures the extent and type of controls and regulations imposed on retail prices in key network and services sectors. While retail price controls are more widespread in Brazil than in the average OECD country, they are less common than in other Latin American countries and G20 peers (Figure 12). Despite this, prices are still regulated in several sectors, including for the services provided by notaries, architects, and engineers, for some non-prescription medicines and in a number of network sectors. This is a matter addressed in more details in section Barriers to entry and competition in the services sectors and network sectors below. Addressing these practices would avoid market distortions and ensure that consumers enjoy the benefits of price competition.

It should be noted that Brazil has made some advances in this area since 2018. Notably, retail fares for long-distance domestic passenger transport services by coach are no longer regulated or approved by the government. In addition, regulation of prices for lawyers' services has been replaced with non-binding prices recommended by the professional association (discussed in greater detail in the section on Insights from PMR sector indicators: services sectors).

Figure 12. PMR low-level indicator: retail price controls and regulation, 2018

Index scale 0 to 6 from most to least competition-friendly regulatory framework



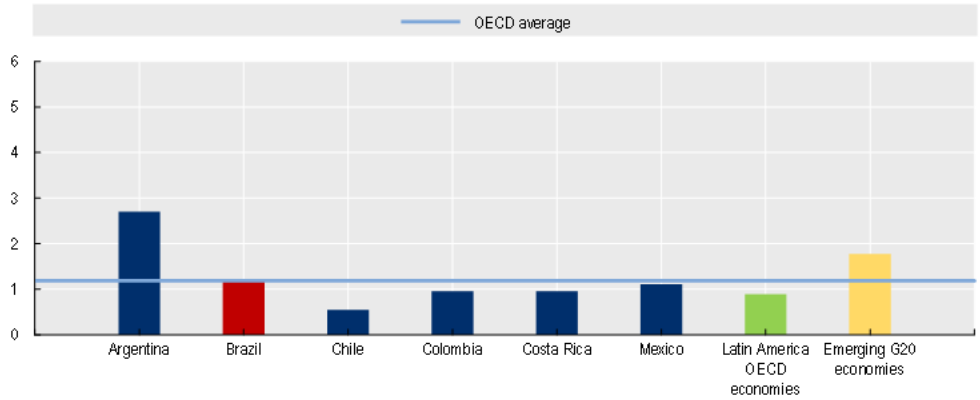
Note: The OECD average includes all OECD member countries. Latin America OECD economies is the average of Chile, Colombia, Costa Rica and Mexico. Emerging G20 economies is the average of eight countries: Argentina, Brazil, China, Indonesia, Mexico, Russia, South Africa and Turkey. For most countries, the indicators are based on laws and regulation in force on 1 January 2018. For Costa Rica, Estonia and the US, the information refers to 1 January 2019 and, for Indonesia and China, to 1 January 2020, as these countries provided their answers to the 2018 PMR questionnaire at a later date.
Source: OECD 2018 PMR database; and OECD-World Bank Group 2018 PMR Database.

Command and control regulation

Brazil's score in the indicator on ***Command and Control Regulation***, which measures the use of coercive rather than incentive-based regulation in both network sectors and service sectors, is close to the OECD average, and a little better than the OECD Latin American average and the average of G20s emerging economies (Figure 13). Brazil could score better if the regulation of some professions was more competition–friendly (a matter addressed in more detail in the section on Insights from PMR sector indicators: services sectors).

Figure 13. PMR low-level indicator: Command and Control Regulation, 2018

Index scale 0 to 6 from most to least competition-friendly regulatory framework



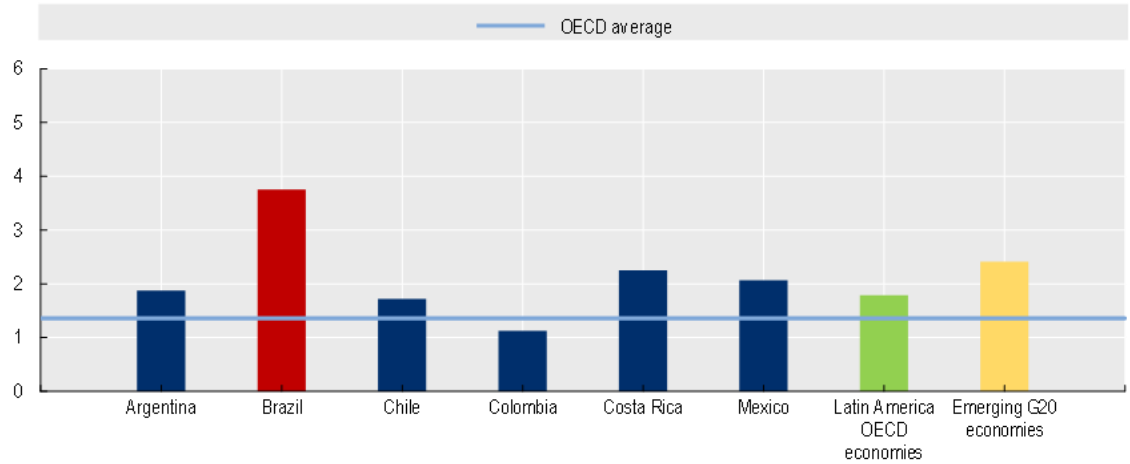
Note: The OECD average includes all OECD member countries. Latin America OECD economies is the average of Chile, Colombia, Costa Rica and Mexico. Emerging G20 economies is the average of eight countries: Argentina, Brazil, China, Indonesia, Mexico, Russia, South Africa and Turkey. For most countries, the indicators are based on laws and regulation in force on 1 January 2018. For Costa Rica, Estonia and the US, the information refers to 1 January 2019 and, for Indonesia and China, to 1 January 2020, as these countries provided their answers to the 2018 PMR questionnaire at a later date.
Source: OECD 2018 PMR database; and OECD-World Bank Group 2018 PMR Database.

Public procurement

The 2018 result for the indicator on the ***public procurement*** of goods, services and public works suggests that the rules in this area are not designed in a way that tries to guarantee that all firms compete on a level playing field. Brazil has a noticeably less competition-friendly public procurement framework than the average OECD economy.[15] Brazil's score also compares unfavourably with the OECD Latin American average and the average of the G20 emerging economies (Figure 14). Improvements could include, for example, measures to ensure that Brazil's regulatory framework for public procurement – both for the procurement of goods and services and for public works – further facilitate participation by bidders and foster competition. It currently does not stipulate that entry requirements should be proportional to the size or value of the tender, and it does not require that deadlines for submitting bids are proportionate to the size or complexity of the tender. Furthermore, there is no requirement for tender documents to be published online, nor to set up systems so that bids can be submitted online.

Figure 14. PMR low-level indicator: public procurement, 2018

Index scale 0 to 6 from most to least competition-friendly regulatory framework



Note: The OECD average includes all OECD member countries. Latin America OECD economies is the average of Chile, Colombia, Costa Rica and Mexico. Emerging G20 economies is the average of eight countries: Argentina, Brazil, China, Indonesia, Mexico, Russia, South Africa and Turkey. For most countries, the indicators are based on laws and regulation in force on 1 January 2018. For Costa Rica, Estonia and the US, the information refers to 1 January 2019 and, for Indonesia and China, to 1 January 2020, as these countries provided their answers to the 2018 PMR questionnaire at a later date.
Source: OECD 2018 PMR database; and OECD-World Bank Group 2018 PMR Database.

However, significant developments have been taking place since 2018. Most notably, a new federal procurement law was adopted in April 2021, which consolidates the fragmented legal framework in Brazil, but will not be fully applicable until 1 April 2023.[16] Since July 2020, all federal authorities must prepare a preliminary technical study (*estudo técnico preliminar, ETP*) when planning procurement of goods, services and works. An electronic repository of public procurement purchases was created in 2018 that can serve for price comparisons at present,[17] but it could be converted into a more comprehensive, centralised e-procurement for public purchases in the future (OECD, n.d.[11]). This will not only allow for bidders in many

[15] It should be noted that public procurement is an area where de jure and de facto realities are often quite different, making comparisons across countries difficult (Vitale et al., 2020[7]).

[16] Law 14.133 of 1 April 2021.

[17]The information shared in this platform – Comprasnet– only covers part of the public procurement carried out at national level. Many municipalities and states use other e-procurement platforms only covers part of the public procurement carried out at national level; many municipalities and states use other e procurement platforms.

public tenders to register online, but it will also assist in the standardisation of public procurement procedures. In addition, the requirement for foreign bidders to have a legal representative in Brazil, and the need for certified translations of foreign language documents, have both been abolished.[18] Brazil is also in the process of joining the World Trade Organization Government Procurement Agreement.

These efforts were recognised in the OECD's 2020 Economic Survey of Brazil, which acknowledged that public procurement procedures for the acquisition of goods and contracting of common services – and particularly electronic auctions, which have increased from 22% to 45% of all federal level procurement from 2017 to 2019 – improved in the last couple of years (OECD, 2020[9]). However, further efforts to make federal procurement more competitive are of the essence. Recent OECD work has highlighted a number of ways through which this could be achieved (Box 2).

Box 2. OECD recommendations to strengthen public procurement in Brazil

The 2021 OECD report *Fighting bid rigging in Brazil: A review of federal public procurement* made a number of recommendations to Brazil on how to better prevent and detect bid rigging in public procurement in line with the *OECD Recommendation of the Council on Fighting Bid Rigging in Public Procurement.* The recommendations, which take into account the changes introduced by the new law, include:

- *Designing procurement procedures based upon appropriate information.* While ETPs (preliminary technical studies) are now mandatory for all federal entities, "market surveys" are merely one possible element of an ETP and are not mandatory. It is particularly important to develop such market investigation practices prior to designing procurement exercises. This could be achieved by mandating a market survey in preliminary technical studies for all procurement processes (possibly with the exception of low-value repetitive tenders for which market research has recently been conducted).
- *Maximising participation of genuine competing bidders*. Currently direct awards are used far too often – even if their use has decreased from 75% of all bids in 2017 to 54% in 2019. The circumstances where such procedures can be relied upon should be tightened, since they can represent a way to favour specific firms and thwart competition. In addition, Brazil should take practical steps to facilitate the participation of more players in public bids. This would involve, for example, developing standard mandatory templates for all types of procurement and all stages of the process (planning, tender phase and execution of the contract) to make participation requirements clearer and more predictable for bidders. All entities involved in overviewing procurement should co-operate in this. The provisions of the new law partially address this, as they require the establishment of certain template documents, like terms of reference and standardised contracts
- *Increasing participation by foreign bidders.* Brazil could study options to relax rules on tendering by international companies and allow independent participation of foreign companies – rather than as part of a consortium.
- *Increasing the use of e-procurement*. Brazil should require procurement bodies to systematically publish all tender documents and receiving bids online at all levels of government, and limit the exceptions to the use of e-procurement to those cases where submission of physical samples are necessary. The new law establishes that e-procurement should be privileged over in-person proceedings and creates a Public Contracting National Portal (*Portal Nacional de Contratações*

[18] Certified translations are still required if the foreign bidder wins the tender.

Públicas, PNCP), though it stops short of imposing an obligation to always rely on e-procurement.

- *Avoiding practices that reduce competition on prices*. Brazil should abandon the current practice of providing a reference price in the tender documentation for goods and services or for public works. Improvements in this area are not only relevant for strengthening competition, but also for reducing the scope for corruption and collusion in public procurement.
- *Recognising and enhancing the essential role of public-procurement officials in the fight against bid rigging*. Hence, the public procurement workforce's employment conditions and level of professionalisation should be improved, including through training and capacity building. The new law introduces new measures to lessen excessive exposure to penalties for public procurement officials mis-applying public procurement rules, including for "non-intentional acts that do not involve private gain".
- *Paying attention to transparency, disclosure and integrity*. Rules pertaining to conflicts of interests, incompatibilities and impartiality in public procurement could be streamlined and strengthened. Building on recent progress with unified electronic procurement platforms can enhance transparency and reduce the scope for economic crimes.
- *Detecting and punishing collusive agreements.* Brazil should be vigilant about the competitive or anti-competitive nature of joint bidding and some sub-contracting practices that might hide collusive agreements. Brazil should also encourage public-procurement officials to report any suspicion of bid rigging to the relevant authorities before annulling the procurement process or starting an inquiry on the tender.

These recommendations, if implemented, would improve how public procurement exercises are run and support authorities in obtaining better value from money.

Source: (OECD, 2021[12])

Complexity of regulatory procedures

Brazil has a fairly high score in the indicator that measures the ***complexity of regulatory procedures*** (Figure 15), as a result Brazil's score compares very unfavourably with the OECD average, that of its G20 peers, as well as with some OECD Latin American economies. However, numerous positive changes are ongoing that may improve the country's performance in this area.

While there is a database of primary regulations in place, Brazil is still rolling out a database of subordinate instruments, as of the time of writing, under the auspices of the "Codex Project," introduced by Ordinance of the General Secretariat of the Presidency of the Republic No. 48/2020. Also, when the data were collected in 2018 Brazil's government did not publish online lists of primary laws or subordinate regulation that are to be prepared, modified, reformed or repealed in the next six months or more. However, a reform introduced in 2019[19] partially addresses this gap and requires regulatory agencies to make public their regulatory agenda. Further, while Brazil has a program to reduce the compliance costs and administrative burdens imposed by the national government on enterprises, this program is limited by the fact that it does not involve costs assessments of existing regulations, or the systematic *ex post* review of such instruments.

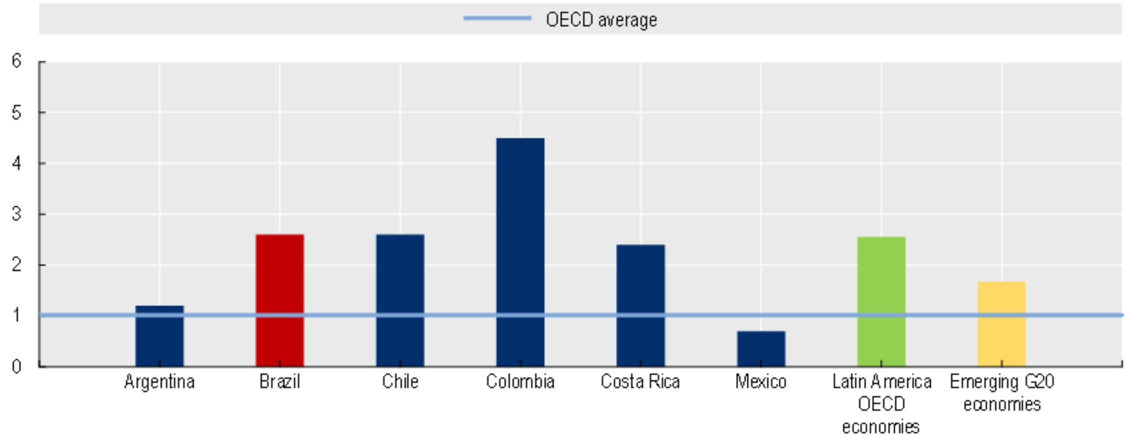
Since 2018, Brazil has continued rolling out new technologies for regulatory administration (e-government). Over 1 000 government services across all areas can now be delivered online (OECD, 2020[9]). This builds on measures to reduce notarization and certified copy requirements in the relations between citizens and

[19] http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/lei/l13848.htm.

the public administration.[20] Recently, measures to digitise signatures and company documents when opening a company have been adopted (OECD, 2020[9]).

Figure 15. PMR low-level indicator: complexity of regulatory procedures, 2018

Index scale 0 to 6 from most to least competition-friendly regulatory framework



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Source: OECD 2018 PMR database; and OECD-World Bank Group 2018 PMR Database.

Despite there being no systematic *ex post* requirement to review existing regulation,[21] recent efforts to take stock of the complexity of current regulations have led to a review of over 3 700 pieces of legislation, of which 3,300 were revoked in February 2020. Brazil should continue to build on these efforts with a view towards identifying further scope for easing and simplification of the administrative burden on firms (OECD, 2020[9]). One such option is conducting competition assessments of specific sectors to identify and remove unnecessary regulations in order to foster a more competitive environment (see the discussion in the section on Insights from PMR sector indicators: network sectors below).

Assessment of impact on competition

In 2018, there was considerable scope for improving the regulatory regime for assessing the impact of new and existing regulations on competition. However, Brazil has made improvements in this area.

A main reason for the poor performance in 2018 was the absence of requirements for public authorities to pursue regulatory impact assessments (RIAs) systematically, but this is beginning to change. In 2019, RIAs became mandatory for eleven regulatory agencies[22] under the Law of Regulatory Agencies

[20] Law 13.726 of 8 October 2018.

[21] Ongoing efforts to introduce systematic *ex post* evaluations of existing laws and regulations are discussed in more detail in (OECD, 2022[13]).

[22] These include the National Electric Energy Agency (Agência Nacional de Energia Elétrica, Aneel), the National Agency of Petroleum, Natural Gas and Biofuels (Agência Nacional do Petróleo, Gás Natural e Biocombustíveis, ANP); the National Telecommunications Agency (Agência Nacional de Telecomunicações, Anatel); the National Health Surveillance Agency (Agência Nacional de Vigilância Sanitária, Anvisa); the National Supplementary Health Agency (Agência Nacional de Saúde Suplementar, ANS); the National Water Agency (Agência Nacional de Águas, ANA); the National Waterway Transport Agency (Agência Nacional de Transportes Aquaviários, Antaq); the National Land Transport Agency (Agência Nacional de Transportes Terrestres, ANTT); the National Cinema Agency (Agência

(Law 13 484/2019) and for the rest of the federal administration with the approval of the Law of Economic Freedom (Law 13 874/2019). It is worth highlighting that these requirements concern subordinate regulations and do not apply to primary laws. In addition, the publication of new written guidance to support the preparation of RIAs has also helped Brazil to support the use of this regulatory tool in line with international best practices. (OECD, 2022[13]) contains an in-depth assessment of Brazil's performance in this area and provides detailed policy recommendations (Box 3).

Box 3. OECD assessment and recommendations to improve the use of RIA

The 2022 OECD report *Regulatory Reform in Brazil* assessed the recent introduction of RIAs *and* made a number of recommendations to Brazil on to best make use of this important regulatory tool.

The assessment

Brazil introduced a gradual implementation of RIA in the federal administration, but the country has not defined concrete and achievable goals for the adoption of this tool and a plan to communicate these expectations clearly is missing.

Stakeholder engagement activities have improved and become a widespread practice; however, public consultation and practices to foster transparency have not yet become a central part of RIA.

Brazil has deployed technical resources to foster the uptake of RIA including capacity building; the main challenge ahead is the cultural change required to adopt RIA effectively.

Recommendations

1. Building on the lessons learned from the gradual introduction of RIA, Brazil would benefit from defining a roadmap with explicit goals for the deployment and adoption of RIA in the public administration as a whole. This roadmap could include:
   - Clear indications on how Brazil plans to include in the RIA discipline all types of regulations emanating from entities belonging to the executive power;
   - Objectives, milestones, and goals to be achieved in the adoption of RIA;
   - Monitoring and evaluation mechanisms to evaluate the RIA system against the goals defined in the roadmap;
   - Clearly defined co-ordination and collaboration mechanisms within, and throughout agencies and ministries.
2. As part of the designation of one or several bodies as oversight entities for better regulation, Brazil could consider granting powers to this body to help ensure effective implementation of the RIA tool.
3. Brazil should foster the engagement of stakeholders in the regulatory process by embedding the requirements for public consultation in the RIA process.
4. Brazil would benefit from securing greater buy-in from ministries and regulatory entities by increasing communication and engagement practices within the administration. Brazil could build on the experience by the regulatory agencies and other institutions with more advanced expertise on RIA, including its own Ministry of Economy, to advocate a change of culture within line ministries. This change in culture should be considered as a necessary condition for RIA to develop and improve over time.

Nacional do Cinema, Ancine); the National Civil Aviation Agency (Agência Nacional de Aviação Civil, Anac); and the National Mining Agency (Agência Nacional de Mineração, ANM).

5. Brazil could foster the use of proportionality criteria and threshold tests for the use of RIA starting with a high threshold for a small number of RIAs.
6. Continue efforts to build a robust data collection to provide information for the regulatory assessments.

Source : (OECD, 2022[13])

A bright area, which was reflected already in the 2018 results, concerns competition advocacy. The competition authority (*CADE*) is an independent body with powers to advocate for competition, and it can perform market studies, which can be a powerful tool to foster competition.[23] However, the government is not required to publicly respond to the recommendations emerging from these studies, neither by stating if and how it will implement them nor, if it decides not to accept them, by justifying such a decision. This can reduce the impact that these recommendations can have in terms of removing barriers to competition that fall outside the traditional scope of antitrust law and weaken the competition advocacy role of CADE.

Interaction with interest groups

This indicator also shows margin for improvement, as in 2018 Brazil's indicator value pointed to a large gap with OECD countries' practices and to a smaller gap with G20 emerging economies.

This indicator looks at two related, yet distinct topics. The first concerns the involvement of stakeholders in the design of new policy interventions. In this area, Brazil lacks good-practice arrangements to involve stakeholders in policy processes[24]. Notably, Brazil lacks requirements for stakeholder engagement in developing primary laws and subordinate regulations, it does not provide written guidance on how to conduct stakeholder engagement, and it does not require that regulators formally consider comments received during stakeholder consultation. Finally, there are no mechanisms in place in the country for the public to provide input or dispute existing laws and regulations on an ongoing basis. Progress since 2018 has affected eleven regulatory agencies;[25] in 2019 Brazil adopted a law that provides for the participation of stakeholders in the design of new regulations by these agencies.[26]

The second area concerns the regulation of the interaction between interest groups and public officials involved in the elaboration, modification, or repeal of laws, regulations, and other policies, plans and programmes, to ensure that the process is transparent. In this latter area Brazil has made some small improvements, as a 2021 decree requires the proactive publication of the agenda of certain officials in the

23 The Secretariat of Competition Advocacy and Competitiveness (Secretaria de Advocacia da Concorrência e Competitividade, SEAE) also performs advocacy activities and market studies, but since SEAE is part of the Ministry of Economics, it is not considered in the PMR indicators. These only focuses on market studies run by independent bodies.

24 For more detail on this issue refer to (OECD, 2022[13])

25 These include the National Electric Energy Agency (Agência Nacional de Energia Elétrica, Aneel), the National Agency of Petroleum, Natural Gas and Biofuels (Agência Nacional do Petróleo, Gás Natural e Biocombustíveis, ANP); the National Telecommunications Agency (Agência Nacional de Telecomunicações, Anatel); the National Health Surveillance Agency (Agência Nacional de Vigilância Sanitária, Anvisa); the National Supplementary Health Agency (Agência Nacional de Saúde Suplementar, ANS); the National Water Agency (Agência Nacional de Águas, ANA); the National Waterway Transport Agency (Agência Nacional de Transportes Aquaviários, Antaq); the National Land Transport Agency (Agência Nacional de Transportes Terrestres, ANTT); the National Cinema Agency (Agência Nacional do Cinema, Ancine); the National Civil Aviation Agency (Agência Nacional de Aviação Civil, Anac); and the National Mining Agency (Agência Nacional de Mineração, ANM).

26 Law 13.848 of 26 June 2019.

executive branch.[27] However, Brazil still lacks a comprehensive legal framework regulating the legitimate interaction between public officials and interest groups. This regulatory gap raises the risk of private interests being advanced in an opaque and non-transparent fashion (for more information about transparency and integrity in interactions with lobbyists, see Box 4). A draft law[28] may fill this gap.

Brazil should also consider extending the rules concerning conflict of interests and cooling-off periods after leaving office to all public officials, including members of legislative bodies. The movement of individuals between the public and private sectors – known as the revolving door – may lead to conflict of interest situations, increasing the risks of corruption. Given their decision-making power, access to key information and influence, former ministers and members of the government can be an important asset for private companies. It is considered good practice to have measures in place to avoid former public officials misusing the information and power they hold to the benefit of private interests.

Box 4. Transparency and integrity in lobbying in Brazil

The *OECD Recommendation on Principles for Transparency and Integrity in Lobbying*[29] were the first international guidelines for governments to address transparency and integrity risks related to lobbying practices. The principles for transparency and integrity in lobbying set out in the OECD Recommendations are organised around four pillars: i) building an effective and fair framework for openness and access; ii) enhancing transparency; iii) fostering a culture of integrity; and iv) adopting mechanisms for effective implementation, compliance and review.

In 2021, the OECD Council released a report on the implementation of this Recommendation across a number of countries including Brazil, despite the country not having adhered to the Recommendation. This report noted that:

- Brazil does not have any transparency requirements – i.e. no type of decision-maker (ministers and/or members of their cabinet, members of legislative bodies, appointed public officials (e.g. political advisors), or any type of civil servant) is under a duty to disclose any contacts it may have on any type of public decision (primary legislation, government regulation, policy, programme or decision, and contract, grant, funding or any other type of award). Following the introduction of Decree 10.889/2021, some categories of officials are now required to publish their agenda.
- Brazil has no regulation covering any type of lobbying, not even non-binding rules such as codes of conduct. Brazil also has no disclosure requirements for lobbying activities.
- Infractions related to the financing of political parties and election campaigns are sanctioned with fines, loss of funding, and loss of official and party offices, but not with prison.
- Regulation in other LAC countries is referred to in order to provide examples Brazil could consider when assessing possible reforms:
- **Chile** has an act regulating lobbying and representations of private interests to authorities and civil servants. Lobbyists are subject to a Code of Good Practice for Lobbyists, which requires them to abide by the principles of honesty and integrity, transparency, professionalism, and compatibility of private and public interests. The country subjects all senior decision-makers to

[27] Decree 10.889, of 9 December 2021.

[28] Law Proposal 4391/2021. This draft law includes, inter alia, provisions for lobbyists to register on a dedicated registry, to refrain from undertaking certain activities, and to report annually on expenses and payments to public officials above a certain amount.

[29] OECD Principles for Transparency and Integrity in Lobbying OECD/LEGAL/0379.

transparency requirements regarding all types of public decisions mentioned above. In particular, members of the Executive, the Legislature, regional and local authorities, judicature, senior members of the policy and army and various senior civil servants such as Central Bank Members and the Comptroller General, are subject to disclosure in their contacts with stakeholders that may have an interest regarding the elaboration, enactment, modification, repeal or rejection of laws, administrative acts, public contracts and other policies, plans and programmes. Lobbied public officials and administrations have a duty to register, in a public registry, hearings and meetings with lobbyists, as well as donations and trips. Public administrations also have a duty to maintain a public register of lobbyists and interest representatives. Political finance infractions are sanctioned with prison and fine, and deregistration from political parties.

- **Colombia** has rules concerning conflicts of interest and imposes cooling-off periods for public officials. It sanctions political financing infractions with prison, fines, loss of public funding, forfeiture, party deregistration and loss of office.
- **Costa Rica** sanctions political financing infractions solely with prison and fines and has rules concerning conflicts of interest. However, it does not have any rules governing the interaction with public officials in the regulatory process of interest groups, nor does it have cooling-off periods. Further, while it has requirements to conduct stakeholder engagement, Costa Rica does not regulate how this is to take place.
- **Mexico** subjects the members of its legislative bodies (in particular management bodies and committees of the Senate or the Chamber of Deputies, or senators or deputies contacted individually or jointly) to transparency requirements and regulates lobbying of the legislature. In particular, all lobbyists must be registered together with their interests. Mexico also has conflict of interest rules in place for all types of senior public decision-makers, including cooling-off periods. Finance party infractions are sanctioned with fines, deregistration from political parties and loss of ability to run for office.
- **Peru** subjects all “Officials with public decision-making capacity” (i.e. members of the Executive, legislature, judicature, local authorities, members of SOE boards and certain civil servants with decision-making powers) to act transparently regarding any contact that may influence public decision that has an economic, social or political significance of an individual or collective nature, or that affects interests in the various sectors of society. Peru also has an act regulating lobbying. Public officials must only meet lobbyists in their institutional headquarters and must register all their visits. Political financing infractions can lead to prison, fines, loss of public funding and loss of possibility to run for office.

Source:; (OECD, 2021[12]) ; (OECD, 2010[14])

Results for barriers to domestic and foreign entry

This high-level indicator captures potential regulatory barriers to the entry and expansion of domestic and foreign firms.

In 2018, Brazil’s PMR score in this high-level indicator showed that its regulatory framework in this area was less competition friendly than the OECD average and the OECD Latin American average, though Brazil’s score was broadly in line with that of G20 emerging economies. However, recent reforms are likely to improve Brazil’s performance in this indicator.

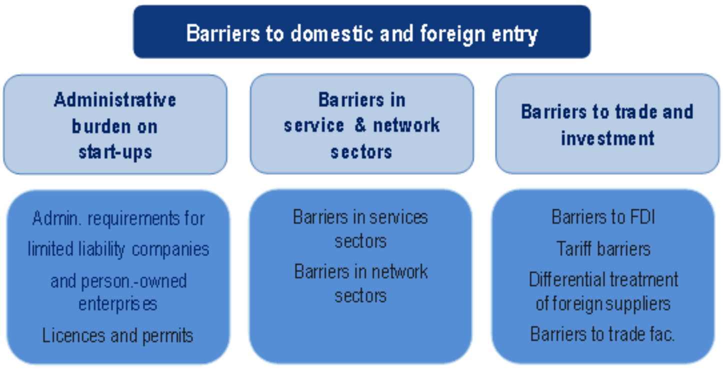
These include:

Some reductions in administrative burdens on start-ups, such as the removal of a requirement to certificate documents necessary to start limited liability companies and personally-owned enterprises, wider application of the "silence is consent" rule, and the establishment of an online one-stop shop for starting new businesses;

- The easing of barriers to entry in some network sectors. This includes, first, the creation of a secondary market for spectrum. Second, recent reforms have introduced the requirement to vertically separate monopolistic and competitive activities in the gas sector (specifically introducing full ownership separation between the gas transmission operator and all other companies active in other segments of the gas market, a process already well underway, and operational separation between gas generation and import companies from gas distribution companies)[30];
- The reduction of barriers to foreign direct investments in air transport, in the insurance sector and in financial institutions;
- The lowering of tariffs on the import of some goods, including a temporary horizontal reduction on a wide swath of products ending in December 2023 and a reduction on many compounds in the chemicals sector through MERCOSUR;
- Some steps to level the playing ground between foreign and domestic firms, namely relaxing the rules limiting the provision of water transport cabotage services and changing the requirement for foreign firms to have legal representatives in-country to bid in public tenders.

Nevertheless, these efforts are not yet sufficient to bring Brazil's regulatory framework in line with that of the average OECD country. In particular, barriers to trade concerning tariffs and trade facilitation remain high. In addition to some of the highest effectively applied import tariffs[31] in terms of value and coverage in the region, various forms of non-tariff barriers, including local content requirements, limit competition by foreign companies (OECD, 2020[9]). Furthermore, some discriminatory restrictions to FDI remain in place. While for barriers to foreign entry in services sectors and in network sectors in some areas, particularly in regulated professions, there is still substantial scope for pro-competition reforms.

Figure 16. Low-level indicators under the high-level barriers to domestic and foreign entry indicator



Source: (Vitale et al., 2020[7]).

The next sub-sections discuss Brazil's result in each of the 10 low-level indicators included in *Barriers to domestic and foreign entry* (Figure 16), highlighting the improvements made since 2018 but also the remaining weaknesses.

30 For more details on the reforms in the Brazil gas sector please refer to (Vitale et al., forthcoming[17])

31 The PMR gauges tariff trade barriers using the effectively applied tariff data from the UNCTAD Trade Analysis Information System database, which can be accessed at https://wits.worldbank.org/. This data refers to the lowest available tariff, which may be a preferential tariff or the Most-Favoured Nation Tariff.

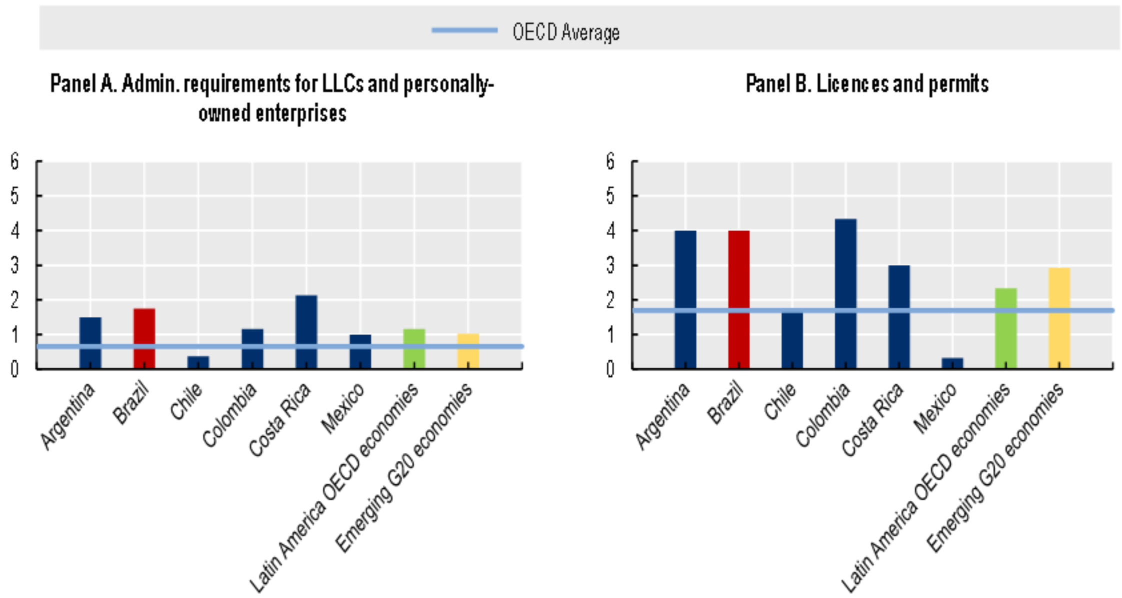
Administrative burden on start-ups

In 2018 Brazil did not score well in the two low-level indicators that measure the administrative burden that new firms must face to start their business (Figure 17).

The low-level indicator on ***Administrative requirements for limited liability and personally-owned enterprises*** (Figure 17, Panel A) captures the steps a business must take to set up a new enterprise, including the number of bodies to be contacted and the associated compliance costs. On this indicator, Brazil's score indicates that the regulatory settings have to change substantially to align with the OECD average. Brazil's result is also higher than that of the average of OECD Latin American economies and of its G20 peers. Recent reforms aimed at cutting red tape would not improve this result, as they do not reduce substantially neither the number of procedures necessary to set up a new firm, nor the number of bodies that need to be contacted.

Figure 17. PMR low-level indicators on measuring the administrative burden on start-ups, 2018

Index scale 0 to 6 from most to least competition-friendly regulatory framework



Note: The OECD average includes all OECD member countries. Latin America OECD economies is the average of Chile, Colombia, Costa Rica and Mexico. Emerging G20 economies is the average of eight countries: Argentina, Brazil, China, Indonesia, Mexico, Russia, South Africa and Turkey. For most countries, the indicators are based on laws and regulation in force on 1 January 2018. For Costa Rica, Estonia and the US, the information refers to 1 January 2019 and, for Indonesia and China, to 1 January 2020, as these countries provided their answers to the 2018 PMR questionnaire at a later date.
Source: OECD 2018 PMR database; and OECD-World Bank Group 2018 PMR Database.

When it comes to the low-level indicator ***licences and permits***, which measures initiatives aimed at simplifying licensing procedures, recent policy interventions are likely to considerably improve Brazil's performance, which was quite negative in 2018 (as shown in Figure 17, Panel B).

Brazil has relaxed some of the administrative requirements to set up a business. In particular it has removed the obligation to notarise or certify documents necessary to start an LLC or a personally-owned enterprise. The naming of a new business has also been made simpler since number of the National Register of Legal Entities (CNPJ) can be used as business name, thereby eliminating the need for the companies and registry authorities to assess whether a firm's proposed name conflicts with those of pre-existing entities. In addition, Brazil has continued to develop e-government tools, discussed further in Complexity of Regulatory Procedures under Section Results for distortions induced by state involvement, some of which make starting a business easier. Despite these small reforms Brazil still lags behind the

OECD average, as well as the average of Latin American OECD economies and the one for G20 emerging economies (see Figure 17, Panel A)

Advances in licensing and permitting, instead, have narrowed the gap between Brazil and OECD countries significantly, which was quite high in 2018 (see Figure 17, Panel B). The first advance comes in the form of a one-stop shop for information and submission procedures relating to starting a business. Brazil has set up a single portal for collecting the information needed to start a business, under the management of Receita Federal do Brasil, the Brazilian federal revenue service agency and a secretariat of the Ministry of Economy of Brazil. Local authorities must adjust their own rules to comply with these simplifications and implementing regulations to ensure that this happens.[32] The second advance enhanced the scope of application of the silence-is-consent rules.[33] Efforts are underway to apply silence-is-consent rules wherever possible and to add the remaining requirements for starting a business to the one-stop shop.

However, there are still opportunities for improvement. For example, Brazil's federal government does not keep a complete count of the number of permits and licences required. This makes it hard to control excessive burdens imposed by lower-level governments, and the lack of a proper assessment of the status quo makes it difficult to implement reforms to reduce such burdens.

Barriers to entry and competition in the service sectors and in the network sectors

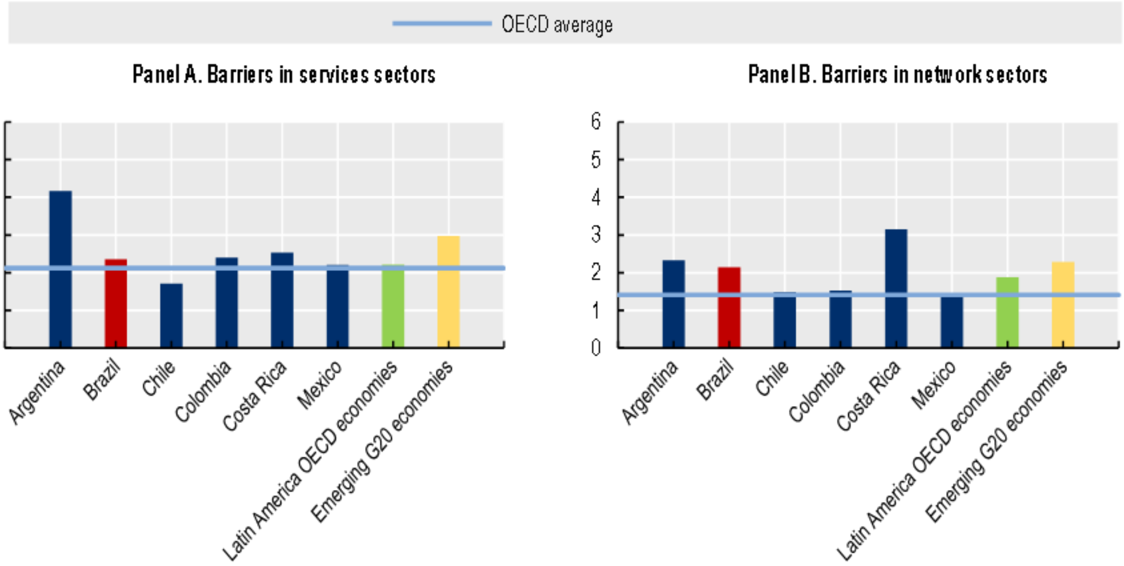
In 2018 Brazil's score in the indicator on ***Barriers in services sectors*** was slightly worse than the OECD average, but similar to peer countries (Figure 18, Panel A). However, when Brazil is compared with the five best performing OECD countries, it is clear that are still considerable margins for improvement. No reforms have been introduced that could affect these results. Regulatory ***Barriers in networks sectors*** in 2018 were lower compared to those in the services sectors, but higher than in the average OECD country, and higher than in peer G20 economies (Figure 18, Panel B). Recent reforms, however, are going in the right direction.

[32] Resolution CGSIM nº 61/2020 of 12 August 2020. São Paulo has already implemented an online one-stop shop, but other municipalities are still in the implementation phase.

[33] Law No. 13.874 of 20 September 2019.

Figure 18. PMR low-level indicators: Barriers in service sectors and barriers in network sectors, 2018

Index scale 0 to 6 from most to least competition-friendly regulatory framework



Note: The OECD average includes all OECD member countries. Latin America OECD economies is the average of Chile, Colombia, Costa Rica and Mexico. Emerging G20 economies is the average of eight countries: Argentina, Brazil, China, Indonesia, Mexico, Russia, South Africa and Turkey. For most countries, the indicators are based on laws and regulation in force on 1 January 2018. For Costa Rica, Estonia and the US, the information refers to 1 January 2019 and, for Indonesia and China, to 1 January 2020, as these countries provided their answers to the 2018 PMR questionnaire at a later date.
Source: OECD 2018 PMR database; and OECD-World Bank Group 2018 PMR Database.

The following sections use the PMR sector indicators to better understand the nature of these barriers to competition.

Insights from PMR sector indicators: services sectors

The service sector indicators cover general retail distribution and retail sales of medicines, as well as six professions (accountants, architects, civil engineers, real estate agents, lawyers, and notaries).

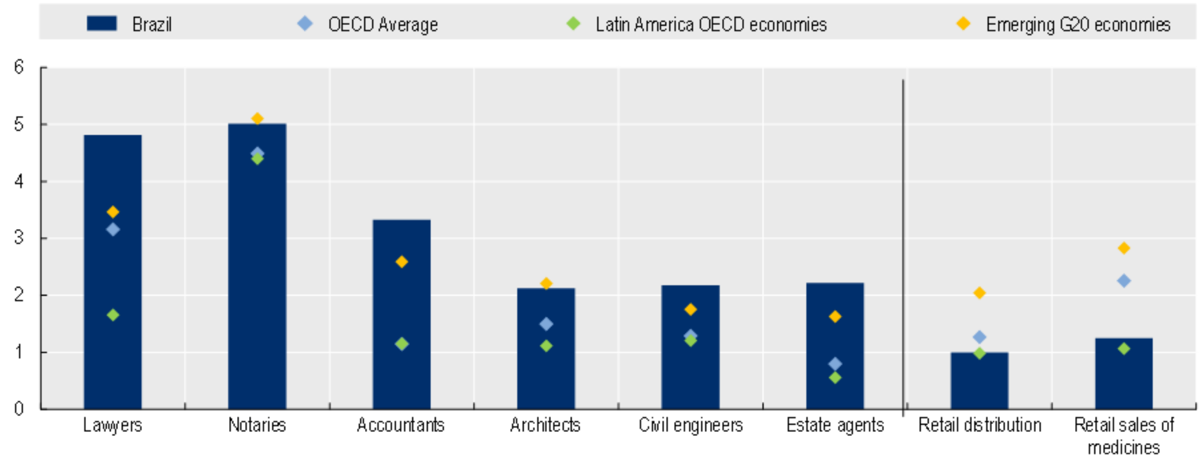
Regulatory constraints to retail distribution and the retail sale of medicines in Brazil are lighter than in many OECD countries. As regards the former, owners of retail outlets can decide on shop-opening hours, only registration in a specific register is required, and, in general, there are few constraints to competition, even with respect to online sales. Concerning the retail sale of medicines, there are no restrictions on the number, location and ownership of pharmacies, which are more common in OECD countries. Reforms since 2018 have further liberalised these sectors, e.g. most non-prescription medicines are now exempt from government-mandate price adjustments and prices are freely set in the market.[34]

However, the PMR sector indicators measuring regulatory barriers to competition in the six regulated professions included in the PMR database show rather high scores (Figure 19). It should be highlighted that this is an area where also OECD countries could perform better. But the regulatory framework in Brazil appears to be even less competition-friendly than in the average OECD Latin American economy and, to a lesser extent, than the average of G20 emerging ones.

[34] Communication CMED No. 2 of 5 March 2020.

Figure 19. PMR sector indicators: Professional Services and Retail trade, 2018

Index scale 0 to 6 from most to least competition-friendly regulatory framework



Note: The OECD average includes all OECD member countries. The average for Latin America OECD economies is the average of Chile, Colombia, Costa Rica and Mexico. Emerging G20 economies is the average of eight countries: Argentina, Brazil, China, Indonesia, Mexico, Russia, South Africa and Turkey. For most countries, the indicators are based on laws and regulation in force on 1 January 2018. For Costa Rica, Estonia and the US, the information refers to 1 January 2019 and, for Indonesia and China, to 1 January 2020, as these countries provided their answers to the 2018 PMR questionnaire at a later date.
Source: OECD 2018 PMR database; and OECD-World Bank Group 2018 PMR Database.

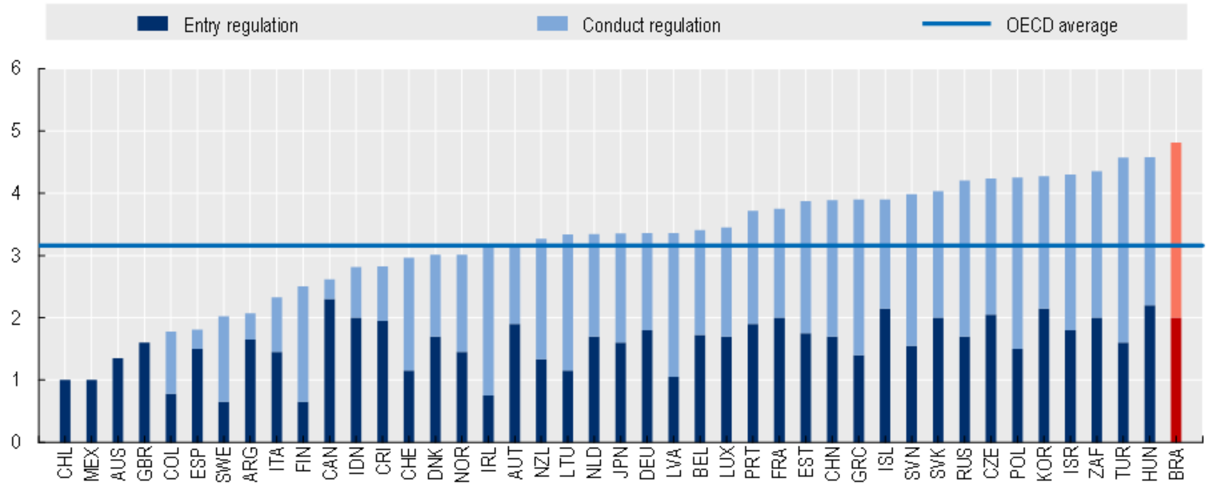
These results are due to the presence of constraints on the legal form that professional firms can take and of territorial restrictions to the movement of professionals within the country. In addition, professional associations can restrict the scope for new entry and limit competition by setting minimum or fixed fees for legal, notarial, architectural and engineering services (binding or recommended). Brazil still reserves exclusive rights for certain ancillary tasks to legal, accounting or architectural professionals, although these tasks could also be performed by other professionals (OECD, 2020[9]). All six professions can be accessed through a single pathway, which for some includes passing an examination run by the professional association. Finally, engineers, lawyers, accountants, architects and real estate agents have to be member of the respective professional associations to be allowed to practice.

Below we discuss more in depth the results for each of the six professions.

Lawyers

A comparison of PMR indicators across individual countries makes it apparent that regulations in Brazil pose higher barriers to entry and conduct into this profession than is observed in OECD countries (Figure 20).

Figure 20. PMR sector indicator for professional services: Lawyers, 2018



Note: For most countries, the indicators are based on laws and regulation in force on 1 January 2018. For Costa Rica and Estonia, this information refers to 1 January 2019 and for Indonesia and China to 1 January 2020, as these countries provided their answer to the 2018 PMR questionnaire at a later date.
Source: OECD 2018 PMR database.

The existence of a single pathway that requires the cumulative requirements to have a university degree, pass an entrance exam and to become a member of the professional association, limits access to the profession.

In addition, Brazil reserves a larger number of services exclusively to lawyers than other countries – including representation before courts, drawing up of legal instruments, and providing advice on international and foreign law (which prevents foreign lawyers from providing services in Brazil). Lawyers also have reserved, though shared, rights to provide advice on a number of matters. These rules are more restrictive than in many other countries.

Brazil also imposes stricter rules on lawyers' conduct including, *inter alia*, restrictions on advertising and marketing and restrictions on business co-operation between lawyers and other professionals. However, the recent liberalisation of lawyers' fees is a positive development.

Until 2018 the fees for lawyers' services were strictly regulated, but soon after the Superior Court of Justice stipulated that the fees for lawyers' services could not be fixed by the professional association, the latter could only issue recommendations on their level. This decision has introduced some competition on prices. However, recommended fees still provide a reference point and could foster tacit collusion. In addition, there is no evidence that consumers are sufficiently well informed about the possibility to negotiate what they are asked to pay. Hence, this intervention is still not sufficient to introduce real competitive pressures on these fees.

Notaries

The provision of notarial services is very strictly regulated in many countries around the world, where notaries exercise administrative and judicial tasks by virtue of power delegated by the state. The special role notaries play in the legal services market justifies some of these regulatory constraints. However, Brazil has rules that are even less competition friendly than the average OECD and OECD Latin American country – though Brazil fares better than the average G20 peer.

The number of notaries is limited, and notaries are only able to practice in the state where they undertook the professional examination and cannot move to other states. In addition, entry into the profession is also subject to candidates being Brazilian nationals. Fees are strictly regulated, and notaries cannot advertise their services.

A few countries have started deregulating the profession, showing that there are margins for introducing greater competition without harming consumers or endangering the proper functioning of the legal system (Vitale et al., 2020[7]). For example, fees have been liberalised in the Netherlands and Italy, geographic restrictions on where to practice have been removed in France, and quantitative restrictions on the number of notaries have been eased or eliminated in France (partially) and in the Netherlands.

Accountants

The value of the PMR sector indicator for this profession compares very poorly with both the OECD average and OECD Latin American average.

Most uncommonly, accountants in Brazil have exclusive rights to provide an extensive number of accounting services. Many OECD countries do not restrict the provision of these services to regulated professions.

Access to the profession is possible only through one single pathway, which involves obtaining a higher education degree followed by a professional certification and passing an examination that is administered by the professional body. Across the OECD, it is unusual for accountants to have access to the profession through a single pathway. Further, it is necessary to be member of a professional organisation to be able to provide accounting services while many OECD countries do not impose such a requirement. In addition, accountants can set up limited liability partnership, but no incorporation is possible, and they face limits on their freedom to advertise their services.

Architects and civil engineers

The regulations imposed on both architects and civil engineers are more competition-friendly than those imposed on the other regulated professions in Brazil, but they are significantly more stringent than in the average OECD country.

Access to these professions is possible only through a single pathway, which requires an earlier higher education degree followed by a professional certification. Many countries offer alternative paths for entering into each of these professions, thus facilitating entry. In addition, architectural and engineering services can only be provided by members of the relevant professional organisation. Many countries do not require architects and civil engineers to belong to a professional organisation, including Argentina, Chile, Colombia and Mexico in the Americas, the Scandinavian and Baltic countries in Europe, and Japan in Asia.

Architects and civil engineers share with other professionals the exclusive rights to provide a number of services, e.g. preparing and submitting studies to the authorities, design and planning, representation for obtaining permits and submit tenders, construction management, and even interior design. Brazil is unusually restrictive in requiring that so many activities can only be provided by regulated professionals, while a number of countries, including many European countries[35] and New Zealand, do not restrict access to the provision of these activities.

In addition, the fees these professionals can charge for their services are regulated, and only civil engineers/architects can have the majority of ownership and voting rights in engineering/architectural firms.

[35] E.g. the Scandinavian and Baltic countries, France, the Netherlands, Switzerland and the United Kingdom.

Real estate agents

Real estate agents face regulation that raises barriers to entry and creates limits on the conduct of professionals that are higher than the OECD average, the average of OECD Latin American countries and, to a lesser extent, the average of G20 emerging economies.

Real estate agents have the exclusive right to perform activities that are not restricted to regulated professionals in many countries, including Chile, Colombia, and Costa Rica, such as facilitating contacts between buyers and sellers, showing properties to interested parties and setting up arrangements between them and even drawing up lease agreements. In addition, only one pathway gives access to the profession, which requires attending an eight-month course, undertaking a period of compulsory practice, and becoming member of the professional organisation.

Insights from PMR sector indicators: network sectors

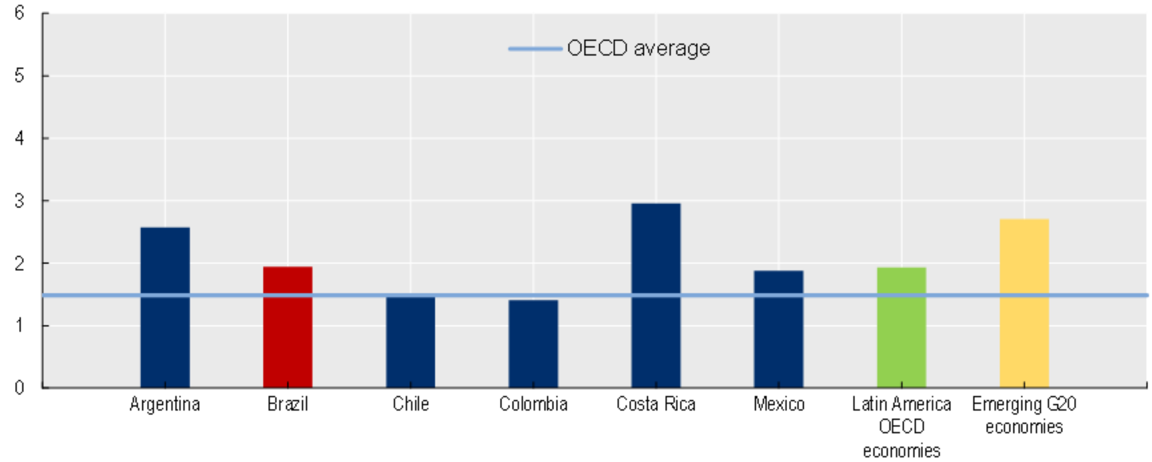
These indicators provide an assessment of how competition-friendly the regulatory framework is in three industries: ***energy, transport,*** and ***e-communications***.

Brazil's 2018 score in the PMR sector indicator for all network industries suggests that the country's regulatory settings are more restrictive than in the average OECD country, but close to the average of OECD Latin American countries and of G20 emerging economies (Figure 21). However, in the last few years Brazil has undertaken reforms, most notably in the energy sector, which have addressed some of the regulatory weaknesses highlighted in the 2018 PMR results.

The importance of network sectors for economic activity, investment, and welfare suggests there could be sizeable benefits from exploring all margins for introducing more competition in these sectors. OECD research drawing on the PMR sector indicators has shown that the effects of competition-friendly regulation in upstream sectors cascade through the economy improving productivity (Bourlès et al., 2013[15]) (Égert and Wanner, 2016[5])and may have a larger effect when countries are further from the technology frontier (Nicoletti et al., 2003[16])

Figure 21. PMR sector indicators: Average of all network sectors, 2018

Index scale 0 to 6 from most to least competition-friendly regulatory framework



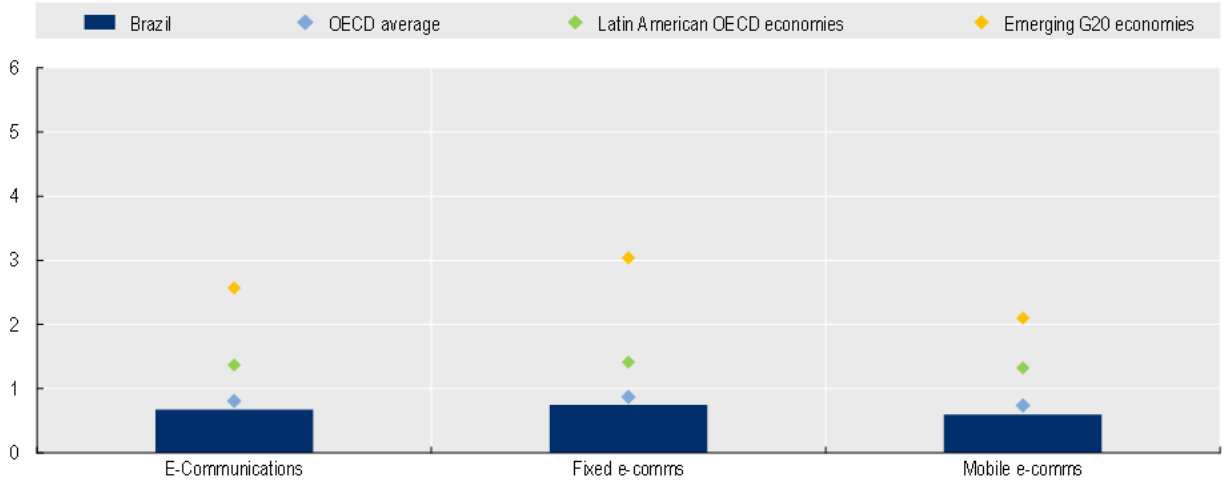
Note: The OECD average includes all OECD member countries. Latin America OECD economies are the average of Chile, Colombia, Costa Rica and Mexico. Emerging G20 economies is the average of eight countries: Argentina, Brazil, China, Indonesia, Mexico, Russia, South Africa and Turkey. For most countries, the indicators are based on laws and regulation in force on 1 January 2018. For Costa Rica, Estonia and the US, the information refers to 1 January 2019 and, for Indonesia and China, to 1 January 2020, as these countries provided their answers to the 2018 PMR questionnaire at a later date.
Source: OECD 2018 PMR database; and OECD-World Bank Group 2018 PMR Database.

E-communications

Looking at individual network sectors, Brazil has very good results in the e-communications PMR sector indicators. The indicators suggest that regulatory settings in both **fixed** and **mobile e-communications** are conducive to competition, with values in line with the OECD average (Figure 22).

Figure 22. PMR sector indicator: E-communications, 2018

Index scale 0 to 6 from most to least competition-friendly regulatory framework



Note: The OECD average includes all OECD member countries. Latin America OECD economies is the average of Chile, Colombia, Costa Rica and Mexico. Emerging G20 economies is the average of eight countries: Argentina, Brazil, China, Indonesia, Mexico, Russia, South Africa and Turkey. For most countries, the indicators are based on laws and regulation in force on 1 January 2018. For Costa Rica, Estonia and the US, the information refers to 1 January 2019 and, for Indonesia and China, to 1 January 2020, as these countries provided their answers to the 2018 PMR questionnaire at a later date.
Source: OECD 2018 PMR database; and OECD-World Bank Group 2018 PMR Database.

It should be noted that in 2018 these indicators reflected the fact that secondary trading of spectrum was not permitted. However, this was amended by Law Nº 13.879, of 3 October 2019, which created a secondary radio frequency market, and Decree Nº 10.402 of 17 June 2020, which authorises telecommunication services and the extension and transfer of radio frequency permits, thereby enabling private investments in the sector. Additional reforms introduced since 2018 are expected to lead to improved investment in this sector but are unlikely to improve the country's performance in the PMR sector indicators.[36]

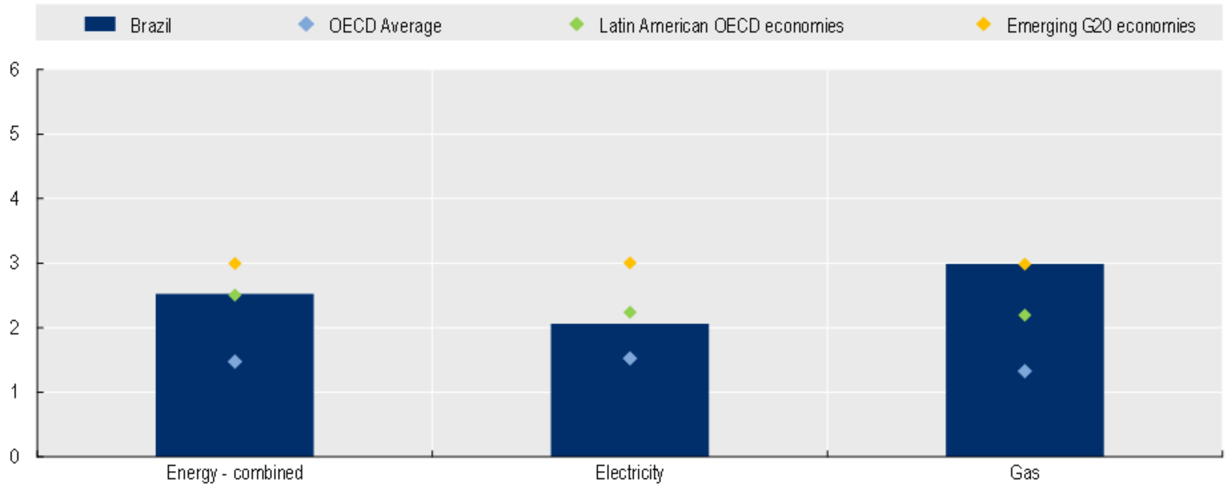
Energy

As regards the energy sector, the 2018 indicators show that both electricity and natural gas have more barriers to competition than the average OECD country (Figure 23).

[36] Law 14.109, of 16 December 2020, restructures the Telecommunications Universalization Fund and allows its use to invest in telecommunication networks. Finally, Law 14.173, of 15 June 2021 rationalises existing sectorial taxes on the provision of internet services via satellite, with a view to incentivising the provision of such services.

Figure 23. PMR sector indicator: Energy, 2018

Index scale 0 to 6 from most to least competition-friendly regulatory framework



Note: The OECD average includes all OECD member countries. Latin America OECD economies is the average of Chile, Colombia, Costa Rica and Mexico. Emerging G20 economies is the average of eight countries: Argentina, Brazil, China, Indonesia, Mexico, Russia, South Africa and Turkey. For most countries, the indicators are based on laws and regulation in force on 1 January 2018. For Costa Rica, Estonia and the US, the information refers to 1 January 2019 and, for Indonesia and China, to 1 January 2020, as these countries provided their answers to the 2018 PMR questionnaire at a later date.
Source: OECD 2018 PMR database; and OECD-World Bank Group 2018 PMR Database.

However, some recent reforms in the gas sector have improved Brazil's performance in this sector. (Vitale et al., forthcoming[17]) provides a detailed assessment of these changes and their impact on Brazil's performance in the relevant PMR indicator, and it outlines the measures that could further foster the development of competition in the gas sector. Box 5 below provides an overview of these policy conclusions.

Box 5. Areas for improvement and insights for policy reform in the natural gas sector in Brazil

In recent years, Brazil has made important strides in reducing the level of public involvement in the sector, promoting market entry and enhancing competition in numerous segments of the natural gas industry.

Additional steps that Brazil could contemplate to foster the development of competition involve:

- Further divesting Petrobras' various gas interests, building on Brazil's significant early efforts to liberalise the sector and in line with Petrobras' agreement with the Brazilian competition authority to divest assets in transportation and distribution.
- Pursuing full ownership separation of gas distribution from gas generation and import companies – current requirements are limited to operational separation.
- Continue pursuing full ownership separation between existing gas transmission companies and all other companies active in the gas market, which is already well underway.
- Implementing the suggestions put forward by (IEA, 2021[18])and (IEA, 2021[19])on the wholesale market.
- Allowing all consumers in all states, regardless of their consumption volume, to choose their retail suppliers, and, when competition becomes effective, liberalising retail tariffs.
- Ensuring that all consumers are provided with the information necessary for them to understand the terms and conditions they are subject to in their annual bill.

- Further harmonising regulatory frameworks between states to facilitate the development of effective competition across borders.

Source: (Vitale et al., 2020[7])

As for the ***electricity*** sector, the value of the 2018 PMR sector indicator compares unfavourably with the OECD average – though not with respect to the average of OECD Latin American economies or of the average of its G20 peers. This is due to the fact that public authorities hold stakes in electricity companies at all levels of the supply, and control in those companies under state ownership can only be divested following legislative authorisation. In addition, Brazil's electricity sector is highly vertically integrated. Companies involved in both electricity generation and transmission, and in electricity distribution and transmission, are only required to ensure accounting separation, and no separation is required between companies active in both electricity distribution and retail supply.

In the last couple of years this has started to change, however. Consider, for example, Elétricas Brasileiras S.A. – Eletrobras. Eletrobras is Latin America's largest electricity company – operating in energy generation, transmission and commercialisation. It controls eight subsidiaries, a holding company (Eletropar), a research centre that is a private association (Cepel) and 50% of Itaipu Binacional. It holds approximately 30.2% of Brazil's installed generation capacity, has a market value of 8,728 million USD and employs 14,641 people. The state owns 63.08% of Eletrobras and exercises this ownership jointly through the Ministry of Economy and the Ministry of Mines and Energy. However, Eletrobras is slated for privatisation[37] and the passage of law 14.182/2021 that provides for the privatisation of Eletrobras marks significant step towards achieving this objective. The government intends to privatise Eletrobras in 2022, and has initiated preparatory actions.

In addition, Eletrobras has divested some of its assets in recent years. The company held direct and indirect interests in 137 special purpose entities in 2020, down from 160 in 2016. At present, Eletrobras has no more distribution companies and is completely focused on the generation and transmission of electricity. In addition, Brazil has created new possibilities for contracting with concessionaires, in the context of wider efforts to introduce competition into the electricity generation sector. In 2018, a legal instrument was adopted regulating the granting of a concession contract in the electricity sector associated with the privatization of the holder of a public service concession for electricity generation, thereby establishing new contract conditions (possibilities) and facilitating the privatization process[38]

In short, Brazil is making progress in fostering competition in the electricity network, even though avenues for improvement remain, most obviously as regards further divestments of public stakes in some market players, and the unbundling of vertically integrated electricity companies.

Transport

Concerning the ***transport sector***, regulatory barriers to competition are highest in rail transport, though this is also the case for most OECD and non-OECD countries. The 2018 PMR result was driven by the fact that rail infrastructure was owned by public companies that are vertically integrated with rail freight service providers, and which limits access to the rail infrastructure to non-integrated operators. However, the situation may have improved since 2018 as a result of recent changes in the rules applicable to freight rail service provided by independent rail operators, which facilitate the use by third parties of rail infrastructure and may lead to improved intra-sector competition on different rail lines.[39]

[37] Provisional Measure No. 1.031 of 23 February 2021.

[38] Decree 9.271 of 25 January 2018.

[39] Resolution ANTT 5.920 of 15 December 2020.

In 2018 there was also no competition in rail passenger transport services, and this has not changed since.

Regulations in air transport, on the other hand, are very competition-friendly, and recent reforms have fully opened the market to foreign investors.[40]

The relative strengths and weaknesses of these PMR indicators are understandable given Brazil's geography and transport structure, and the respective roles that trains and air travel play in it – with the first being quite marginal, while the second one plays an important role.[41]

Road and water transport are also important for Brazil's economy, given its geography, and their regulatory framework is less competition-friendly than the air transport one. However, a recent change in federal legislation for water transport, which broadens permissions for the use of foreign vessels and labour force, represents a positive development.

Historically, the domestic supply of shipping services has been highly concentrated among those (national) companies that obtained the requisite licence. The low quality of port infrastructure and high bureaucratic requirements to provide shipping services add to these challenges (OECD, 2020, p. 75[9]). Further, regulatory barriers have been put in place for providers of container storage and movement services in Brazilian Ports since 2018,[42] despite other improvements to Brazil's regulatory framework in this area.

In the road transport sector,[43] non-transferable licences are required to operate both freight transport and passenger coach transport services. In addition, each new route for passenger transport has to be approved before service provision can start. A 2022 law[44] may further restrict competition, as it introduces the possibility for the economic regulator of terrestrial transport (*Agência Nacional de Transportes Terrestres*) to limit the number of competitors based on economic feasibility of new entry. The implications of this new law rest upon the criteria of feasibility to be defined by the executive as well as its implementing regulations.

Furthermore, until 2019, prices for passenger coach transport services were regulated, but recent provisions have liberalised them.[45] However, in 2018 price floors were established for road freight services following a transport strike (OECD, 2020, p. 69[9]).

Specific aspects of competition in transport sectors – specifically civil aviation and ports – will be the subject of an OECD competition assessment review, expected publication 2022. The review (will apply the OECD Competition Assessment Toolkit to the regulation of the civil aviation and ports sectors, in co-operation with CADE (OECD, n.d.[11]).

Barriers to trade and investment

Strengthening competitive pressures from foreign firms provides a powerful way to raise competition. With exports and imports below 30% of GDP, Brazil's economy is significantly less integrated into international trade than other emerging market economies of similar size. Brazilian companies have also shown only scant participation in global value chains, in a context where other Latin American countries exemplify how

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[40] Law 13.842 of 17 June 2019 permanently eliminated the previous requirement for management and at least 80% of the voting shares of air transport companies to be in the hands of Brazilian nationals. The new regime requires local incorporation only.

[41] However, the PMR indicators do not consider the relative importance of different sectors.

[42] Resolution Antaq 34, of 19 August 2019.

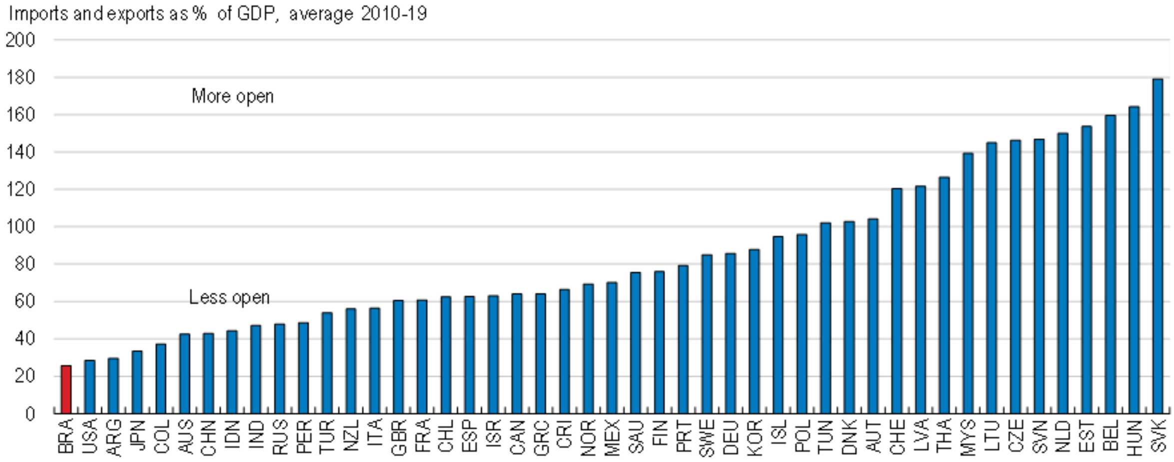
[43] Taxis are not discussed since their regulation is limited to the State level.

[44] Law 14.298 of 5 January 2022.

[45] Decree 10.157 of 4 December 2019.

trade and the integration in global value chains can contribute to economic growth (OECD, 2020, p. 72[9]). Figure 24 shows Brazil's imports and exports as a percentage of its GDP.

Figure 24. Brazil's exposure to international trade, 2010-2019



Source: OECD Economic Outlook database (2020).

Scores of the low-level PMR indicators in the area of barriers to trade and investment are low relative to its scores in other PMR indicators, but high relative to those of other countries.

Tariff barriers to trade

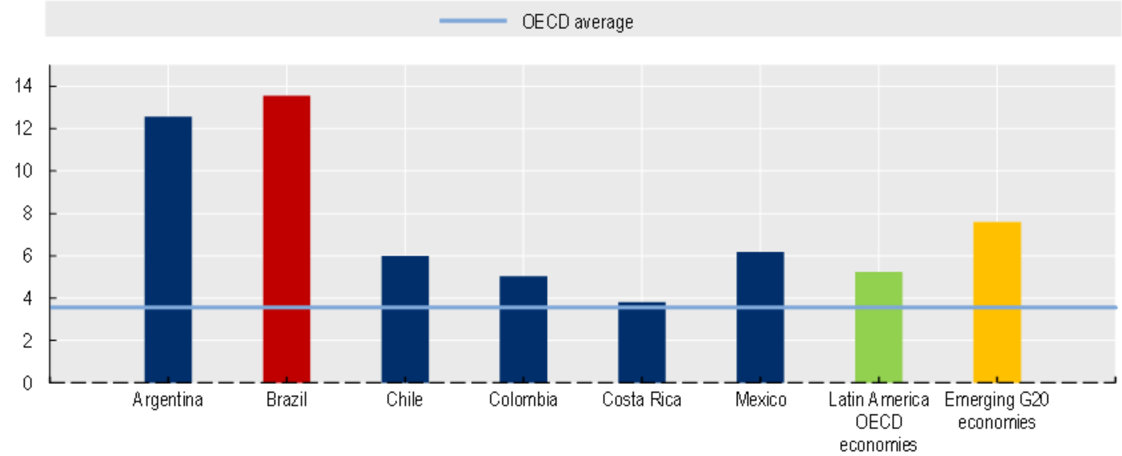
Brazil has taken some steps in recent years to reduce ***tariff barriers to trade***. A 2019 MERCOSUR resolution reduced tariffs affecting many compounds in the chemicals sector (MERCOSUR, 2018[20]). More recently, a resolution reduced import taxes on a wide range of products, although the measure is temporary and will stop at the end of 2023.The scope of tariff exemptions for capital goods has been extended by applying a narrower definition of the availability of domestic equivalents, which rules out these tariff exemptions. In addition, import licensing requirements have been eased in recent years. The imposition of import licensing requirements will be subject to review based on Law nº 14.195/2021 (Article 10, § 3º). The requirement to conduct such a review would not affect the PMR indicator in this area, but represents a positive signal. A National Single Window Project – *Portal Único Siscomex* for both export and import processes has reduced processing delays, and its implementation has continued to progress in recent years (OECD, 2020, p. 75[9]). Additional steps in this direction would facilitate Brazil's external trade, thereby helping Brazil better integrate in the world's economy.

Even after recent reductions, tariff barriers, as measured by effectively applied tariffs on imports, remain high both in absolute terms, and in comparison to other countries. As discussed in the most recent OECD Economic Survey of Brazil (OECD, 2020, p. 71[9]) average tariff levels weighted by imports are significantly higher than its Latin American peers, and Brazil's most frequently applied tariff rate is around 13/14%, while around 450 tariff lines are at 35%, including textiles, apparel and leather and motor vehicles. In addition to tariffs, various forms of non-tariff barriers, including local content requirements, add to the protection of domestic producers. The Economic Survey suggests that they are at the root of significant reductions in imports and exports (OECD, 2020, p. 71[9]).

Figure 25 shows the average value of the effectively applied import tariffs at the time when the 2018 PMR valued where published. These data refer to 2016.[46] In the case of Brazil more recent values do not show any major improvements.[47]

Figure 25. Effectively applied import tariffs, 2016

Effectively applied tariffs, simple average (%)



Note: The PMR gauges tariff trade barriers using the effectively applied tariff data from the UNCTAD Trade Analysis Information System database, which can be accessed at https://wits.worldbank.org/. This data refers to the lowest available tariff, which may be a preferential tariff or the Most-Favoured Nation Tariff. The data refers to 2016, which was the most recent data available when the 2018 PMR indicators were calculated. More recent data is not available for all the countries in the figure.
Source: The United Nations Conference on Trade and Development (UNCTAD) Trade Analysis Information System (TRAINS) database.

Continuing to lower trade barriers may offer a range of benefits for Brazil's economy. The most evident and immediate effects of lowering trade barriers would be a fall in import prices for consumers and firms in downstream sectors, which is particularly important for micro-, small- and medium-sized enterprises, and further participation in global value chains. Partial equilibrium estimates suggest that Brazilian consumers could see their purchasing power increase by 8% if tariff barriers were eliminated (OECD, 2020, p. 73[9]). Moreover, these benefits are highly progressive, as lower income households spend larger shares of their incomes on tradable goods, such as food, home appliances, furniture and clothing. Lowering tariffs would not result in significant tax losses, and the productivity effects of better integration are likely to lead to an expansion of economic activity and to additional tax revenues. Firms would simultaneously gain improved access to intermediate and capital inputs, and they would be more exposed to external competition. This would induce them to upgrade products and processes, reduce slack and cut economic rents. Just like in the case of stronger domestic competition, it would also allow high-performing firms to grow at the expense of less productive ones (OECD, 2020, p. 73[9]).

[46] The PMR low-level indicator on Tariff Barriers to Trade is based on the UNCTAD Trade Analysis Information System (TRAINS) is a computerised database that collects data on trade control measures in 150 countries. The OECD takes from this database the average value of the tariff rates effectively applied in a country for all trade available when the PMR indicators are calculated, which means that the data refers to an older date (in 2018 the data referred to 2016). This average value is broken down in classes to which the 0 to 6 PMR scale is applied.

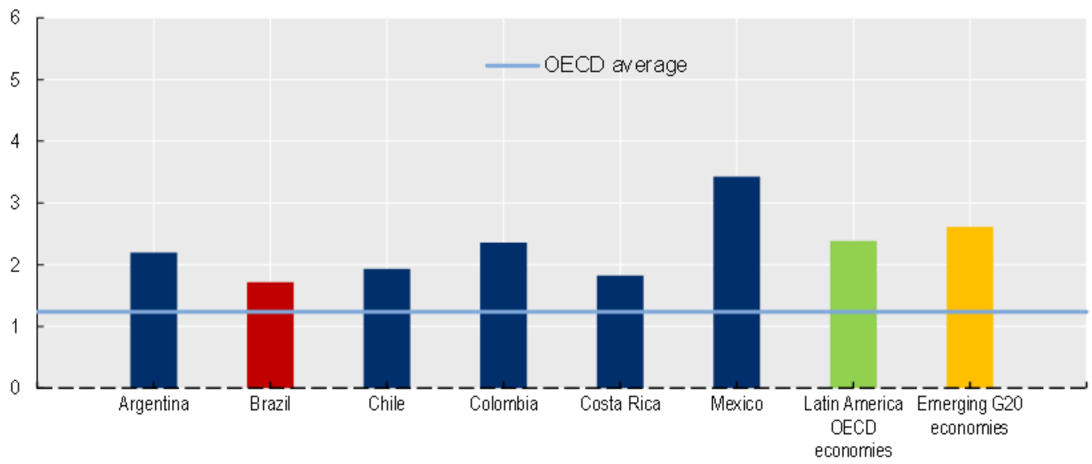
[47] In 2016 the average value of the effectively applied import tariffs for Brazil was 13.56, the most recent available value, which refers to 2019, is 13.43.

Differential treatment of foreign suppliers

Regulations also create relatively high barriers for foreign firms that wish to participate in public procurement processes, or that try to operate in key network and service sectors, as shown by the value of the low-level indicator on ***differential treatment of foreign suppliers***, which compares unfavourably with the OECD average (Figure 26). However, in this low-level indicator Brazil fares better than the average of its G20 peers and the average of the OECD Latin American countries.

Figure 26. PMR low-level indicator: differential treatment of foreign suppliers, 2018

Index scale 0 to 6 from most to least competition-friendly regulatory framework



Note: The OECD average includes all OECD member countries. Latin America OECD economies is the average of Chile, Colombia, Costa Rica and Mexico. Emerging G20 economies is the average of eight countries: Argentina, Brazil, China, Indonesia, Mexico, Russia, South Africa and Turkey. For most countries, the indicators are based on laws and regulation in force on 1 January 2018. For Costa Rica, Estonia and the US, the information refers to 1 January 2019 and, for Indonesia and China, to 1 January 2020, as these countries provided their answers to the 2018 PMR questionnaire at a later date.
Source: OECD 2018 PMR database; and OECD-World Bank Group 2018 PMR Database.

The high value in 2018 is partially explained by the rules that limit access by foreign firms to public tenders. However, the country has started addressing these constraints by recently abolishing the requirement for foreign bidders to have a legal representative in Brazil and the obligation to provide certified translations of foreign documents. Nevertheless, more is necessary to ensure that foreign bidders are not at a disadvantage compared to domestic ones. For example, foreign bidders can participate in all procurement processes, provided they meet all the legal and technical requirements. In practice, however, a foreign company wishing to participate in a tender needs to obtain an authorisation order from the Ministry of the Economy to operate in the country. This authorisation is not required only if the foreign firm is participating as part of a consortium including domestic firms, so the majority of foreign companies prefer to bid jointly with a local company, which reduces the number of participants in tenders (OECD, n.d.[11]).

The 2018 results are also due to are restrictive cabotage regimes in transport. A 2022 law making chartering of foreign vessels more flexible for Brazilian maritime cabotage is a positive development in this area (see also the subsection on transport under Sector PMR indicators). However, foreign planes and road vehicles are still prevented from operating on internal routes.

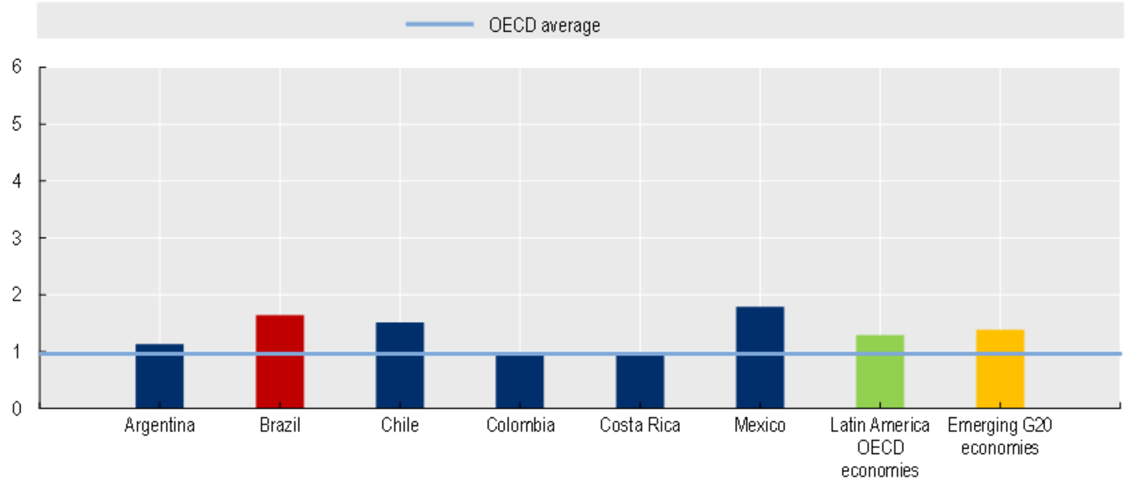
In addition, accountants and lawyers are protected from competition from foreign professionals, since the latter are required to take a local exam in order to be able to practice.

Barriers to trade facilitation

The indicator of ***Barriers to trade facilitation*** reflects the degree of complexity of the technical and legal procedures relating to international trade transactions.[48] The indicator for Brazil is close to the value of other large economies, such as Mexico and Indonesia. However, it is above the OECD, the G20 emerging economies and the OECD Latin American countries averages (Figure 27).

Figure 27. PMR low-level indicator: Barriers to Trade Facilitation, 2018

Index scale 0 to 6 from most to least competition-friendly regulatory framework



Note: The OECD average includes all OECD member countries. Latin America OECD economies is the average of Chile, Colombia, Costa Rica and Mexico. Emerging G20 economies is the average of eight countries: Argentina, Brazil, China, Indonesia, Mexico, Russia, South Africa and Turkey. For most countries, the indicators are based on laws and regulation in force on 1 January 2018. For Costa Rica, Estonia and the US, the information refers to 1 January 2019 and, for Indonesia and China, to 1 January 2020, as these countries provided their answers to the 2018 PMR questionnaire at a later date.
Source: OECD 2018 PMR database; and OECD-World Bank Group 2018 PMR Database.

Brazil has made strides towards improving trade facilitation as it continues implementation of the Single Foreign Trade Portal Programme (*Siscomex*), a single window for the trade community, launched in 2014 and further elaborated in law in 2021. The programme has resulted in a new process for exports, and the module for imports is now being made operational as well. Implementation of this programme continues in 2022.

Brazil can build upon these efforts by targeting areas of greatest impact for trade facilitation: streamlining trade formalities, governance and impartiality, information availability, involvement of trade community, advance rulings and fees and charges, simplification and harmonisation of documents, automation of border processes, and cross-border agency co-operation, as noted in the OECD Trade Facilitation Indicators cross-country comparison tool.

The following are suggested as areas for further improvement (OECD, 2019[21]):

- Reduce the average issuance time for advance rulings, which are prior statements from authorities regarding the treatment the country will provide to an imported good.
- Limit the number and diversity of fees and charges collected during appeals of administrative decisions by border agencies.

[48] This low-level indicator is based on the OECD Trade Facilitation indicators, which assess the implementation of key provisions of the World Trade Organisation's Trade Facilitation Agreement. The data refers to the 2017 update for these indicators. For more information, see https://www.oecd.org/trade/topics/trade-facilitation/.

- Enhance the capacity of border agencies' IT systems to exchange data electronically, complete the development of electronic pre-arrival processing, and improve the quality of telecommunications and IT supporting the automation of border processes.
- Expand the use of pre-arrival processing of import documentation, expand the use of Authorised Operator programmes for operators meeting certain criteria related to compliance, and further simplify procedures in terms of associated time and cost.
- Increase co-operation on the ground between various administrations present at the border by, inter alia, holding regular meetings at the national level in order to improve co-operation.

Barriers to FDI

In 2018, these barriers, as measured in the OECD FDI Regulatory Restrictiveness Index that feeds directly into this PMR low-level indicator,[49] are relatively low in absolute terms and by comparison to the average of G20 emerging economies. However, they are still higher than the OECD average and the average of OECD Latin American countries (Figure 28).

Since 2018, Brazil adopted a number of measures that have led to lower regulatory barriers to FDI. The country repealed the previous 20% limit on foreign investment in air transport and the requirement that directors be exclusively Brazilian nationals.[50] Brazil also repealed reciprocity requirements for foreign insurance companies that wish to invest in the country.[51] Finally, the Central Bank no longer has to authorise foreign investment in financial institutions, and applies to them the principle of national treatment.[52]

These measures have slightly narrowed the gap with the OECD average. Table 1 below shows the changes in the values, calculated using the most recent values for the OECD FDI Restrictiveness Index. In addition, a horizontal restriction related to the access to the national financial system by foreign companies, which currently may be restricted by the Central Bank in case of balance of payment crises, is slated to be removed in December 2022 with the entry into force of Law No. 14.286. Despite these improvements, a number of discriminatory restrictions remain, such as local incorporation requirements in various sectors, and foreign ownership restriction in media and for purchases of rural property. Brazil could consider whether less discriminatory alternatives could be implemented.

[49] The FDI Index is used to calculate the low-level indicator Barriers to FDI. The value of this low-level indicator is set equal to the value of the FDI index, adjusted to a 0 to 6 scale. For more detail refer to www.oecd.org/economy/reform/a%20detailed%20explanation%20of%20the%20methodology%20used%20to%20build%20the%20oecd%20pmr%20indicators_final.pdf.

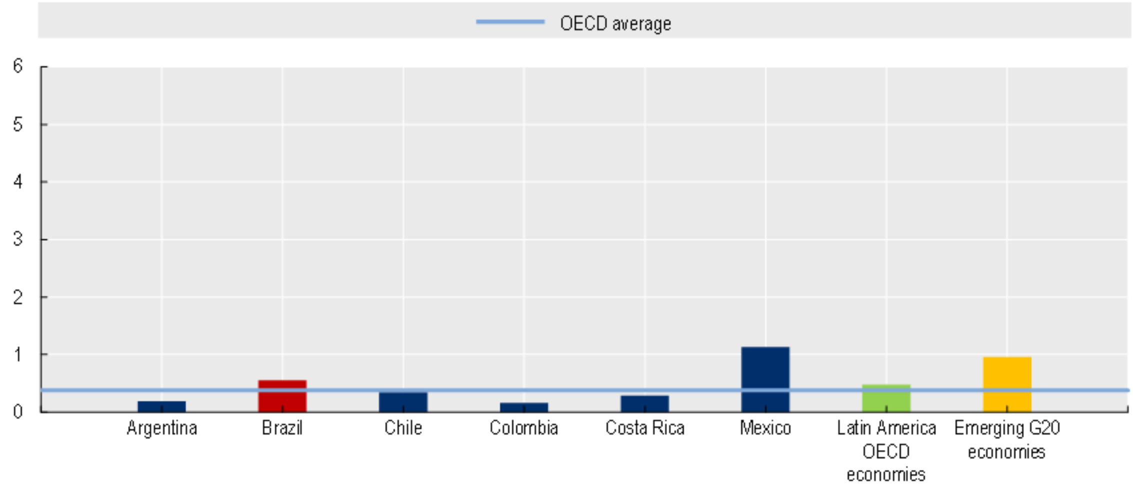
[50] Law 13.842 of 17 June 2019.

[51] Law 13.874 of 20 September 2019.

[52] Circular No. 3.977/2020 of the Brazilian Central Bank (Banco Central do Brazil).

Figure 28. PMR low-level indicator: Barriers to FDI, 2018

Index scale 0 to 6 from most to least competition-friendly regulatory framework



Note: Their vertical axis is on a 0-3 scale to better highlight the differences between the values. The OECD average includes all OECD member countries. Latin America OECD economies is the average of Chile, Colombia, Costa Rica and Mexico. Emerging G20 economies is the average of eight countries: Argentina, Brazil, China, Indonesia, Mexico, Russia, South Africa and Turkey.
Source: 2018 FDI Regulatory Restrictiveness dataset.

Table 1. Low-level indicator on Barriers to FDI, 2018 and 2020

Year	Brazil	OECD average
2018	0.55	0.38
2020*	0.49	0.38

* The values for 2020 are estimated on the basis of the values of the FDI Restrictiveness Index.
Source: OECD FDI Restrictiveness dataset.

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