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Private Enforcement of Competition Law – Note by Italy

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Italy

1. Introduction

1. The experience of private antitrust enforcement in Italy, although still at a relatively early stage of development, offers an interesting perspective on the evolution of the relationship between public and private enforcement, and on the practical challenges involved in turning competition law infringements into effective civil remedies. Over the past two decades, and particularly following the implementation of Directive 2014/104/EU, private enforcement has gained momentum. Italian practice is therefore worth examining not only for the progress it has made, but also for the questions it raises about the conditions under which private enforcement can become a genuinely effective complement to public enforcement.

2. First, Italian experience provides an opportunity to observe the evolution of the interaction between the Italian Competition Authority (AGCM) and the specialised business courts of Milan, Rome and Naples, having sole jurisdiction over Italian private claims based on competition law. The concentration of jurisdiction, the increasingly significant role played by the Authority's infringement decisions in subsequent civil proceedings, and the courts' growing experience in handling complex competition disputes have contributed to the emergence of a more structured body of case law. At the same time, the respective roles of the Authority and the civil courts are not always straightforward. Questions arise, for instance, as to the evidentiary reach of administrative decisions, access to the Authority's investigative file, the degree of detail that infringement decisions should provide to facilitate subsequent damages actions, and the circumstances in which the Authority can assist courts in assessing harm.

3. Second, Italian litigation illustrates the considerable difficulties involved in quantifying antitrust damages. Establishing the existence of an infringement does not necessarily imply that a claimant has suffered a loss, let alone determine its amount. Reconstructing the economic situation that would have prevailed in the absence of the infringement (the so-called counterfactual), assessing the transmission of an overcharge along the supply chain and determining whether it was passed on to customers often require complex economic analysis. These difficulties become particularly acute when claims are brought many years after the conduct, when relevant commercial and accounting records may no longer be available.

4. Third, and perhaps most importantly, the Italian experience sheds light on the factors that are encouraging or, conversely, holding back the development of private enforcement. Legislative harmonisation, the binding effect of final infringement decisions, specialised judicial expertise, the professionalisation of claimants and the emergence of litigation funding have all contributed to its growth. Conversely, lengthy proceedings, the costs and uncertainties of economic evidence, the limited use of collective redress mechanisms and the difficulties faced by consumers and other small claimants continue to constrain its reach. The contrast between the increasing ability of businesses to aggregate and pursue substantial claims and the relative absence of consumers from competition damages litigation is particularly revealing.

5. A dedicated section examines three paradigmatic strands of follow-on litigation, which illustrate how markedly different private enforcement proceedings can be in terms of claimants, objectives and outcomes. The *Trucks* litigation concerns businesses seeking compensation for the additional costs allegedly incurred as a result of a cartel, and

highlights the difficulties of proving and quantifying an overcharge. The bank guarantee litigation shows how a prior competition-law finding can underpin claims for contractual nullity, with competition law operating primarily as a means of defence rather than as a basis for obtaining damages. The Pfizer litigation, finally, involves the State itself as claimant, seeking to recover additional expenditure borne by the National Health Service as a consequence of an abuse of dominance. Taken together, these cases demonstrate that private enforcement is not a homogeneous phenomenon: it can serve different interests, pursue different remedies and produce very different forms of redress, even when it builds on a prior public enforcement decision.

6. The concluding reflections focus on several challenges that remain unresolved. How can private enforcement be made effective when the harm is dispersed among a large number of businesses or consumers, each of whom may have little incentive or practical ability to bring an individual claim? How can its development be encouraged without undermining public enforcement, which pursues broader public-interest objectives and is itself a major driver of private claims? And how can courts reliably quantify harm, including the extent to which an overcharge has or has not been passed on, when proceedings take place many years after the infringement and the underlying evidence may have disappeared? These questions go beyond the technical application of the rules on damages. They concern the institutional balance, procedural arrangements and economic conditions necessary to ensure that private enforcement can fulfil its complementary role in the effective application of competition law.

7. This contribution is organised as follows. Section 2 describes the legal and institutional framework, including the Authority's role. Section 3 traces how private enforcement has developed. Section 4 presents the three cases and Section 5 compares them. Section 6 draws lessons from Italian practice on follow-on and stand-alone claims, the reach of public decisions, disclosure, quantification and the interface between the Authority and the courts. Section 7 discusses the challenges ahead.

2. Overview of the legal and institutional framework

2.1. Main features of d.lgs 3/2017

8. Civil remedies have been available under the Competition Act (Law No. 287 of 10 October 1990) since its enactment. Article 33(2) of the Competition Act currently provides that actions for nullity and damages, as well as interim injunction shall be lodged before specialised court with territorial jurisdiction. Nullity claims have played an important role alongside damages claims in Italian litigation (see Section 4.2 below). Moreover, in the Italian framework, competition-law issues may also arise in unfair-competition proceedings under Article 2598(3) of the Civil Code (see Section 6.5 below). The EU Damages Directive (Directive 2014/104/EU, the "Damages Directive") brought greater harmonisation at EU level in the treatment of claims for damages.

9. The Damages Directive was transposed by Legislative Decree No. 3 of 19 January 2017 ("d.lgs. 3/2017"), in force since 3 February 2017. D.lgs. 3/2017 applies to claims for damages caused by infringements of the EU competition rules (Articles 101 and 102 TFEU) and the equivalent national rules (Articles 2, 3 and 4 of the Competition Act), including when these claims are brought as collective actions (d.lgs. 3/2017, Articles 1(1) and 2(1)(b)).

10. D.lgs. 3/2017 follows the Damages Directive closely and it provides for:

- compensation covering actual loss, loss of profit and interest, but must not exceed the harm suffered (Article 1(2));
- disclosure of evidence, including evidence in the Authority's file, subject to proportionality and the protection of confidential information (Articles 3–6);
- a binding effect for the Authority's final infringement decisions: once a decision can no longer be challenged, civil courts hearing damages actions against the infringer must treat the infringement as proven (Article 7);
- a five-year time limit for bringing a claim (the limitation period). It starts only once the infringement has ended and the claimant knows, or should know, of the conduct and its character as an infringement, the harm and who caused it. It is suspended when the AGCM opens an investigation or proceedings concerning the infringement, until one year after the infringement decision becomes final or the proceedings are concluded otherwise (Article 8);
- joint and several liability, meaning that each participant in the infringement can be required to pay the full damages, with narrowly defined exceptions for qualifying small and medium-sized enterprises and for companies that obtained immunity from fines under the leniency programme (Article 9);
- rules on passing-on, covering both claims by downstream buyers and the defence that an overcharge was passed on, including a rebuttable presumption in favour of indirect purchasers (Articles 10–13);[1]
- rules protecting claims during consensual dispute resolution and governing the effect of settlements on compensation and contribution between infringers (Articles 15 and 16).

11. As regards time, Article 19 provides that Articles 3, 4 and 5 on evidence disclosure and Article 15(2) on the suspension of proceedings during consensual dispute resolution, described as procedural, apply to damages actions brought after 26 December 2014. It is silent on the temporal application of the other provisions, which has been left to the courts (see Section 6.4 below).

2.2. Access to evidence

12. Because claimants usually have less information than defendants, access to evidence is central to private enforcement.[2] Articles 3 to 6 of d.lgs. 3/2017 allow courts to

[1] Rules on passing-on concern two different questions: whether an overcharge reached an indirect purchaser, and whether a claimant passed it on to its own customers. The defendant bears the burden of proving the latter. Full passing-on of the overcharge does not exclude separately proven lost profits. D.lgs. 3/2017, Articles 10(2), 11 and 12.

[2] Information asymmetry has different forms at different stages of the case. The complainant may lack internal communications necessary to establish an infringement in a stand-alone action; a follow-on claimant may already know the infringement but lack sales, discounts and cost data needed to model the overcharge; a downstream purchaser may lack evidence about intermediate price transmission. A disclosure rule that is sufficient for the first problem may be too narrow for the second or unduly intrusive for the third. The proportionate response is targeted requests identifying relevant categories, time windows and economic functions of the data, paired with confidentiality protections and realistic time for response. See European Commission, *Communication on the protection of confidential information by national courts in proceedings for the private enforcement of EU competition law*, OJ C 242, 2020.

order the disclosure of specific and proportionate evidence, subject to safeguards for confidential information and to the public interest in effective public enforcement.[3]

13. Article 3 of d.lgs. 3/2017 broadens the civil courts' pre-existing evidence-gathering powers, notably by allowing requests for defined categories of evidence. If a party gives reasons showing that its claim or defence is plausible, the court may order the other party or a third party to produce specified documents or categories of documents. The order must be proportionate, and the court can protect confidential information, for example by redacting passages, holding hearings in private, limiting the number of people with access or having experts prepare non-confidential summaries. Unjustified failure to comply with a disclosure order, or destruction of relevant evidence, may be punished by administrative fines of EUR 15,000 to 150,000, and the court may treat the relevant fact (to which the evidence relates) as proven (Article 6(1)-(3) and (6)). Leniency statements and non-withdrawn settlement submissions are protected from disclosure (Article 4(5)); pre-existing evidence is not protected merely because it was supplied with them.

14. Evidence in the Authority's file is subject to additional rules (Article 4). A court may order its disclosure only where neither the parties nor third parties can reasonably provide it. Pre-existing documents may be disclosed at any time. Information prepared specifically for the Authority's proceedings, the Authority's own communications to the parties and withdrawn settlement submissions may be disclosed only after the proceedings have ended. Leniency statements and settlement submissions may never be disclosed.[4] The court must inform the Authority of relevant disclosure requests, and the Authority may submit observations on their proportionality (Article 4(7)).[5] These limits also apply to evidence a party obtains through access to the file, and other evidence obtained only in that way may be used solely by the party that obtained it or its successor.[6]

15. Claimants can also approach the Authority directly, outside the Damages Decree. Under Article 24(7) of Law No. 241/1990, the general law on administrative procedure, applicants must in any event be given access to administrative documents whose knowledge is necessary to defend their legal interests ("defensive access").

16. The Authority's file can therefore be reached by two routes with different rules. Under d.lgs. 3/2017, the civil court checks whether the request is specific, necessary and proportionate. Under Law No. 241/1990, the claimant asks the Authority directly, and the Authority balances access against confidentiality under the standard set by the administrative courts.[7] The practical consequences are discussed in Section 6.3.

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[3] See Court of Justice, C-360/09, Pfleiderer, 14 June 2011; C-536/11, Donau Chemie, 6 June 2013.

[4] D.lgs. 3/2017, Article 4(4)-(6), and Directive 2014/104/EU, Article 6. Pre-existing evidence may be disclosed subject to relevance, proportionality and confidentiality. Evidence prepared specifically for the authority's proceedings is temporarily protected; withdrawn settlement submissions also fall within this category. Leniency statements and non-withdrawn settlement submissions receive absolute protection, with a narrowly limited verification procedure before the judge. The categories concern the nature of the evidence, not merely its presence in the authority's file.

[5] Article 4(7) of d.lgs. 3/2017 itself provides for information to be sent to the Authority.

[6] D.lgs. 3/2017, Article 5(1) and (2).

[7] Council of State, judgments Nos. 5176-5178 of 7 July 2021, cit.; S. Stella, "Il ruolo dell'Autorità Garante della Concorrenza e del Mercato nel risarcimento del danno", in A. Argentati (ed.), *Diritto civile e tutela del mercato*, AGCM, Temi e Problemi No. 16, December 2024, pp. 53-69 (hereinafter "Stella (2024)"), at pp. 58-60.

2.3. The effect of public enforcement decisions in civil proceedings

17. Article 7(1) of d.lgs. 3/2017 provides that, for the purposes of a damages action, an infringement found by a decision of the Authority is deemed to be definitively established against the infringer once the decision can no longer be challenged, or has been upheld by a final judgment of the administrative courts. The binding effect covers the nature of the infringement and its material, personal, temporal and territorial scope (the products, the companies, the period and the territory concerned) but not causation or the existence of harm. The same provision specifies that the administrative courts reviewing the Authority's decisions must verify directly the facts on which they rest, including technical assessments that do not involve an objective margin of discretion.[8]

18. Final decisions of competition authorities or review courts of other Member States are evidence of the nature and scope of the infringement, to be assessed together with other evidence (Article 7(2)). Decisions of the European Commission bind national courts under Article 16(1) of Regulation (EC) No 1/2003: national courts may not take decisions that conflict with them. Settlement decisions, in which companies acknowledge their participation in an infringement in exchange for a reduced fine, are infringement decisions. Decisions accepting commitments, by contrast, contain no finding of infringement and do not bind civil courts; under the Court of Justice's *Gasorba* judgment, national courts must nonetheless take account of the preliminary assessment they contain as an indication that the conduct may have infringed competition law.[9]

19. Before 2017 Italian courts had already given the Authority's decisions a special status. According to the Court of Cassation, a final infringement decision is "privileged evidence": the defendant may offer contrary evidence, but may not reopen the facts of the infringement on the basis of the same evidence and arguments already rejected in the administrative proceedings.[10] This case law continues to govern situations in which the binding effect pursuant to Article 7 of d.lgs. 3/2017 does not apply: *e.g.*, claims to which Article 7 does not apply because it was not yet in force, such as the *Pfizer* action brought in 2014 (Section 4.3); decisions of bodies other than the Authority, such as the Bank of Italy's 2005 decision on bank guarantees (Section 4.2); and actions other than damages actions.

2.4. The Authority's role and tools

20. Besides access to its file (Section 2.2) and the effect of its decisions (Section 2.3), the legal framework gives the Authority the following tools:[11]

- assistance on quantification: a court may ask the Authority for guidance on quantifying harm, specifying what it needs. The court decides, after hearing the

[8] D.lgs. 3/2017, Article 7(1).

[9] Law No. 287/1990, Article 14-ter; Regulation (EC) No. 1/2003, Article 9; Court of Justice, judgment of 23 November 2017, *Gasorba and Others*, C-547/16, EU:C:2017:891, paragraphs 26-30; E. Camilleri, "Decisioni con impegni e antitrust private enforcement: verso una convergenza possibile", in A. Argentati (ed.), Diritto civile e tutela del mercato, AGCM, Temi e Problemi No. 16, December 2024, pp. 70-85.

[10] Court of Cassation, judgment No. 13486 of 20 June 2011 and judgment No. 5381 of 27 February 2020, as restated in Court of Cassation, Section I, order No. 9 of 2 January 2024 (*Pfizer*), section 4.1 of the reasoning.

[11] Stella (2024), cit., pp. 53-69.

Authority, the form and arrangements of the assistance, and the Authority must provide it unless doing so would be inappropriate in view of the need to safeguard the effectiveness of public enforcement (Article 14(3) of d.lgs. 3/2017);

- observations on the proportionality of disclosure requests concerning its file (Article 4(7) of d.lgs. 3/2017);
- written observations to national courts, on its own initiative, on issues relating to the application of Articles 101 and 102 TFEU (Article 15(3) of Regulation (EC) No 1/2003);[12]
- the possibility of taking into account, when setting a fine, compensation that the infringer has paid under an out-of-court settlement concluded before the Authority's decision (Article 15(4) of d.lgs. 3/2017); and
- the possibility of being recognised as a qualified entity entitled to bring representative actions on behalf of consumers (Section 2.7).

2.5. The role of the specialised Courts of Milan, Rome or Naples

21. Jurisdiction over civil antitrust actions is concentrated. Since 2017, the actions covered by Article 33(2) of the Competition Act and the corresponding EU-law provisions, including damages, nullity and interim-relief actions, have been allocated at first instance to the specialised business sections of the courts of Milan, Rome or Naples, each covering a group of judicial districts (Article 18). This concentration allows judges to build up expertise, especially when many cases arise from the same infringement. However, a court dealing with an infringement that affected thousands of different transactions must still decide which issues can be examined together and which must be assessed case by case. Second-instance proceedings for private antitrust enforcement are also concentrated before the specialised business sections of the Courts of Appeal in Milan, Rome, and Naples, where both points of law and issues of fact identified in the first-instance judgments can be challenged. Judgments delivered by the Court of Appeal can be further challenged before the Court of Cassation (the Supreme Civil Court), although appeal is strictly limited to points of law or jurisdictional breaches.

2.6. Quantification of harm

22. Under Article 14(1) of d.lgs. 3/2017, damages are assessed under the general rules of the Civil Code: compensation covers actual loss and lost profits that are an immediate and direct consequence of the wrong (Article 1223); the judge may estimate the amount on an equitable basis where it cannot be precisely proven (Article 1226); and compensation may be reduced for the claimant's contributory negligence or excluded for losses that ordinary diligence could have avoided (Article 1227).[13] Article 14(2), a separate provision, establishes a rebuttable presumption that cartels cause harm, without prescribing a percentage overcharge or a fixed award.

[12] D.lgs. 3/2017, Article 14(3); Regulation (EC) No 1/2003, Article 15(3).

[13] Civil Code, Articles 1223, 1226, 1227 and 2056; d.lgs. 3/2017, Article 14(1)-(2). Article 1227(1) concerns the injured party's negligent contribution to causing harm; paragraph 2 excludes losses avoidable with ordinary diligence. Failure to take reasonable measures to limit later losses is an example of the second rule, not necessarily *contributory negligence* under the first. These rules are distinct from passing-on.

23. Courts rely on economic experts they appoint themselves (*consulenti tecnici d'ufficio*, or CTUs), who work under the judge's supervision and whose work is scrutinised by the parties' own experts. Parties may also ask for a preliminary expert assessment before starting proceedings (Article 696-bis of the Code of Civil Procedure), a procedure meant mainly to encourage settlement. A court may also ask the Authority for assistance on quantification (Section 2.4).

2.7. Collective redress, claim aggregation and funding

24. The Italian legal framework envisages two types of collective mechanisms to bring actions. The first is the class action, which since Law No. 31 of 12 April 2019 has been regulated by the Code of Civil Procedure (Articles 840-bis to 840-sexiesdecies). The reform took effect on 19 May 2021 and applies to conduct after that date. Any holder of "homogeneous individual rights", including companies, may use it. Each victim must actively join the action ("opt-in"), although members may now join even after the court has ruled on liability. The previous consumer class-action regime continues to govern earlier conduct.[14]

25. The second type is the representative action, introduced by Legislative Decree No. 28 of 10 March 2023 (implementing Directive (EU) 2020/1828) and available since 25 June 2023. It is brought by qualified entities, such as consumer associations, on behalf of consumers.[15] It covers only infringements of the EU laws listed in Annex II-septies of the Consumer Code, which includes the Digital Markets Act but not Articles 101 and 102 TFEU as such.[16] Independent public bodies designated under Regulation (EU) 2017/2394, which include the Authority because of its consumer protection role, may ask to be recognised as qualified entities.[17] When a representative action concerns facts that an independent authority is investigating, the court may suspend it; the provision preserves the application of d.lgs. 3/2017 within its own scope.[18] Sections 3.4 and 7.1 below discuss how these two tools are used in competition cases.

26. Outside these procedures, claimants can combine claims using ordinary procedural tools: several claimants may join a single action, or transfer (assign) their claims to a single entity that sues in its own name.[19]

27. Italy has no specific legislation on third-party litigation funding, in which an investor pays the costs of a case in exchange for a share of any recovery. Funding agreements are governed by general contract law; funders are subject to financial regulation

[14] Law No. 31 of 12 April 2019, Article 7, as amended; Code of Civil Procedure, Articles 840-bis et seq.; E. Cruellas Sada and S. Gaudiello (Gianni & Origoni), "Private Antitrust Litigation – Italy", *Lexology Panoramic: Private Antitrust Litigation 2025* (law stated as at 14 June 2024) (hereinafter "Gianni & Origoni (2024)"), section "Applicable legislation" under collective actions.

[15] Legislative Decree No. 28 of 10 March 2023 (hereinafter "d.lgs. 28/2023"), Article 4(1) and (2); under Article 4(2), compensatory redress is available only for infringements occurring from 25 June 2023.

[16] Consumer Code, Article 140-ter(1)(c) and (e) and Annex II-septies, point 67, as introduced by d.lgs. 28/2023.

[17] Consumer Code, Article 140-quater(1).

[18] Consumer Code, Article 140-septies(7).

[19] G. Afferni, "Arbitrato e diritto della concorrenza", in Argentati (ed.), *Diritto civile e tutela del mercato*, cit., pp. 86-99, at p. 94, distinguishing representative actions, class actions, joinder and assignment.

only if they qualify as financial entities; and funding agreements are not disclosed in court proceedings.[20]

2.8. Arbitration

28. Finally, competition disputes can be resolved by arbitration in Italy, as the Court of Cassation recognised in 1996.[21] D.lgs. 3/2017 treats arbitration as one of the ways of settling a dispute by agreement: it interrupts the limitation period and affects how infringers share the cost of compensation among themselves (Articles 2(1)(s) and (t), 15 and 16(5)). Arbitration remains subject to effective judicial protection of mandatory EU competition rules.[22] Arbitrators must therefore apply mandatory EU competition rules, including Article 101(2) TFEU, under which prohibited agreements are void, since arbitration does not remove the need to safeguard the public interest dimension of competition law.

3. How private enforcement has evolved

3.1. Volume and composition of claims

29. The absence of a comprehensive official statistical series on private enforcement judgments[23] means that there are no reliable national figures on the annual caseload or the total compensation recovered. The available picture therefore relies on academic and practitioner initiatives[24].

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[20] European Commission, *Mapping Third-Party Litigation Funding in the European Union*, final report, National Report for Italy (C. Poncibò), available here: https://commission.europa.eu/document/download/65adb710-1a36-4550-a4c6-a606adbff061_en?filename=Final%20Report%20EC%20Mapping%20TPLF%20in%20the%20EU.pdf .

[21] Court of Cassation, judgment No. 7733 of 21 August 1996; G. Afferni, "Arbitrato e diritto della concorrenza", in A. Argentati (ed.), Diritto civile e tutela del mercato, AGCM, Temi e Problemi No. 16, December 2024, pp. 86-99, especially pp. 87-88; Gianni & Origoni (2024), section "Alternative dispute resolution".

[22] The European Court of Justice's ISU judgment emphasised this requirement in the specific context of compulsory sports arbitration. See: Court of Justice, judgment of 21 December 2023, *International Skating Union v Commission*, C-124/21 P, EU:C:2023:1012, paragraphs 190-201; Afferni (2024), pp. 87-88. The judgment concerns effective review in the context of compulsory sports arbitration.

[23] Article 15(2) of Regulation (EC) No. 1/2003 requires Member States to transmit national judgments applying Articles 101 and 102 TFEU to the Commission. M. Condinanzi, J. Alberti and F. Croci, "Introduzione", in *Il private antitrust enforcement nelle Corti milanesi: una prospettiva europea*, Eurojus, special issue, June 2020, footnote 15, reported only two Italian judgments transmitted, both delivered in Milan in 2013, on the basis of the Commission's published list. This historical account is not a current audit of transmission or of all Italian judgments. R. Chieppa, "Ruolo dell'AGCM nel private enforcement e possibili ambiti di cooperazione con il giudice civile", Proceedings of XIII conference "Antitrust fra diritto nazionale e diritto dell'unione europea", Treviso, 2018 (Bruylant, 2019), p. 83, reports six Italian judgments on the Commission's website in 2017: five of the Court of Milan from 2013 and one of the Court of Rome from 2007.

[24] Published datasets have different coverage: some count judgments, others proceedings, and some include nullity or contractual actions as well as damages. Examples are Giurisprudenza Antitrust Milanese and ITA.CA - Italian Case-Law on Private Antitrust Enforcement, maintained by Jacopo Alberti and Filippo Croci: https://itaca.europeanlitigation.eu/en/p1. Neither is treated here as a comprehensive national statistical series.

30. Between 1990 and 2010 about 150 actions were reported in total, about three quarters of them "stand-alone", that is, brought without a prior decision of a competition authority.[25] Growth since then has been real but uneven, and has come in waves, each triggered by particular public decisions. The first followed the Authority's 2000 decision on the motor insurance cartel, which led to a large number of claims by consumers and to important Court of Cassation case law.[26] The second, larger, followed the European Commission's *Trucks* decision of 19 July 2016, adopted around the time the Damages Directive was transposed in Italy.[27] A third is now forming around national decisions, most visibly in the corrugated cardboard cartel (see Section 7.4).[28]

31. Counts of judgments confirm the growth but must be read with care as they have different coverage and include decisions at different procedural stages.[29] A 2024 academic study reported more than 300 decisions by the specialised business courts of Milan, Rome and Naples since the 2017 assignment of jurisdiction.[30] A practitioner survey reported more than 130 judgments delivered between 2013 and 2024 in follow-on damages cases alone, at first instance, on appeal and before the Court of Cassation.[31]

32. The analysis of one of the available datasets provides an interesting picture of the private enforcement. The *Giurisprudenza Antitrust Milanese* database, compiled at the University of Milan, covers the Milan courts, an important centre of antitrust litigation. For the period from 2013 to January 2020, this database records 118 decisions of the Milan courts, 78 at first instance and 40 on appeal.[32] The main findings from this database are the following:

[25] Gianni & Origoni (2024), cit., section "Development of antitrust litigation".

[26] Gianni & Origoni (2024), cit., referring to AGCM decision No. 8546 of 28 July 2000, case I377, *RC Auto*.

[27] European Commission, decision C(2016) 4673 final of 19 July 2016, case AT.39824 – *Trucks*; on its role as the main driver of Italian follow-on litigation see Court of Milan, specialised business section A, judgment No. 212 of 11 January 2026, R.G. 47822/2017, section 2 of the reasoning, and Norton Rose Fulbright (2026), cit.

[28] See A. L. Montini, "Main Developments in Competition Law and Policy 2025 - Italy", *Kluwer Competition Law Blog*, 27 January 2026, section on private enforcement (2026), reporting an overall damage estimate close to EUR 2 billion and claims brought by dozens of companies by the end of 2025.

[29] Moreover, a larger number of cases does not in itself show that victims are being compensated more effectively. Nor does a small number of published judgments mean that little is happening: settlements may remain confidential, and a single proceeding may group the claims of many companies.

[30] V. Meli, "Il ruolo del private enforcement per la piena attuazione delle regole di tutela della concorrenza. Grandi aspettative a confronto con la realtà", *Mercato Concorrenza Regole*, No. 1-2/2024, pp. 9-40, footnote 10, relying on the ITA.CA database.

[31] Norton Rose Fulbright, "Antitrust damages litigation in Italian courts: Key challenges and open issues regarding the application of Italy's national legislation implementing the EU Damages Directive", January 2026, section 2.

[32] M. Tavassi, "La realtà del private enforcement in Italia", in *Il private antitrust enforcement nelle Corti milanesi*, cit., pp. 9 ff., at pp. 11-12; on the genesis of the database, Condinanzi, Alberti and Croci (2020), cit., pp. 1 ff.

- Claims were largely upheld in 38 of the 78 first-instance decisions (49%). Of the 40 claims dismissed, 37 (92%) failed for insufficient evidence and the rest on procedural grounds. Appeals succeeded in 13 of 40 cases (32%).
- Of the 78 first-instance cases, 74% concerned abuse of a dominant position and 26% anticompetitive agreements. None concerned mergers.
- By sector, 32% concerned airport fees, 28% telecommunications, 18% banking and 5% energy.

33. Although it covers only Milan, and its caseload is heavily influenced by airport-fee claims, the database shows the historical importance of abuse-of-dominance and stand-alone litigation in that sample. More recent commentary has identified the *Trucks* and corrugated cardboard disputes as two major waves of follow-on cartel litigation. The available material does not allow to establish the importance of follow-on claims with respect to stand-alone ones. Stand-alone claims are significant, particularly in distribution and abuse cases.[33] One fully litigated example is a claim brought in 2007 by about fifty wholesalers against the operator of Rome's wholesale food centre, discussed in Section 6.1.

3.2. What has driven growth

34. Commentators point to several factors behind the growth of private enforcement in Italy. EU harmonisation clarified important rules on access to evidence, time limits, the effect of the Authority's decisions, passing-on and the presumption that cartels cause harm. In particular, d.lgs. 3/2017 made the Authority's infringement decisions binding on civil courts, building on an earlier Italian case-law (Section 2.3). The increase in claims may also reflect a broader awareness among companies that damages actions are now a realistic option.

35. The concentration of cases in only three courts has allowed specialised case law to develop. Furthermore, some of the Authority's key decisions, which were subsequently upheld by judicial review, have triggered private enforcement. A decision that is annulled loses its binding effect and its value as privileged evidence; a follow-on claim filed while the review was pending then becomes, in substance, a stand-alone claim in which the claimant must prove the infringement by other means (Section 6.1). By contrast, where the courts annul only the amount of a fine, as has been the case for some companies in the corrugated cardboard cartel, the finding of infringement remains intact (Section 7.4). The Authority has also paid increasing attention to the effects of the conduct in its decisions, even in serious cases such as cartels, where it does not need to prove effects to establish the infringement (so called "by-object" restrictions).[34]

36. A further driver is the growing professionalisation of claimants, supported by specialised economic consultancies, litigation funders and vehicles that buy and group claims. The case law of the Court of Justice of the European Union, which Italian courts

[33] Gianni & Origoni (2024), cit., citing Court of Milan judgment No. 7389 of 27 September 2022 (selective distribution) and Milan Court of Appeal judgment No. 2979 of 15 October 2021 (abuse of a monopoly over financial data).

[34] For instance, in the Authority's 2019 decision on the corrugated cardboard cartel (case I805), a reference to the effects of the cartel in question was made, by noting the increase in cartelists' average revenues during the period 2013-2017, a trend that was considered to be compatible with the existence and effectiveness of the concentration. See also R. Chieppa (2019), cit., at p. 86.

follow closely, has also steadily widened the range of those entitled to sue and made proof easier.[35]

3.3. What has held it back

37. Commentators also report several obstacles. The first is the length of proceedings. A 2024 practitioner survey estimated about three years for a first-instance case and two for an appeal,[36] but complex follow-on cases take much longer. The Milan *Trucks* damages judgment discussed here was delivered on 11 January 2026 in proceedings started in 2017;[37] the stand-alone claim against the operator of Rome's wholesale food centre, filed in 2007, was decided only in December 2023, after a second round before the Court of Appeal;[38] and a commentary in the specialised literature describes first-instance cases lasting more than ten years as not exceptional.[39]

38. A second obstacle is the cost and uncertainty of economic evidence (Sections 6.4 and 7.3). To estimate the harm, experts must reconstruct what prices would have been without the infringement (the "counterfactual"). This requires expertise whose cost may be disproportionate for smaller claims. The appointment of an expert by the court reduces this burden but does not remove it, since the parties may have to finance both the court-appointed expert and their own experts. The unpredictability of outcomes is reportedly one reason why third-party funders have entered the Italian market more slowly and selectively than other European markets (Section 3.4).[40]

39. Third, collective actions, designed for the many victims who each suffer losses too small to justify suing individually, are still rarely used in competition cases (Sections 3.4 and 7.1).[41]

3.4. Who sues, and how

40. Italian collective actions have so far played a minor role in competition damages. According to practitioners, the few published decisions in competition class actions are isolated and mostly unfavourable to claimants. Most of the class actions open for joining

[35] Meli (2024), cit., section 1; Norton Rose Fulbright (2026), cit., concluding remarks. For an analysis of the preliminary rulings of the Court of Justice see: Magnus Strand, Private enforcement of competition law: a survey of preliminary references to the Court of Justice (2024–2025), *Journal of European Competition Law & Practice*, Volume 17, Issue 1, January 2026, Pages 52–61, https://doi.org/10.1093/jeclap/lpaf055

[36] Gianni & Origoni (2024), cit., "Time frame".

[37] Court of Milan No. 212/2026, cit., heading and summary.

[38] Rome Court of Appeal, second civil section specialised in business matters, judgment No. 8354 of 27 December 2023, R.G. 6104/2015.

[39] Montini (2026), cit.

[40] A. Grifone, *Italia Oggi*, 21 September 2026, pp. 34-35 (hereinafter "Italia Oggi (2026)"), reporting one practitioner's view that funders' interest in class actions is almost non-existent, whereas funding has become a reality for follow-on cartel claims brought directly by injured parties or by assignees, and another's that international funders now treat Italy as a growth market, concentrating on business-to-business antitrust follow-on claims.

[41] Meli (2024), cit., sections 3 and 7.

on the Ministry of Justice register[42] appear to focus mainly on consumer protection rather than competition law: several are based on the Authority's decisions on unfair commercial practices against Volkswagen, Facebook, Apple and Samsung. Practitioners report growth in the register as a whole: 13 collective actions were registered on the Ministry's portal in 2021-2022, 17 in 2023 and 37 in 2024, for a total of more than 100 by 2026. The practitioners quoted attribute much of this growth to the new representative action and to requests to stop unlawful conduct rather than to obtain compensation.[43]

41. Businesses have instead grouped their claims using ordinary procedural tools. The Milan *Trucks* damages judgment was obtained by a group of haulage companies suing together in a single action, supported by their trade association.[44] In the corrugated cardboard litigation, the press reports that a vehicle grouping the claims of almost 300 companies has sought more than EUR 450 million.[45] Practitioners describe these initiatives as more than litigation conduits: alongside the lawyers, a promoter coordinates the claimants, collects and organises the evidence, may acquire the claims, and increasingly uses technology to manage large volumes of documents.[46] One practitioner reports that hundreds of actions for damages caused by conduct sanctioned by the Authority are now pending, brought either directly by the victims or by those who have acquired their claims.[47] These examples concern business claims while consumers still represent the "great absentees" of Italian competition damages litigation.[48]

42. Third-party litigation funding - in which an investor pays the costs of a case in exchange for a share of any recovery - may make it possible to bring expensive, expert-heavy claims that would otherwise be uneconomic. Third-party litigation funding is still emerging in Italy and difficult to measure because funding agreements are not disclosed. The available evidence points to a market that is small overall but concentrated where Italian private enforcement is most active. A study for the European Commission, based on desk research and interviews, identified only a handful of active funders, domestic start-ups and international firms operating from abroad, and reported fewer than five funded cases a year, mostly in antitrust damages and financial litigation.[49] Some claims by Italian hauliers in the *Trucks* litigation have also been brought abroad, notably before Dutch courts, which claimants and their funders regard as more favourable for complex cartel litigation.[50]

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[42] Ministry of Justice, collective-actions portal: https://servizipst.giustizia.it/PST/it/pst_2_16.wp. The figures and characterisation used here are attributed to the practitioner report cited in the next note, not to a new census of the live register.

[43] A. Grifone, Italia Oggi Sette, 21 September 2026, pp. 34-35. The numbers cover collective proceedings generally and do not identify the number of antitrust damages actions. These are reported figures for collective litigation generally, not a census of antitrust damages actions or successful compensation payments.

[44] Court of Milan No. 212/2026, cit., heading; CNA Fita, press release of 29 January 2026.

[45] Italia Oggi (2026), cit., pp. 34-35.

[46] Ibid., remarks of V. Bellucci (Trevisan & Cuonzo).

[47] Italia Oggi (2026), cit., pp. 34-35.

[48] Meli (2024), cit., p. 16.

[49] European Commission, *Mapping Third-Party Litigation Funding in the European Union*, National Report for Italy, cit., sections 1.3, 1.4 and 3(a).

[50] European Commission, *Mapping Third-Party Litigation Funding in the European Union*, National Report for Italy, cit., section 1.2.

43. Other sources confirm that funding has become a reality for business-to-business follow-on claims brought by injured companies or by assignees, while describing funders' interest in consumer class actions as almost non-existent.[51] However, the rise of digital platforms for small-value consumer claims and the increased demand for funding in mass torts, antitrust damages, and collective redress cases could significantly reshape the Italian mass litigation landscape, making the Italian class action more accessible before Italian courts.[52]

4. Three paradigmatic Italian cases

44. Three litigated cases illustrate the different ways in which a public decision can feed private enforcement in Italy. *Trucks* follows a European Commission cartel decision and turns on the existence and amount of harm. The bank guarantee litigation follows a decision that imposed no fines, and uses competition law mainly to have contract terms declared void. *Pfizer* follows a national abuse decision and shows the State recovering public money. This section describes each case; Section 5 compares them.

4.1. *Trucks*: a binding decision, years of proof

45. In July 2016 the European Commission, using its settlement procedure, fined the main European truck manufacturers for a cartel that lasted from 1997 to 2011 and concerned, among other things, the coordination of gross list prices.[53] The decision binds Italian courts under Article 16 of Regulation (EC) No 1/2003, and Italian courts have accepted that a settlement decision has that effect.[54] The Court of Cassation has added that the objections communicated by the Commission in the settlement procedure, especially those the companies expressly accepted, are circumstantial evidence, or even prima facie proof, of the infringement, and that civil courts may rely on lawfully usable material from the investigation as "atypical" evidence, that is, evidence not specifically regulated by procedural law.[55] Some judgments nonetheless rejected claims, in Naples after the court had obtained an opinion from the European Commission, because, in their view, the decision described an exchange of information on gross list prices rather than a cartel affecting the prices actually paid.[56]

[51] Italia Oggi (2026), cit., pp. 34-35, remarks of E. Teti (Rucellai & Raffaelli) and C. Santoro (Cleary Gottlieb).

[52] European Commission, *Mapping Third-Party Litigation Funding in the European Union*, National Report for Italy, cit., section 1.2.

[53] European Commission, decision C(2016) 4673 final of 19 July 2016, case AT.39824 - *Trucks*.

[54] Court of Naples, judgment No. 6319 of 6 July 2021, pp. 3-5; Court of Milan, judgment No. 212 of 11 January 2026, section 2 of the reasoning. The Commission's settlement decision is governed by Article 16(1) of Regulation (EC) No. 1/2003.

[55] Court of Cassation, Section I, order No. 5232 of 28 February 2024, as restated in Court of Naples, specialised business section, judgment No. 7433/2024 (decided 19 June 2024), R.G. 2526/2019, section 3 of the reasoning.

[56] Court of Naples, judgments No. 5237 of 22 May 2023, No. 6740 of 29 June 2023 and No. 8411 of 13 September 2023; Court of Milan, judgments No. 4841 of 9 June 2023 and No. 4929 of 13 June 2023; all as discussed in Meli (2024), cit., pp. 27-28.

46. Four judgments, delivered in separate proceedings, show how widely outcomes can diverge on the same infringement: those of the Court of Naples of 6 July 2021 and 19 June 2024, and those of the Court of Milan of 11 January 2026 and 28 July 2026.[57]

47. In *Naples 2021*, the claimant had bought a single truck in 2007. The court held that the presumptions in d.lgs. 3/2017 could apply to any proceedings started after the Directive, even though the cartel had ended in 2011, and therefore relied on the presumptions that cartels cause harm and an overcharge reaches indirect purchasers.[58] Its expert considered that a precise calculation was not possible, so the court estimated the overcharge on an equitable basis at 15% of the vehicle's net purchase price, taking account of tax benefits, and awarded damages for EUR 11,550.[59] The defendant had not shown that the claimant passed the overcharge on through its transport prices.[60]

48. In *Naples 2024*, the claimant, a haulier that had leased a single truck in 2003, faced a passing-on defence. The court ordered it to disclose six categories of documents for 1997-2016 (invoices, tax returns, inventory and asset registers, financial statements and customer contracts). The claimant produced none of them, and mentioned the difficulty of finding records older than ten years only in its final written submissions. The court applied Article 6(6) of d.lgs. 3/2017 (see Section 2.2), treated as proven the defendant's claim that the whole overcharge had been passed on, and dismissed the claim. It did not impose the administrative fine for failure to comply with a disclosure order, considering it no longer necessary to secure compliance.[61]

49. In *Milan January 2026*, a group of haulage companies suing together (Section 3.4) obtained damages for 147 of the 234 trucks originally claimed; a partial judgment had already rejected the limitation defence, and that ruling became final in 2025. Following the Court of Justice's judgment in *Volvo and DAF Trucks*, the court held that the statutory presumption of harm was a substantive rule that could not be applied to an infringement that had ended before it was adopted. It nevertheless found harm proven through ordinary presumptions under Articles 2727 and 2729 of the Civil Code: the cartel's 14-year duration, its wide market coverage and the coordination of gross list prices were enough to conclude that buyers had paid too much.[62]

50. *Milan January 2026* conducted a more elaborate economic assessment. The court-appointed expert examined competing econometric models and alternative price benchmarks. The claimants' model, based on list prices, produced an overcharge of 33.4%, later corrected to 29.4%; a second model, based on the manufacturers' net prices to dealers, produced 17.8%. The defendants' models found no overcharge. The expert revised the

[57] Court of Naples, judgment No. 6319 of 6 July 2021, R.G. 4754/2019; Court of Naples, judgment No. 7433 of 19 June 2024, R.G. 2526/2019; Court of Milan, judgment No. 212 of 11 January 2026, chronological No. 56/2026, R.G. 47822/201; Court of Milan, judgment No. 6381 of 28 July 2026, R.G. 13856/2020. These are separate proceedings, not stages of the same action.

[58] That 2021 approach preceded the Court of Justice's clarification in Volvo and DAF Trucks in June 2022. See Court of Naples No. 6319/2021, pp. 7-9; Court of Justice, Volvo and DAF Trucks, C-267/20, paragraphs 90-104.

[59] Court of Naples No. 6319/2021, pp. 10-11 and operative part.

[60] Court of Naples No. 6319/2021, pp. 7-10; Court of Naples No. 7433/2024, pp. 5-7. D.lgs. 3/2017, Articles 11 and 12, distinguish the passing-on defence from the presumption assisting an indirect purchaser.

[61] Court of Naples No. 7433/2024, cit., section 3 of the reasoning and operative part.

[62] Court of Milan No. 212/2026, sections 3-7 of the reasoning; Civil Code, Articles 2727 and 2729.

claimants' list-price model, removing among other things the lingering effect, which reduced the estimate to 8.5%, and combined the corrected model with the defendants' zero-overcharge scenario. The expert reported a resulting estimate of 4.08% of the net purchase price. A supplementary six-month lingering scenario produced 4.89% for the main overcharge and 2.4% for the residual effect.[63]

51. The court criticised both the inclusion of a zero-overcharge scenario it considered implausible and the treatment of residual effects. Rather than building its own model, the court took the expert's corrected version of the claimants' model, put back a lingering effect of one year, which produced 12.2% (the version without any lingering effect produced 8.5%), and reduced this figure, on a prudent and equitable basis, to 8%, because the estimate was based on list prices at a different level of the distribution chain. It applied 8% to purchases made during the infringement and 4% to purchases made during the lingering period[64], which it extended to 31 December 2011 given the duration of the cartel.

52. In *Milan January 2026*, the Court also examined passing-on, but it reached the opposite conclusion. The court-appointed expert found that the annual overcharge represented only 0–0.66% of the claimants' revenues. The transport operators were relatively small businesses operating in competitive downstream markets, with limited ability to influence transport prices. These circumstances supported the conclusion that the overcharge had not been passed on.[65]

53. The defendants had sought to prove passing-on through disclosure. They asked for fourteen categories of documents covering twenty years, from 1997 to 2016. Acting on the court's instructions, the court-appointed expert limited the order to six categories (VAT registers, tax returns, asset registers, published financial statements, price-change notices and accounting ledgers). The claimants produced a large volume of documents, but some of these small family firms could not supply records for the earliest years, which pre-dated the ten-year period for which the law requires records to be kept, or accounts they had never been obliged to prepare. The defendants asked the court to treat passing-on as proven under Article 6(6). The court refused for two reasons. First, Article 6(6), an evidentiary sanction new to Italian law, is not among the procedural provisions that Article 19 extends to actions brought after 26 December 2014, and could not be applied retroactively, contrary to the approach taken in *Naples 2024*. Second, and in any event, there had been no unjustified refusal to comply: the claimants had produced what they had, and extending the order further would have been disproportionate.[66]

54. A later judgment of the same court, delivered in July 2026 in separate proceedings, shows how far outcomes can vary even within a single court. The claimant, a subcontractor in earthworks and transport, had leased 22 trucks made by three cartel members between 1999 and 2011. As in the January judgment, the court held that the statutory presumptions

[63] Court of Milan No. 212/2026, pp. 34-40 and 66-74. The 17.8% estimate is the claimants' second model, not the defendants' estimate. The judgment reports the expert's converted estimates; the percentages should not be read as a simple arithmetic average at a single price level.

[64] Court of Milan No. 212/2026, sections 13-17, especially pp. 71-75, and operative part, points 3-4. The judgment also records the claimants' references to expert assessments in parallel Italian proceedings ranging from 9.83% to 12.6%. In awarding costs, the court took into account that the defendants had refused, without justified reason, a settlement proposal made by the judge (section 27).

[65] Court of Milan No. 212/2026, sections 20-22 of the reasoning. The finding rests on the evidence in that case, not on a general rule that a competitive transport market rules out passing-on.

[66] Court of Milan No. 212/2026, cit., sections 21 and 22 of the reasoning.

did not apply and inferred harm from ordinary presumptions, supported by the expert's finding that the manufacturers' market shares had remained stable throughout the cartel. The court-appointed expert compared average prices at constant values for 2002-2008, excluding the financial crisis years 2009-2010, with those of 2012, treating the whole of 2011 as affected by lingering effects, and estimated an overcharge of 12.96% with an econometric model. The court adopted that figure, which it found consistent with the expert's analysis of margins and with the manufacturers' financial indicators, and applied it in full to purchases made in 2011. However, it rejected the expert's suggestion of a flat 20% reduction for passing-on, which was not supported by qualitative or quantitative evidence, as well as any offset for the resale of the trucks or for tax benefits.[67]

4.2. Bank guarantees: private enforcement through nullity

55. In October 2002, the Italian Banking Association drafted a standard form for "omnibus" personal guarantees, by which a guarantor is responsible for all of a borrower's debts to a bank. The Bank of Italy, at the time responsible for applying competition law to banks, consulted the Authority, which found that three clauses could unduly restrict competition by making credit more expensive and harder to obtain. In decision No. 55 of 2 May 2005, the Bank of Italy ruled that these clauses were the subject of an anticompetitive agreement, because the uniformity of the banks' contracts, reflecting an established practice predating the standard form, risked being perpetuated by it.[68] The decision did not impose any fines on individual banks or award any compensation.

56. Private enforcement therefore took a different route. In 2021, the Joint Chambers of the Court of Cassation held that downstream guarantees implementing the unlawful agreement were generally void only in relation to the offending clauses, unless the conditions for invalidating the whole contract were met. Within the scope of the 2005 decision, it was sufficient for the guarantor to show that the clauses coincided with those that had been criticised; the decision itself was considered privileged evidence of the link with the unlawful agreement.[69]

57. The 2021 ruling left open whether it also applied to guarantees for a specific debt (rather than for all debts) and to guarantees signed before or after the 2002-2005 period examined by the Bank of Italy. Different sections of the Court of Cassation gave conflicting answers. In August 2026, the Joint Chambers of the Court of Cassation held that, for a specific guarantee signed outside the period covered by the 2005 decision, the trial court must itself establish whether the form used reflects an anticompetitive agreement or practice. The administrative decision is only evidence that is "not sufficient on its own" and must be considered alongside an examination of the period and the contracts it covers. The claimant bears the burden of proof and can ask for disclosure orders, while the bank can show that the clauses were individually negotiated.[70]

[67] Court of Milan, judgment No. 6381 of 28 July 2026, sections 8-14 and operative part. The award comprises EUR 202,252.02 for the overcharge and EUR 9,509.71 for higher leasing costs.

[68] Court of Cassation, Joint Chambers, judgment No. 24825 of 28 August 2026, R.G. 16647/2025, sections 4 and 4.1.

[69] Court of Cassation, Joint Chambers, judgment No. 41994 of 30 December 2021, as summarised in Court of Cassation, Joint Chambers, No. 24825/2026, cit., section 5.

[70] Court of Cassation, Joint Chambers, judgment No. 24825 of 28 August 2026, R.G. 16647/2025, principle of law stated at section 9. The case is discussed in Section 4.2.

58. A similar question arose for mortgages indexed to Euribor, after the European Commission's decisions on the manipulation of that interest rate (*Euro Interest Rate Derivatives*). The Cagliari Court of Appeal asked the European Court of Justice whether those decisions bind national courts in every market in which the manipulated rate was used; the Court of Cassation had also referred the issue to its Joint Chambers.[71] In September 2026, the Court of Justice answered that the automatic nullity set out in Article 101(2) TFEU does not extend to contracts concluded by third parties in a different market and that its binding effect is limited to the scope of the infringement ascertained.[72] The Joint Chambers, which had adjourned the case in March 2025 after being informed of the reference, had not yet ruled on the remedies available under national law as of October 2026.[73]

4.3. *Pfizer*: the State as claimant, the Authority's estimate as evidence

59. In January 2012, the Authority found that Pfizer abused its dominant position through a strategy aimed at delaying the entry of cheaper generic versions of a glaucoma medicine in Italy, using patent procedures together with other exclusionary conduct. It did so through a divisional patent and a supplementary protection certificate sought only in Italy, combined with warnings and lawsuits against generic producers.[74] The decision was upheld by the Council of State in 2014.[75] In November 2014, the Ministry of Health and the Ministry of Economy and Finance sued for the additional costs incurred by the National Health Service (NHS), whose reimbursement expenditure in this case would have decreased after the entry of generic products during the months in which their entry had been delayed (October 2009 to May 2010). They relied on the Authority's estimate of the harm: EUR 14,063,650.90.[76]

60. The Court of Rome dismissed the claim, finding the evidence of causation and loss to be insufficient. The statutory binding effect under d.lgs. 3/2017 did not apply to the case in question. However, the Rome Court of Appeal reversed this judgment and awarded EUR 13,360,464 plus interest. The Court treated the decision as privileged evidence of the abuse, inferred causation from the Authority's file (including statements by the medicines agency and by generic producers), and reduced the Authority's estimate by 5% on an equitable basis to account for purchases that might not have been reimbursed. On 2 January 2024, the Court of Cassation dismissed Pfizer's appeal and confirmed the award, recognising the NHS's right to recover the overcharge resulting from Pfizer's abusive

[71] Court of Justice, judgment of 3 September 2026, *Livronsa*, C-60/25, EU:C:2026:685, paragraphs 16-22.

[72] Court of Justice, Livronsa, C-60/25, EU:C:2026:685, paragraphs 37-46 and operative part. The ruling on automatic nullity under Article 101(2) does not dispose of every possible consequence under national contract law.

[73] *Livronsa*, cit., paragraph 39; Iusletter, "Euribor e mutui: nessuna nullità automatica oltre il perimetro dell'accertamento antitrust", 4 September 2026.

[74] See the AGCM press release of 17 January 2012, available here: https://en.agcm.it/en/media/press-releases/2012/1/alias-1986.

[75] Court of Cassation, order No. 9/2024, cit., "Fatti di causa", referring to the Authority's decision of 11 January 2012 and to Council of State judgment No. 693/2014.

[76] Ibid.

conduct and holding that the Court of Appeal's assessment of the harm evidence, based on presumptions and the AGCM's estimate, was not open to review.[77]

5. Comparing the three cases

61. The three cases share one feature. In none of them was the infringement itself successfully re-litigated within the scope of the public decision, thanks to the binding effect, or the privileged-evidence doctrine before it. The difficulties arose at the margins of the decision: whether the infringement caused harm, how much harm was caused, and the extent to which the finding applies to contracts and markets that were not examined.

62. The cases differ with respect to the content of a competition authority's decision. In *Pfizer*, the Authority's decision quantified the additional cost incurred by the National Health Service and its file contained statements on the expected timeframe for the entry of generic medicines into the market. The courts could build causation and quantum on that material and the State recovered about 95% of the Authority's estimate. By contrast, the European Commission's *Trucks* settlement decision was brief and described the coordination of gross list prices, saying nothing about the prices hauliers actually paid. Courts therefore took different views on what claimants still had to prove, and outcomes for the same cartel ranged from an equitable award of 15%, to dismissal, to a carefully reasoned 8%, and to 12.96% in a second Milan judgment six months later. The 2005 banking decision by the Bank of Italy was confined to a standard form used during a specific timeframe; once claimants went beyond this timeframe, the decision could no longer carry the weight that was placed on it.

63. The cases also demonstrate the variety of private enforcement. The claimants were small hauliers and guarantors resisting debt recovery, as well as two ministries. The remedies were damages in two cases, and the nullity of contract terms in the third case, where competition law mainly served as a shield. A framework designed around damages actions only captures part of this activity: the statutory binding effect does not apply to nullity actions and bank guarantee litigation has been governed by case law rather than statute. However, it took two rulings of the Joint Chambers of the Court of Cassation in five years, while the parallel Euribor litigation resulted in a reference to the Court of Justice.

64. Moreover, the three examples differ in scale. The first Milan proceedings involved 147 purchases by several claimants, enabling a fuller economic analysis and justifying its cost. In contrast, the Naples cases each concerned a single vehicle, where the cost of sophisticated econometric analysis may be disproportionate to the value of the claim. In these cases, equitable estimation or a single disclosure failure decided the outcome.

65. Finally, time is a common factor. The *Pfizer* claim took more than nine years from filing to final judgement, while the Milan *Trucks* claim took almost nine years to reach a first-instance judgement, fifteen years after the cartel ended. The bank guarantee litigation has been producing leading rulings for more than twenty years, ever since the Bank of Italy's decision. Such long delays can shift the burden of proof in unforeseen ways: documents that could address passing-on or quantum issues may no longer exist, as demonstrated by the two *Trucks* disclosure rulings (Section 6.3).

[77] Ibid., summary of the lower-court judgments and sections 2 to 9 of the reasoning; Rome Court of Appeal judgment No. 5375/2021 of 20 July 2021.

6. Lessons from Italian practice

6.1. Follow-on and stand-alone claims

66. The practical difference between follow-on and stand-alone claims relates to both the burden of proving infringement and the available information. In a follow-on action, the public decision outlines the conduct, market and companies involved. Without this information, many potential claimants — typically small firms and consumers — would be unaware that they have a claim.[78] Although a prior final decision is not a legal prerequisite for suing, claims brought before the decision has been fully reviewed carry a specific risk. If the decision is annulled, the claimant loses their main piece of evidence, meaning the case becomes a stand-alone claim in substance.[79]

67. The success of follow-on claimants is partly driven by the Authority's decisions. Between February and July 2018, the Court of Milan delivered three judgments on claims following the Authority's finding that the operator of the Milan airports had charged unfair prices to cargo ground-handling companies (case A377).[80] In these judgments, the Court relied heavily on the Authority's findings and extended their benefit to claimants who had not taken part in the administrative proceedings, but who were covered by the decision.[81] When the Authority closes a case with commitments, claimants do not receive a binding finding. However, they can use the preliminary assessment in the decision and seek disclosure of material from the closed file. The literature describes such claims as being somewhere between follow-on and stand-alone actions.[82]

68. Stand-alone actions are much harder to win because evidence is difficult to obtain, particularly in the case of secret cartels. The claimant must prove the infringement using ordinary means of proof, supplemented by the disclosure rules of d.lgs. 3/2017. Stand-alone claims are more common in cases of abuse of a dominant position, where the claimant

[78] M. Negri, "Gli effetti delle decisioni della AGCM nei giudizi civili: analisi di una anomalia necessaria", in A. Argentati (ed.), Diritto civile e tutela del mercato, AGCM, Temi e Problemi No. 16, December 2024, pp. 29-52, at p. 29.

[79] An annulled AGCM decision loses all binding effect regarding the nature, material, personal, temporal, and territorial scope of the infringement, and provokes a shift in the burden of proof. The claimant must independently allege and prove all standard elements of non-contractual tort liability under Article 2043 of the Italian Civil Code: the existence of the anti-competitive conduct, subjective fault or intent, quantifiable damage, and the direct causal link. The factual evidence, market data, and pre-existing business documents gathered in the AGCM investigation file remain accessible to the civil litigation and civil judges may evaluate them as atypical evidence (prove atipiche) or simple indicia (presunzioni semplici) under Article 2729 of the Italian Civil Code, subject to free judicial assessment ex Article 116 of the Italian Code of Civil Procedure. The factual value of the evidence and facts is likely to be higher when the grounds for annulment are procedural and non-substantive.

[80] See AGCM press release of 15 December 2008, available at: https://en.agcm.it/en/media/press-releases/2008/12/alias-1080

[81] M. Siragusa and A. Comino, "Private Antitrust Enforcement in Italy", *CPI Antitrust Chronicle*, June 2019, section III, referring to the Authority's 2008 decision and to the *ITR Handling* and *Brussels Airlines/American Airlines/Aegean* judgments of the Court of Milan.

[82] E. Camilleri, "Decisioni con impegni e antitrust private enforcement: verso una convergenza possibile", cit., pp. 70-85, who proposes that courts treat the findings gathered in proceedings closed with commitments as a rebuttable presumption.

is typically a knowledgeable market participant with first-hand experience of the conduct in question.

69. Stand-alone proceedings do not always seek damages. In January 2007, around fifty fruit, vegetable and fish wholesalers sued the operator of the Rome wholesale food centre. They had moved there when the city's old general market closed in 2002. They asked the court to declare numerous clauses in their leases and in the market rules void, on the grounds that they constituted an abuse of dominance under Article 3 of Law No. 287/1990. The claim did not rely on a prior infringement finding by the AGCM. It was brought directly before the Rome Court of Appeal, which dismissed it in 2010 on the grounds that the claimants had not properly defined the relevant market.[83] In 2015, the Court of Cassation overturned that judgment. It ruled that, in the absence of a prior Authority decision, judges must consider the claimants' lack of information and the cost of economic evidence. Therefore, they must interpret the procedural rules on ordering the production of documents, requesting information, and appointing court experts broadly, and consider the investigative powers available to them, including court-appointed expertise, provided the claimant presents plausible and serious indications of infringement. The Court also held that an operator entrusted with a service of general interest must prove that the contested conditions were the only way to fulfil its obligations.[84]

70. When the case was referred back to it, the Court of Appeal appointed an economic expert. The expert concluded that the relevant market was the food centre itself, and that wholesalers would incur significant organisational costs if they were to move to other markets. To corroborate the expert's market analysis, the court referred to the claimants' evidence that, despite a rent increase of around 70% compared to the previous market, no wholesaler had chosen to move elsewhere. In December 2023, the Court declared void, as abusive, a number of clauses, including the operator's power to change the rules unilaterally, the need for its prior approval of changes in the wholesalers' shareholdings, and the obligation to use service providers chosen or approved by the operator. However, it upheld other clauses, including those relating to the rent level and a discount granted to producers.[85] The claim sought only to have the clauses declared void. The court held that the abuse was harmful and had to be eliminated, and that damages could be claimed separately.[86] The judgment became final in June 2026 when the Court of Cassation ruled that the operator's subsequent appeal was inadmissible due to procedural issues.[87]

71. This case demonstrates the potential of stand-alone enforcement and its associated costs. Without a prior public decision, a group of small traders obtained a declaration that

[83] Rome Court of Appeal No. 8354/2023, cit., "Svolgimento del processo", which also records the Court of Appeal's earlier judgment No. 991/2010. At the time, Article 33(2) of Law No. 287/1990 gave the Courts of Appeal first-instance jurisdiction over nullity and damages actions under national competition law.

[84] Court of Cassation, Section I, judgment No. 11564 of 4 June 2015, pp. 6-9 of the judgment, especially the reasoning on information asymmetry, plausible allegations and the adversarial principle.

[85] Rome Court of Appeal, second civil section specialised in business matters, judgment No. 8354 of 27 December 2023, R.G. 6104/2015, reasoning and operative part.

[86] Rome Court of Appeal No. 8354/2023, pp. 7-8 of the judgment. The proceedings concerned nullity, not an award of damages.

[87] Court of Cassation, First Section, order No. 17328 of 1 June 2026 (decided on 27 March 2026), R.G. 6972/2024, declaring the appeal not proceedable under Article 369(2)(2) of the Code of Civil Procedure, because the operator had not filed the notified copy of the judgment under appeal.

abusive clauses imposed by the operator of an essential facility were void. This was largely thanks to a Court of Cassation ruling that required judges to use their own investigative powers to compensate for the claimants' lack of information. However, nineteen years passed between the claim being filed and the final judgment being delivered, and the claim sought nullity only; separate proceedings would be required for damages.

6.2. How far the effects of a public decision extend

72. The binding effect does not cover whether the infringement caused the claimant's loss or the existence of the loss itself. However, the Authority's file may help to prove both. In *Pfizer*, the Court of Cassation upheld a judgment that had found causation on the basis of the Authority's decision and of statements obtained during the administrative proceedings, applying the "more likely than not" standard.[88]

73. Nor does a decision by itself establish the illegality of contracts outside the scope of its findings. In August 2026, the Joint Chambers of the Court of Cassation held that, for bank guarantees signed outside the period or type of contract covered by the Bank of Italy's 2005 decision, the latter is evidence "not sufficient on its own", and claimants must prove the anticompetitive agreement or practice by other means (Section 4.2). Shortly afterwards, the Court of Justice of the European Union held that the Commission's *Euro Interest Rate Derivatives* decisions only bind national courts within the scope of the infringement found and do not automatically invalidate, under Article 101(2) TFEU, a clause in a Euribor-indexed mortgage concluded in a different market by a bank that was not involved in the cartel.[89]

74. Settlement decisions raise a different question. While they are binding infringement decisions, they may contain less detail. In *Trucks*, for example, the brevity of the Commission's settlement decision allowed some courts to reject claims on the ground that it described an exchange of information on list prices rather than a cartel affecting transaction prices. Other courts, however, inferred harm from its duration, coverage and subject matter (Section 4.1). As the Authority begins to adopt its own settlement decisions, the level of detail they contain will be as important to follow-on claimants as their binding force (Section 7.2).

6.3. Disclosure

75. The two *Trucks* rulings on disclosure (Section 4.1) highlight a practical issue that the disclosure rules fail to address. Passing-on and quantum may depend on documents covering a period beginning twenty years before the litigation, which is well beyond the ten-year period for which companies must keep their records. Therefore, identifying and preserving the relevant economic data as early as possible, or at the latest when a public investigation becomes known, is as important as the disclosure rules themselves (Section 7.3).

76. The mechanism designed to involve the Authority in disclosures from its files has not been used. As of October 2026, the Authority had never submitted observations on the proportionality of a disclosure request under Article 4(7). This was partly due to the weak flow of information between the courts and the Authority: the system for informing

[88] Court of Cassation, order No. 9/2024, cit., section 4 of the reasoning. The case is discussed in Section 4.3.

[89] Court of Justice, judgment of 3 September 2026, *Livronsa*, C-60/25, EU:C:2026:685, paragraphs 37, 39, 42-45 and operative part.

competition authorities of disclosure requests, as set out in the Damages Directive, had not been implemented.[90]

77. Instead, claimants have used defensive access under Law No. 241/1990 (Section 2.2), and after 2017 the Authority received many more such requests, in order to prepare for damages actions. On 7 July 2021, the Council of State applied this rule in three judgments to a claimant preparing a damages action against companies fined by the Authority. The Council of State held that the necessity of the claimant's request must be understood broadly and assessed in the abstract: neither the Authority nor the administrative court is to judge whether the damages claim is well founded. Confidentiality cannot justify the withholding of all material submitted by an investigated company in its defence, as this would effectively grant the infringer immunity in follow-on proceedings. The courts placed the burden on the AGCM to review its complex files and distinguish the documents it considered relevant to reconstructing the facts and reaching a decision, to which access must in principle be granted, from material outside the decision, such as rejected commitment proposals.[91]

78. In 2022, the courts qualified this approach: before deciding on such a request, the Authority must inform the companies concerned and consider their comments, balancing confidentiality against the right to defence. Granting access first and hearing the companies afterwards invalidates the entire procedure, and access is granted within the limits of the request. The Council of State declined to rule on whether the Authority must assess the merits of the intended damages claim.[92]

79. The Authority notes that this route bypasses the proportionality check carried out by the civil judge and requires its investigative teams to reassess the confidentiality of large files sometimes years after the initial decision. This means that case teams must consult the relevant companies again to balance the right of access against the protection of business secrets. At the same time, however, the Authority has demonstrated greater openness towards granting file access to injured parties after its proceedings have closed.

80. The Authority's files contain information whose disclosure could make competitors' strategies artificially transparent to one another. Companies that cannot rely on confidentiality are less likely to cooperate. In the Authority's view, broader access would undermine the carefully calibrated disclosure system established by the Damages Directive.

6.4. Quantification

81. Much of the courts' effort has gone into deciding which rules of d.lgs. 3/2017 apply to older infringements. Since *Volvo and DAF Trucks*, courts have generally treated the rules not listed in Article 19, including the cartel harm and indirect purchaser presumptions, as

[90] Stella (2024), cit., p. 57, referring to recital 30 of the Damages Directive.

[91] Council of State, judgments Nos. 5176, 5177 and 5178 of 7 July 2021.

[92] Regional Administrative Court of Lazio, First Section, judgment No. 13214 of 21 December 2021; upheld by Council of State, Sixth Section, judgment No. 3416 of 2 May 2022, §§17.2–17.3 and 19.1. The case concerned a request for access to the file in the cement cartel case (I793) by an indirect purchaser (a buyer of concrete from a company in the group of one of the sanctioned undertakings) preparing a damages action. The Authority was the unsuccessful appellant before the Council of State.

substantive rules that do not apply retroactively.[93] This is particularly important in cartel cases, where the infringement may have occurred many years before the Directive came into force, but the claim is brought afterwards. Consequently, most cases that have been decided thus far are governed by the rules that were in force prior to 2017. The full impact of the new legislation will become apparent in the coming years as claims relating to infringements that concluded after December 2016 reach judgment.

82. Italian courts have employed three techniques. Firstly, where the statutory presumption of harm does not apply under the relevant time-based rules, they have relied on general presumptions under Articles 2727 and 2729 of the Civil Code. They have considered the features of the cartel (its duration, coverage, and market share), as well as the Commission's Practical Guide on quantifying harm.[94] These presumptions are particularly useful for proving harm and causation when direct evidence is unavailable. However, they do not automatically determine the rate of compensation. While inferences drawn from the evidence may inform the quantification process, the final amount awarded still requires a reasoned assessment. If necessary, this can be supported by expert evidence and judicial estimation under Article 1226 of the Civil Code.

83. Secondly, while courts have relied on quantitative analysis by court-appointed experts — econometric in some cases, and simpler before-and-after comparisons in others — they have also been willing to correct it. In the *Milan January 2026 Trucks* judgment, the court rejected the expert's figure because it averaged a corrected version of the claimants' estimate with a scenario of zero overcharge, which the expert himself considered to be implausible. The court also rejected the figure because it ignored the effects that continued after the cartel ended.[95] According to practitioners, expert evidence raises significant difficulties, including high costs, lengthy investigations, incomplete historical data, and widely differing estimates in cases arising from the same infringement (see Section 4.1). They stress the need for expertise in industrial and competition economics rather than accounting expertise alone and propose closer methodological dialogue between judges and economists.[96]

84. Third, judges have estimated damages on an equitable basis under Article 1226 of the Civil Code, either to fill gaps left by expert evidence or, in smaller claims, as the main method, as in the first *Trucks* award in Naples (Section 4.1). The *Milan January 2026* judgment illustrates the underlying principle: economic expertise informs the judge's decision but does not replace the judge's own assessment.

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[93] In *Volvo and DAF Trucks*, the Court of Justice distinguished the procedural power to estimate harm from the substantive presumption that cartels cause harm. It also held that the Directive's limitation rules may apply to an older infringement if the previous limitation period had not expired by 27 December 2016. Each rule therefore requires a separate assessment: the date of the infringement or of the claim is not, on its own, decisive for the whole case. See D.lgs. 3/2017, Article 19; Directive 2014/104/EU, Article 22; Court of Justice, judgment of 22 June 2022, *Volvo and DAF Trucks*, C-267/20, EU:C:2022:494, paragraphs 79, 80-89 and 90-104 and operative part.

[94] Court of Milan No. 212/2026, sections 3-7 of the reasoning; Civil Code, Articles 2727 and 2729. Judicial presumptions must rest on serious, precise and consistent indications; they are distinct from the statutory cartel presumption in Article 14(2) of d.lgs. 3/2017.

[95] Court of Milan No. 212/2026, sections 13-16. A lingering effect means that the cartel's price effects persist after the infringement has ended. Its existence, duration and size require assessment in the individual case.

[96] Discussion at the conference "Private Enforcement: la consulenza tecnica d'ufficio", Rome, 21 November 2024; recording: https://www.youtube.com/watch?v=I7eyw51ztsY. The concerns and proposed improvements are participants' views, not a statistical assessment of court-appointed experts.

85. In stand-alone cases, the Court of Cassation has required courts to actively use expert evidence and orders to produce documents to compensate for the claimant's lack of information.[97] Preliminary expert assessments prior to proceedings have received a more mixed response: while initially admitted in isolated cases, recent rulings, notably in the Trucks litigation, have often rejected such applications. Several courts have reportedly refused such requests in competition cases because complex legal questions requiring the involvement of a judge had to be resolved first.[98]

86. Regarding passing-on, the *Trucks* judgments show that the defence cannot succeed simply because an undertaking sells goods or services downstream. A case-specific assessment of pricing behaviour, market conditions and available evidence is required. In Milan, for example, an overcharge of up to 0.66% of revenues, which was borne by small firms in fragmented transport markets, could not have been passed on. Pass-on reduces the recoverable overcharge but does not exclude a separate claim for lost profits caused by reduced sales if it is proven.[99]

87. The Milan judgments also recognised that the effects of a cartel may outlast it. After fourteen years of collusion, it was unlikely that prices would return immediately to competitive levels. In January 2026, the court applied a reduced overcharge of 4% to six trucks purchased in the eleven months following the end of the cartel. In July 2026, the full rate was applied to purchases made throughout 2011.[100] This presents an additional challenge for economic experts: the period immediately following an infringement may not offer a reliable competitive benchmark because prices may still be affected by the cartel.

6.5. The interface between the Authority and the courts

88. The tools described in Section 2.4 have rarely been used. As of October 2026, the Authority had received four requests for assistance with quantification, all of which were from the Court of Rome and all of which concerned follow-on claims based on the following infringement decisions:

- an abuse of dominance by Telecom Italia, which refused and delayed wholesale access to its fixed network;[101]
- bid rigging and price fixing in helicopter fire-fighting services supplied to public bodies;[102]

[97] Court of Cassation No. 11564/2015, cit.

[98] Gianni & Origoni (2024), cit., "Discovery procedures"; Norton Rose Fulbright (2026), cit., section 6.

[99] D.lgs. 3/2017, Article 10(2); Directive 2014/104/EU, Article 12(3).

[100] Court of Milan No. 212/2026, sections 15-17 and operative part, points 3-4; Court of Naples No. 6319/2021, p. 2; Court of Naples No. 7433/2024, p. 2. The two rates apply to different purchases and are not cumulative.

[101] AGCM, case A428, press release of 10 May 2013: https://en.agcm.it/en/media/press-releases/2013/5/alias-2052. On the request for quantification assistance, see S. Stella (2024), pp. 61-62.

[102] AGCM, case I806, press release of 26 February 2019, available at: https://en.agcm.it/en/media/press-releases/2019/3/I806.

- an abuse of dominance by Telecom Italia, which squeezed its competitors' margins in the wholesale mobile market for business messaging;[103]
- two distinct cartels in the sector of corrugated cardboard sheets and corrugated cardboard packaging.[104]

89. In these cases, the Authority emphasised that it does not act as a court-appointed expert, and that it is the task of the civil judge to calculate harm, because harm must be assessed separately for each claimant. At the same time, however, it indicated to the court the method it considered to be the most appropriate for reconstructing what would have happened without the infringement. It also suggested criteria for calculating lost profits through lost customers, both actual and potential, and, where relevant, the additional costs caused by the infringement. Its guidance also drew on the evidence published in its infringement decisions. The Authority recognises that future requests concerning stand-alone cases would be more challenging because it would have to analyse allegations that it had never investigated before, from the perspective of one claimant's loss rather than the impact on competition.[105]

90. The Authority may submit observations to national courts under Article 15(3) of Regulation No. 1/2003. As of October 2026, it had done so once: in May 2017, before the Court of Rome, in proceedings in which Uber challenged an interim order banning some of its services on the grounds of unfair competition under Article 2598 of the Italian Civil Code. The Authority's decision to intervene as amicus curiae was to provide the judge with certain factual and analytical information resulting from previous and extensive advocacy activities in the specific sector of non-scheduled mobility. Article 15(3) applied because Uber had argued that the sectoral regulation infringed Articles 106(1) and 102 TFEU by distorting the structure of the market and creating unequal competitive conditions. The court accepted the observations as a neutral contribution in the public interest – to ensure the uniform application of EU competition rules - rather than as support for one of the parties and, in May 2017, upheld Uber's challenge.[106]

91. Article 15(4) of d.lgs. 3/2017, which allows the Authority to take into account compensation paid under a settlement concluded before its decision, has never been applied.

92. The interface has mainly been effective through the content of the Authority's decisions. Where these decisions contain evidence of the economic impact of the conduct in question, the courts have used this information: in *Pfizer*, the Rome Court of Appeal relied on the Authority's estimate, based on market data, of the additional costs incurred by the National Health Service. This approach was upheld by the Court of Cassation. Nevertheless, the civil court remained responsible for determining the amount of compensation and reduced the estimate to reflect potential non-reimbursed purchases.[107]

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[103] AGCM, case A500B, press release of 28 December 2017, available at: https://www.agcm.it/media/comunicati-stampa/2017/12/alias-9098.

[104] AGCM, case I805, press release of 7 August 2019, available at: https://en.agcm.it/en/media/press-releases/2019/8/I805.

[105] Practitioners note that assistance may be considered inappropriate where the Authority's case is at an early stage, was closed with commitments, or was closed because it was not a priority. See Gianni & Origoni (2024), cit., "Compensation".

[106] Stella (2024), cit., pp. 62-63 Chieppa, cit., pp. 93-95.

[107] Court of Cassation, order No. 9/2024, cit., R.G. 5336/2022; the Authority's decision is that of 11 January 2012 in case A431.

7. Challenges ahead

7.1. Small but widespread harm: bringing many claimants together

93. For an opt-in class action to work, people who have suffered small losses must find out about the action, be interested in joining it, and take the time to do so. In practice, this rarely happens, especially when the harm is large in aggregate but small for each victim.[108] Although the concentration of competition claims in three specialist courts has fostered expertise, it may have made individual consumer action even less feasible.[109] The few individual claims brought after the motor insurance cartel, some of which were for less than EUR 40, were the work of highly motivated claimants. Italian commentators consider such actions to be virtually impossible under the current regime.[110]

94. The representative action introduced in 2023 does not cover Articles 101 and 102 TFEU (Section 2.7), and litigation funders, who have made business claims viable, show almost no interest in consumer class actions (Section 3.4). The coordination achieved by promoters who gather claimants, evidence and funding for business claims therefore has no equivalent for consumers.

95. Even when legal action is taken, small claims raise specific issues regarding proof. Consumers rarely keep receipts for everyday purchases made years earlier, and their losses usually pass through several layers of distribution, meaning that each claim involves questions of passing-on. One Italian commentator has suggested that, unless proven otherwise, courts could presume that claimants were ordinary consumers of the product and estimate their loss based on average consumption.[111]

7.2. Public and private enforcement interplay

96. Private enforcement relies heavily on public enforcement, which in turn relies heavily on companies' cooperation. The Authority's main tools for detecting and proving cartels are leniency and settlement, and both require companies to admit an infringement that could be used against them in damages actions. D.lgs. 3/2017 protects leniency statements and settlement submissions from disclosure (Article 4(5)) and limits the joint liability of immunity recipients (Article 9).[112] However, a leniency reduction is not the same as immunity: the special liability rules in Article 9 do not protect all leniency participants, and protecting a submission does not remove liability for the underlying harm. The Serie A litigation case is an example of this: the reported EUR 300 million settlement was made with a company that had cooperated with the Authority and obtained a reduced fine (Section 7.4).

97. When it comes to settlement decisions, it is reasonable to assume that the parties involved are unlikely to challenge the infringement finding. Consequently, such decisions

[108] Meli (2024), cit., p. 17, noting that, among the sixty or so class actions open for joining on the Ministry of Justice register when the article was written, none appeared to concern competition law.

[109] Meli (2024), cit., p. 16.

[110] Ibid., footnote 20, citing Court of Cassation, Section III, judgment No. 7045 of 9 May 2012, on a claim for less than EUR 40 following the motor insurance cartel decision.

[111] Meli (2024), cit., p. 22, footnote 43.

[112] D.lgs. 3/2017, Article 4(5); Stella (2024), cit., p. 56.

may become final and binding under Article 7 more quickly.[113] On 15 April 2026, the first Italian settlement decision was adopted in a cartel among producers of private-label snacks for large retailers.[114] This decision combined reductions for settlement and for leniency, and it was immediately interpreted by practitioners as likely to trigger damages claims by retailers.[115]

98. The content of decisions is a second source of tension. Decisions that describe the conduct in detail and analyse its effects facilitate follow-on claims, as demonstrated by *Pfizer*. the Authority has paid increasing attention to effects even where it need not prove them (Section 3.2). During the 2023 consultation on the settlement notice, some respondents requested that settlement decisions be brief, without extracts from the file or indications of the conduct's effects, in order to limit their use in civil claims and maintain the attractiveness of settlements.[116] However, the final notice includes none of these provisions, as the Authority deemed it necessary to assess the balancing of these two competing interests, i.e., the promotion of the AGCM's new settlement procedures and the encouragement of private enforcement, on a case-by-case basis. This made the balancing process unsuitable for codification in the notice.[117]

99. The Authority has kept the two forms of enforcement separate when setting fines. In proceedings to recalculate fines in the corrugated cardboard cartel following the Council of State's rulings, several companies argued that they had been sued by customers for damages, which they would have to pay. This caused difficulties with suppliers and banks in some cases. However, the Authority held that such private actions were irrelevant to the recalculation. The purpose of the fine is to protect competition in the public interest and to punish and deter, whereas damages compensate those harmed. As the two remedies differ in nature and purpose, they are independent of each other.[118] The same decisions state that larger reductions would risk undermining the effectiveness of fines as a deterrent for secret cartels.[119] Article 15(4) of d.lgs. 3/2017 concerns compensation that has already been paid rather than possible future payments. It offers an alternative approach, but this has never been used.

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[113] Stella (2024), cit., p. 56.

[114] AGCM, decision No. 31924 of 15 April 2026, case I871 - *Accordo sui prezzi tra produttori di patatine fritte*, Bulletin No. 18/2026; press release of 28 April 2026: https://en.agcm.it/en/media/press-releases/2026/4/I871.

[115] A&O Shearman (E. De Giorgi and A. Fletcher), "Italian Antitrust Authority fines snack producers for market sharing in the private label retail channel", *JD Supra*, 15 May 2026.

[116] See, for instance, Associazione Antitrust Italiana, observations on the draft notice on the application of Article 14-quater of Law No. 287/1990, 2023 public consultation, comments on points 16(d) and 21.

[117] AGCM, *Notice on the enforcement of Article 14-quater of Law 287 of 10 October 1990* (adopted by decision No. 30629 of 16 May 2023; unofficial English translation, last updated December 2025), points 16(d), 19, 21, 25, 26 and 29.

[118] AGCM, decisions of 20 February 2024 No. 31073, case I805F – *Prezzi del cartone ondulato/Rideterminazione sanzione Ondulato Piceno*, paragraphs 17 and 24-27; No. 31078, case I805M – *Rideterminazione sanzione Sandra*, paragraphs 14 and 21-24; and No. 31079, case I805N – *Rideterminazione sanzione Ondulati del Savio*, paragraphs 17 and 25-28. The reasoning is identical in the three decisions.

[119] AGCM, decision No. 31079 of 20 February 2024, case I805N – *Prezzi del cartone ondulato/Rideterminazione sanzione Ondulati del Savio*, paragraphs 46 and 56; the statement on deterrence also appears in decision No. 31078, cit., paragraph 39.

100. The Council of State has confirmed this approach to the autonomy of public fines and civil overcharges. In one ruling, the Court decided that, even if a civil expert report (CTU) reveals a 0% overcharge in a particular market segment, this civil finding cannot be used retrospectively to contest the validity or proportionality of an AGCM fine imposed for a cartel by object. The Council of State stated that, since the cartel constituted a restriction by object, the AGCM was not required to prove actual market effects or overcharges. This means that downstream civil findings cannot be used to contest the legality or proportionality of public sanctions ex post.[120]

101. Although Italian law does not set out criteria for prioritising enforcement cases, the Authority considers the likelihood of private action when deciding whether to open or dismiss a case. The Authority also views private actions as a complementary tool that can address conduct that public enforcement does not prioritise. However, access to the Authority's file has the opposite effect: while it helps claimants, it may also make companies less willing to share sensitive information during investigations.

102. The interaction can also run from private interests back into public enforcement. In the Serie A broadcasting case involving TIM and DAZN, for example, appeals brought by complainants led the administrative courts to require the Authority to reassess the duration of the infringement. The Authority extended this from 32 days to approximately eighteen months. One of the complainants is now claiming up to EUR 1.9 billion in damages based on this wider finding.[121]

103. Therefore, rather than questioning whether public and private enforcement are complementary — a notion that is widely accepted — the focus should be on designing the areas where they converge, such as disclosure, the content of decisions, the treatment of leniency and settlement participants, and the timing of binding decisions, in order to minimise any potential tension between them.

[120] See Judgment No. 3792/2026 (Council of State, Section VI, 13 May 2026). The appellant argued that applying a 15% gravity coefficient to calculate its base fine was inappropriate, claiming there was no evidence that it derived extra-profit from the cartel and noting that civil court-appointed experts (CTUs) in downstream damages cases found a 0% price overcharge. The Council of State rejected this challenge and validated the 15% gravity rate based on the following principles: the 15% rate represents the statistical average downstream overcharge (markup) generated by cartelist; from an economic analysis perspective, using this percentage ensures effective deterrence by preventing fines from being absorbed by the expected economic gains of participating in the cartel; because the case involved an infringement by object, the AGCM was not required to conduct a market-by-market analysis of actual price effects or overcharges to establish gravity.

[121] A. Biondi, "Sky, Tim and Dazn claim €1.9 billion in damages for Serie A", *Il Sole 24 Ore*, 6 May 2026, available here: https://en.ilsole24ore.com/art/sky-tim-and-dazn-claim-damages-19-billion-euro-serie-a-AIWNBWuC. That decision originally found an infringement lasting 32 days. Following appeals by the complainants Sky and Fastweb, the administrative courts required the Authority to reassess the duration, and the Council of State confirmed the infringement as a restriction by object while excluding DAZN Media Services. By decision No. 31798 of 22 December 2025, the Authority set the infringement period at 27 January 2021 to 3 August 2022; it left TIM's fine unchanged and reduced DAZN Limited's fine because of a narrower turnover base. Judicial review initiated by a competitor thus widened the temporal scope that will bind the civil court in that competitor's own damages action. See: AGCM, decision No. 30699 of 28 June 2023, case I857; Lazio Regional Administrative Court, Section I, judgment No. 9315 of 11 May 2024; Council of State, judgment No. 5357 of 19 June 2025; decision No. 31798 of 22 December 2025, case I857C, Bulletin No. 2 of 12 January 2026, paragraphs 1-2 and 114-121 and operative part: https://www.agcm.it/dotcmsdoc/bollettini/2026/2-26.pdf

7.3. Quantifying harm years after the events

104. Quantification remains the decisive battleground, and Italian practice highlights three challenges. The first is evidence that no longer exists. Follow-on claims are usually made years after the infringement occurred, and questions relating to passing-on or quantum may require data spanning two decades — well beyond the ten-year period for which records must be kept (see Section 6.3). Small claimants are the most vulnerable, but defendants who rely on passing-on face the same issue.

105. The second is divergence in the quantification as in the *Trucks* examples. When many similar claims are decided separately by different experts and courts, they may reach incompatible results on the same overcharge or passing-on chain. This also makes early settlement more difficult.[122]

106. The third is cost and expertise. Court-appointed experts play a central role, but their work is expensive and time-consuming. Practitioners emphasised the importance of expertise in industrial and competition economics, rather than accounting alone. They also stressed the need for an early agreement between the court and the parties' experts on methods and data, as well as closer methodological dialogue between judges and economists.[123]

107. Some answers lie within the existing framework: early preservation of data once an investigation becomes public; joinder or coordination of related claims, which allows a common analysis of the market; the Authority's assistance in follow-on cases under Article 14(3); and judicial estimation where harm is established but precise quantification is impossible or impractical. Others call for broader discussions, such as whether courts dealing with the same infringement should be able to share expert evidence and how the lingering effects of long cartels should be treated.

7.4. Scale, speed and other open fronts

108. The number and value of follow-on claims based on national decisions are growing. In April 2026, it was reported that Lega Serie A had approved a EUR 300 million settlement with IMG in proceedings following the Authority's 2019 finding of a cartel among the agencies selling the international broadcasting rights to Serie A football for the 2008-2018

[122] See A. Gemma, *Il Private Enforcement antitrust in Italia: azioni follow on, quantificazione del danno e regole di giudizio*, in Riv. dir. econ. trasp. amb., XXIV, 2026, pp. 1021-1091. According to Gemma, court-appointed technical experts (CTUs) routinely make choices presented as purely "technical" or "methodological" that are actually legal rules of decision governing the allocation of the burden of proof and legal risk. In practice, the questions put by courts frequently delegate legal choices to CTUs, such as selecting admissible estimation methods, determining disclosure boundaries, or assessing SME statutory requirements, which are then embedded in the technical reports. Gemma also highlights several technical flaws in damage quantification that distort financial outcomes, such as arbitrary "prudential discounts" for passing-on (e.g., cutting the estimated overcharge by 20%), reluctance to use regression analysis (Italian practice show a marked preference for simple temporal price-average comparisons), and a misplaced reliance by claimants on general economic literature averages as a substitute for case-specific proof, whereas he accepts them only as a plausibility check or a reasoned minimum. He identifies as the most consequential choice the counting of positive deviations only between actual and counterfactual prices, which converts estimation error into apparent damage (pp. 1067-1069).

[123] Conference "Private Enforcement: la consulenza tecnica d'ufficio", Rome, 21 November 2024, cit.

period; the original claim exceeded EUR 3 billion.[124] In May 2026, the press reported that Sky Italia and Sky Ltd had filed a damages claim against TIM and DAZN, seeking EUR 1.8–1.9 billion (Section 7.2).

109. The corrugated cardboard cartel, in which the Authority's 2019 decision was upheld by the administrative courts, is generating a further wave of claims.[125] Where the Council of State annulled only the amount of certain fines, it confirmed the infringement itself, and the Authority recalculated the fines without reopening the case. Therefore, the recalculation does not change the scope of the infringement on which follow-on claims can rely under Article 7 of d.lgs. 3/2017. Claims based on the same decision are also being brought abroad. In *Cardboard Packaging*, in which Unilever brought a follow-on action before the Dutch courts, the Court of Justice ruled in April 2026 that a holding company that was not an addressee in the infringement decision could establish jurisdiction if there were serious indications that it belonged to the same undertaking as the addressees.[126] However, before a foreign court, the Authority's decision is not binding; under Article 9(2) of the Damages Directive, it constitutes at least prima facie evidence of an infringement. If upheld by the courts, practitioners expect the Authority's December 2025 decision on the foundries cartel to generate a further wave of follow-on claims.[127]

110. In digital markets, the Digital Markets Act (Regulation (EU) 2022/1925) is subject to representative actions in Italy. The Regulation also provides for cooperation between national courts and the Commission. This offers the potential for further private enforcement, informed by experience with competition claims. It is a distinct legal regime: the cartel-harm presumption and binding-effect rules of d.lgs. 3/2017 do not automatically apply to a claim based solely on the DMA.[128]

111. Finally, the length of proceedings remains a significant issue. While Italian courts have demonstrated their ability to handle complex economic evidence, the question remains as to whether they can do so at the scale and speed required by the large number of follow-on claims now being brought forward.[129] As claims based on infringements that ended after 2016 reach judgement and large follow-on claims based on national decisions increase, the Italian experience will demonstrate the capacity of the system established by the Damages Directive to handle litigation on this scale. A clearer evidence base would also help:

[124] AGCM, decision of 24 April 2019, case I814 - *Diritti internazionali*, and press release of 20 May 2019: https://en.agcm.it/en/media/press-releases/2019/5/I814. M. Spaziante, "Serie A, via libera dall'assemblea all'accordo con IMG: i club incasseranno 300 milioni", *Calcio e Finanza*, 13 April 2026, reports approval of the settlement and the original claim: https://www.calcioefinanza.it/2026/04/13/serie-a-accordo-img-300-milioni-incasso-club/.

[125] AGCM decision No. 27849 of 17 July 2019, upheld by Lazio Regional Administrative Court, Section I, judgment No. 6052 of 24 May 2021 and Council of State, Section VI, judgment No. 198 of 5 January 2024, as cited in Meli (2024), cit., footnote 69; Italia Oggi (2026), cit.; Montini (2026), cit., reporting an overall damage estimate close to EUR 2 billion and claims brought by dozens of companies by the end of 2025.

[126] Court of Justice, judgment of 16 April 2026, Electricity & Water Authority of the Government of Bahrain and Others (C-672/23) and Smurfit Kappa Europe and Others (C-673/23), joined cases, ECLI:EU:C:2026:293, on references from the Amsterdam Court of Appeal. The claim in C-673/23 is based on AGCM decision No. 27849 of 17 July 2019 (case I805).

[127] Montini (2026), cit., referring to the AGCM decision of 22 December 2025, case I866 – *Fonderie*.

[128] Consumer Code, Annex II-septies, point 67; Regulation (EU) 2022/1925, Articles 39 and 42; Stella (2024), cit., pp. 67-68.

[129] Montini (2026), cit.; Court of Milan No. 212/2026, cit.

published decisions, settlements, amounts actually recovered and the time and cost of obtaining redress measure different aspects of effectiveness. However, no comprehensive national account of these outcomes is yet available.