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Third-Party Litigation Funding and Private Antitrust Enforcement in Digital Markets: Conditions and Opportunities in Italy

Third-Party Litigation Funding e private enforcement antitrust nei mercati digitali: condizioni e opportunità in Italia

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Abstract
The article examines the role of Third-Party Litigation Funding (TPLF) as a tool to support private antitrust enforcement in digital markets, with specific reference to the Italian system. Starting from the absence of a dedicated legal framework on litigation funding, the paper reconstructs the conditions under which its main operational models may be considered legitimate under Italian civil law, banking and financial regulation. Particular emphasis is placed on abuses of dominance in digital markets, where the structural features of the sector and the characteristics of the actors involved make the challenge of ensuring effective damages actions particularly complex. The article then identifies the main legal and economic conditions required to bring TPLF-backed antitrust claims in Italy, with special focus on anticompetitive conducts in digital markets and the AdTech sector.

L'articolo esamina il ruolo del Third-Party Litigation Funding (TPLF) quale strumento di supporto al private antitrust enforcement nei mercati digitali, con specifico riferimento all'ordinamento italiano. Muovendo dall'assenza di una disciplina organica del finanziamento del contenzioso da parte di terzi, il contributo ricostruisce sistematicamente le condizioni in presenza delle quali i suoi principali modelli operativi possono legittimamente operare in considerazione delle implicazioni civilistiche e regolamentari coinvolte. Particolare attenzione è dedicata agli abusi di posizione dominante nei mercati digitali, nei quali le caratteristiche strutturali del settore e degli attori coinvolti rendono particolarmente complessa la sfida dell'effettività della tutela risarcitoria. L'articolo individua quindi le principali condizioni giuridiche ed economiche necessarie per promuovere in Italia azioni antitrust sostenute dal TPLF, con specifico riguardo alle condotte anticoncorrenziali nei mercati digitali e al settore AdTech.

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Summary: 1. Introduction and Statement of Objectives. – 2. TPLF in the Italian Legal Framework. – 3. The Key Role of Preliminary Assessment. – 4. Must Have in the Legal Assessment. – 5. Theory of Harm & Burden of Proof: Legal Complexity in Digital Markets and Antitrust Actions. – 6. Anticompetitive Conduct in Digital Markets and Readiness of the Italian System for a Funded Pilot Case.

1. Introduction.

The progressive emergence of anticompetitive practices in digital markets and the difficulties that victims of such conduct face in obtaining full compensation for the harm suffered as a result of the infringement has brought to the forefront a crucial question for the Italian legal system: can Third-Party Litigation Funding (TPLF) operate as a viable and legitimate mechanism to support private enforcement in complex antitrust cases, including those arising in the digital economy[1]?

The question is not merely theoretical. Indeed, antitrust law inherently demands the development of effective instruments to give full effect to the right to compensation enshrined in Art. 3 of Directive 2014/104/EU (Antitrust Damages Directive). This principle – ensuring the restoration of the injured party to the position they would have been in absent the infringement – becomes even more crucial in the digital economy, whose structural characteristics significantly heighten the barriers to access to justice. In digital markets, the imbalance between dominant platforms and injured parties is particularly pronounced: the capacity of big players to design and manipulate market architecture can produce widespread and diffuse harm while simultaneously rendering individual litigation prohibitively costly, thus deterring claims that would otherwise be legally well-founded.

This observation is particularly relevant to the flourishing of TPLF in Italy, especially considering the recent enforcement activities undertaken by the European Commission in the digital sector, Art. 9 Directive 2014/104/EU, and the increasing recourse to follow-on damages actions concerning cartels and abuses of dominance in Italy[2].

As Big Techs operate at a global level and across integrated markets, the effects of their anticompetitive conducts transcend national boundaries, producing distortions both at the European and national levels. Italy, as part of the EU Digital Single Market, is not immune to these dynamics. The market power exercised by "digital giants" in areas such as online advertising, search engine rankings, app marketplaces, and e-commerce routinely impacts Italian firms, developers, and consumers.

[1] C Poncibò, 'Justice Comes at a Price: Third Party Litigation Funding in the European Union' (2026) 34(1) ERPL 139.
[2] See, inter alia, Cass 19729/2025; Trib Milano 3914/2023; App Milano 19 March 2025.

These distortions, however, present a significant enforcement paradox. While the harm suffered may be economically significant, it is often fragmented across a multitude of actors who lack both the economic and informational resources to pursue litigation against dominant platforms. The initiation of such proceedings requires a high degree of specialization, economic expertise, and the ability to navigate multi-jurisdictional complexity. For these reasons, victims of digital anticompetitive abuses face significant concrete disincentives to litigate, resulting in the perpetuation of the market failures that competition law aims to correct.

This is precisely why the current context offers a timely opportunity and a sound legal background to expand the use of TPLF within the field of antitrust private enforcement in Italy.

Third-party litigation funding presents itself as a mechanism capable of counterbalancing the economic, informational, and strategic asymmetries that characterize digital antitrust private enforcement. TPLF, allowing a private funder to finance litigation costs in exchange for a share of the recovery, ensures the anticipation of legal and economic costs, removing the initial financial obstacle and simplifying access to the expertise and resources required to construct a sound theory of harm. In this sense, TPLF strengthens the effectiveness of remedies, including compensation, envisaged by the Antitrust Damages Directive.

From a national perspective, Italy is particularly well-positioned to serve as a testing ground for the structured deployment of TPLF in antitrust private enforcement. Italian courts have matured in their handling of follow-on damages claims, and procedural instruments for mass litigation are becoming more accessible [3] . Moreover, the increasing use of litigation finance in commercial arbitration and high-value antitrust cases has fostered a basic awareness among legal professionals.

These developments, combined with the proactive stance of the Italian Competition Authority (AGCM), suggest that the conditions are in place for the first wave of TPLF-supported antitrust litigation in digital markets as well.

This contribution develops a conditional argument rather than a claim of automatic suitability of Third-Party Litigation Funding in Italy. Its synthesizes the civil-law, regulatory and ethical perimeter within which TPLF may legitimately operate in Italy, taking into account the absence of a dedicated statutory framework and the need to rely on general principles of contract law, banking regulation and professional ethics. That perimeter is then translated into a practical due-diligence framework for antitrust damages actions, capable of distinguishing claims that are merely theoretically admissible from claims that are procedurally viable, economically rational and evidentially sustainable.

The analysis therefore proceeds through three analytically distinct steps. First, it addresses the question of legal admissibility, asking whether the funding arrangement can be structured in a way that complies with Italian civil law, financial regulation and ethical constraints. Secondly, it considers investment viability, assessing whether the claim presents a sufficiently robust combination of jurisdiction, standing, limitation period, theory of harm,

[3] L Bugatti, 'Collective Redress 3.0 in Italy: From Consumer Class Action to Consumer Representative Action' (2024) ItaLJ 551 ff.

causation and quantifiable damage to justify the allocation of litigation capital. Thirdly, it evaluates strategic opportunity, examining whether digital-market abuses may provide a suitable context for a first TPLF-backed antitrust action in Italy. This sequence is intended to avoid any assumption that the mere existence of an antitrust infringement, or of a public-enforcement decision, is sufficient to make a funded damages action viable. Rather, the article argues that TPLF can become a legitimate and useful instrument of private antitrust enforcement only where legal admissibility, economic sustainability and strategic coherence are cumulatively satisfied.

In this perspective, the paper also aims to provide a roadmap for practitioners, funders, and academics working at the intersection of civil law, competition law and law & economics, interested in dealing with third party litigation funding.

Therefore, this paper has three main objectives.

First, it seeks to synthesize whether and under what legal conditions TPLF can be effectively used in Italy as a general legitimate tool for antitrust private enforcement, with specific attention to the civil-law constraints arising from financial regulation, contract law, and procedural issues.

Second, it outlines the methodological framework required to assess the viability of a funded antitrust action, focusing on the legal and economic assessment, indispensable for constructing a robust theory of harm and, thus, for a successful strategy.

Ultimately, the analysis argues that recent findings related to anticompetitive behaviour in digital markets – particularly in the advertising and online intermediation sectors – create the factual and legal preconditions for the first TPLF-supported antitrust action in Italy, marking a potential turning point in the private enforcement landscape.

2. TPLF in the Italian Legal Framework.

TPLF is not explicitly regulated under Italian law. This silence, however, does not translate into prohibition. As in many civil law jurisdictions, the absence of codified legislation demands a functional reading of existing general principles of civil law, banking regulation and ethics to determine whether litigation funding agreements are enforceable[4].

Indeed, although Italy lacks specific legislation on litigation finance, the existing legal framework offers paths of legitimacy, provided that funders, claimants, and legal counsels are attentive to regulatory boundaries, civil law principles, and ethical constraints[5].

The interpretation of Arts. 1260 ff., 1322, 1343, 1418, 1472 and 2233 c.c., in light of Article 106 Testo Unico Bancario (TUB), forms the legal perimeter within which litigation funding must be structured.

To understand whether and how litigation funding may lawfully operate in Italy, one must examine (a) the contractual schemes currently in use, (b) the

[4] C Poncibò, Final Report – European Commission: Mapping Third-Party Litigation Funding in the EU (2025) 288 ff.

[5] See ELI, Principles on Third Party Litigation Funding.

limits imposed by the Italian civil code, (c) the boundaries of financial regulation under Article 106 TUB, and (d) possible practical strategies to structure TPLF operations and funding agreements without violating mandatory provisions[6].

a) Structural Variants of TPLF in the Italian Context

In the current Italian practice, litigation funding is not confined to a single model. Rather, several contractual configurations are deployed, depending on the relationship between the funder, the claimant, and the lawyers involved. Among the most common structures are:

i. Assignment of Claim

Pursuant to Articles 1260 - 1267 c.c., the creditor may assign a claim to a third party, even without the debtor's consent, unless the claim is strictly personal or assignment is prohibited by law. In this model, the funder becomes the holder of the substantive legal right and can litigate in its own name[7]. While effective in terms of standing – particularly in complex damages actions where procedural clarity is critical – this model may raise regulatory concerns when the funder performs the acquisition of claims on a professional basis. In such circumstances, the activity risks falling within the scope of regulatory oversight, as it may fall under the definition of financial regulated activities *ex* Art. 106 TUB.

However, it must be emphasized that the fact that the assigned claim is disputed, uncertain in its amount, or even in its legal foundation (*quantum et an*) does not impair the validity of the assignment under Italian civil law[8]. This principle is rooted in Art. 1472 c.c., which expressly permits the sale of a future asset, and reinforced by Art. 1261 c.c., which only prohibits the assignment of disputed claims by judges, public officials, or attorneys involved in the matter due to concerns of conflict of interest and ethical impropriety. Outside these specific exclusions, the codified rules do not require that the claim be certain, liquidated, or uncontested.

On the contrary, civil law doctrine and jurisprudence recognize the assignability of future, conditional, or contested claims, provided that the cause of the contract is lawful and the object is sufficiently determinable under Article 1346 c.c.

This natural flexibility makes claim assignment a structurally viable vehicle for TPLF, particularly in antitrust actions where the damages are often hypothetical, disputed, or not yet judicially recognized[9].

ii. Success-Based Remuneration

[6] F Bertelli, Gli accordi di finanziamento della lite (Napoli 2024).

[7] E Ferrante, S Visca and L Coppo, 'Il modello contrattuale applicabile' in E D'Alessandro and C Poncibò (eds), *Prospettive del Third-Party Funding in Italia* (Torino 2019) 25 ff.

[8] G Afferni, 'Bundling of Claims by Way of Assignment in Italy' (2022) MC 30 ff.

[9] A Pinna, 'Financing Civil Litigation: The Case for the Assignment and Securitization of Liability Claims 'in M Tuil and L Visscher (eds), *New Trends in Financing Civil Litigation in Europe: A Legal, Empirical, and Economic Analysis* (Cheltenham 2010) 109 ff; A Davola, 'Oltre il private enforcement: l'ipotesi di un mercato delle azioni di risarcimento del danno antitrust' (2015) Danno e resp 677 ff; G Afferni, 'La cessione del credito risarcitorio per violazione del diritto antitrust' (2017) Dir comm int 909 ff.

Another common structure in practice does not involve a transfer of the claim. Rather, it establishes a purely obligational relationship between the funder and the claimant. In such models, the creditor remains the formal and substantive holder of the right and litigates in its own name, while the funder undertakes to cover all litigation-related costs (including legal fees, procedural expenses, and the potential risk of adverse costs) in exchange for a contractual obligation by the claimant to pay a portion of any sum recovered through settlement or judgment[10].

This model avoids some of the complexities associated with the assignment model, such as the need to notify the debtor, or the regulatory implications that may arise when assignments are made on a systematic basis. However, it raises more significant challenges in terms of litigation governance. Since the funder does not become the formal party to the proceedings, it lacks *iure proprio* standing and must rely entirely on the claimant to conduct the litigation effectively. This creates potential for strategic misalignment and may undermine the efficiency and legal certainty of the operation. To mitigate these issues, it is essential that contractual governance mechanisms are carefully drafted to regulate, *inter alia*, the decision-making authority between claimant and funder, the allocation of procedural risks, the information obligations throughout proceedings; the conditions of withdrawal.

Legal professionals are not allowed to be the "funding" party in such TPLF agreements. Indeed, Italian law prohibits "patti quota lite" – contracts under which lawyers receive a share of the proceeds of litigation – as per 13, co. 4, l. 247/2012, which forbids compensation consisting of a share in the object of the dispute[11].

iii. Hybrid Models

Frequently, litigation finance takes hybrid forms. In funding arrangements currently explored within the Italian legal system, the structure often revolves around assignments of claims that include no immediate disbursement of the purchase price to the creditor. Instead, the funder commits to covering the costs necessary to enforce the claim (including legal fees, court costs, expert reports, and other potential costs). In this circumstance sums are not transferred, but money is somehow allocated to support the litigation process itself, ensuring its sustainability throughout the entire lifecycle of the judicial proceedings, potentially including appeals and enforcement[12].

Within this framework, the price of the assigned credit is determined *ex ante*, but the payment is conditioned to a successful outcome, since the funder agrees to retrocede to the claimant a fixed or variable (considering time and efforts) percentage of the amount recovered upon the resolution of the

[10] GM Solas, 'Alternative Litigation Funding and the Italian Perspective' (2016) ERPL 253 ff; G De Nova, 'Il finanziamento della lite: il "litigation funding agreement"' (2022) Riv trim dir proc civ 267 ff; M de Pamphilis, ' "Litigation funding": i modelli di finanziamento del contenzioso tra luci e ombre' (2023) Nuova giur civ comm 451 ff.

[11] Decreto-legge 4 July 2006, n 223, amending art 2233 cc.

[12] A very important profile to consider and further explore, indeed, is connected to the destination and management of the funds provided by the third-party funder. From a prudential perspective, it may be advisable for these funds to be held in an escrow account, ensuring that they are used exclusively for the purposes set out in the funding agreement and providing an additional layer of transparency and security for all parties involved.

dispute, whether by settlement or final judicial decision[13]. In this sense, the funder does not acquire the full economic benefit of the litigation, but shares the result with the original creditor, whose cooperation and alignment of interests remain necessary throughout the proceedings[14].

This hybrid model combines features of traditional civil law structures, such as assignment, mandate, fiduciary agreements. Nevertheless, none of these is, on its own, sufficient to absorb the full complexity of the funding operation. Consequently, a TPLF agreement must be regarded as atypical contracts within the meaning of Art.1322 c.c., which admits the validity of contractual forms not expressly regulated, provided they pursue interests worthy of legal protection by the system[15].

The legitimacy and enforceability of litigation funding contracts, thus, must be evaluated regardless of the *nomen iuris* used in drafts. Instead, the applicable legal framework must be reconstructed through a functional analysis, capable of identifying the true nature of the operation, in light of its structure, purpose, and effects.

b) Legitimacy and Enforceability of TPLF Agreements in Italy

The functional perspective makes clear why litigation funding can legitimately flourish in Italy. From a functional standpoint, the question is not which abstract category the contract resembles. Rather, the inquiry turns on which interests the whole operation realizes.

One of the defining characteristics of TPLF lies in the inherent tension between private economic interests and social utility. At its core, a TPLF arrangement is a financial transaction: the funder enters the operation with a clear expectation of return mainly depending on the success of the litigation/arbitration or negotiation. Yet, the very mechanism through which this return is pursued, places litigation funding within the broader landscape of access to justice, where economic intent intersects with constitutionally protected values.

This dual nature generates a structural tension. On the one hand, the funder's profitable purpose is both legitimate and necessary: without it, the economic rationale for investing in costly and risky litigation would collapse. On the other hand, the utility of TPLF from a systemic perspective lies in its capacity to facilitate compensation for damages, redress power imbalances, and enable meritorious claims to reach the courtroom, particularly in complex or high-cost areas such as antitrust enforcement or environmental litigation[16].

A legitimate and enforceable contract requires a reconciliation between the interests at stake. The balancing act is not a theoretical activity: it is a matter of contractual design to avoid any grounds for contestation based on fears of predatory conduct or abusive exploitation of weaker parties[17].

[13] Munari, ' "Third party funding" e "assignment of claims": il fenomeno, le riserve di attività previste dal TUB e dal TUF, e la normativa sull'usura per interessi' (2025) Riv trim dir proc civ 789 ff.
[14] Afferni, 'La cessione del credito risarcitorio' (n 8) 921 ff; Munari (n 12) 789 ff.
[15] De Nova (n 9).
[16] Costituzione italiana, arts 24 and 111; European Convention on Human Rights, art 6.
[17] ELI (n 4); D'Alessandro and Poncibò (n 6) 37 ff.

The pursuit of economic gain is not incompatible with the legal system and is worthy of protection. What the law seeks to prevent is the transformation of that pursuit into a mechanism for exploiting asymmetries of power or information, particularly in markets where certain actors are structurally disadvantaged. Thus, contractual safeguards must *inter alia* ensure that the funder's influence does not distort the course of litigation, suppress settlement opportunities for strategic reasons, or pressure the claimant into pursuing claims that are legally unsound but financially promising[18]. Likewise, the contract must be transparent and proportionate. Contracts that violate these boundaries may be declared null and void under Article 1418 c.c.

Besides, when funding agreements help overcoming financial obstacles that would otherwise prevent the claimant from enforcing rights, TPLF rebalances power and enhances the principle of effectiveness. This is particularly evident in structurally asymmetric contexts such as the field of antitrust damages, where Directive 2014/104/EU seeks to ensure the full and effective compensation of harm, and recognizes the structural difficulties that victims face in bringing such actions[19]. Similar arguments can be invoked in markets such as the digital one, characterised by dominance or super-dominance positions, severe informational asymmetry, the need for costly economic analysis to assess damages.

c) Financial Regulation: The Article 106 TUB

The most controversial issue in Italian TPLF practice is whether the funder engages in a regulated financial activity, which requires authorization under Article 106 TUB20.

According to Article 106 TUB, the exercise of the activity of "granting loans in any form" toward the public is reserved for authorised financial intermediaries, whose capital, governance, and transparency requirements are supervised by the national banking authorities.

To operate safely in Italy, the key questions for funders – regardless of the concrete model used in their operations (assignment/success fee/hybrid), given that they all pursue an identical economic function – are: Is the TPLF activity professional and systematic? Does it involve activities to the public?

If the answers are yes, there is a concrete possibility for funders to fall within the perimeter of Art. 106 TUB.

In early 202421, the Italian Supreme Court addressed some concerns in a case involving the professional acquisition of airline passenger claims. In such a circumstance, the Court ruled that, since the funder did not provide upfront capital, its remuneration was conditional on successful enforcement of the claim and all costs and risks were retained by the funder, no financial activity was in place.

[18] FP Patti, 'Settlements and Trial Control in Third Party Litigation Funding: The European Context' (2026) 34(1) ERPL 119.
[19] Directive 2014/104/EU, art 2.
[20] Bertelli (n 5) 283 ff.
[21] Cass 12345/2024; Cass 7645/2024.

However, this precedent must be treated with caution, since the core business of the "funder" in the case under review, was linked to trial and proceedings in a minimal percentage. Indeed, the funder was specialised in sending compensation requests for flight delays: the main service offered to the public concerned the processing of the application and the management of compensation claims where the right to receive reimbursement had arisen under Regulation (EC) No 261/2004. The investment in assessment and litigation-linked activities, thus, also considering the value of the claims, was not prevalent. Moreover, the professional activity primarily consists of collecting and submitting documents and formal requests to the companies on behalf of passengers who would otherwise renounce their rights.

More structured operations, especially those involving upfront payments, high-volume acquisitions, high litigation-linked costs on a professional basis, as well as expected economic returns, may, on the contrary, trigger regulatory scrutiny and require authorization. In its absence, it is still debated if contracts concluded in violation of Art. 106 TUB may be declared void, under Article 1418 c.c. In any case, criminal liability for unauthorized banking activity may arise under Article 132 TUB.

d) Practical Strategies to Avoid Regulatory Risks

To operate effectively and avoid risks of non-compliance in Italy, TPLF providers and funders must adopt structural safeguards alternatively aimed to a) remain outside the perimeter of banking regulation; either b) obtain the necessary authorization where they intend to operate as financial intermediaries and, if needed, collect private investments; or c) pursue strategies that ensure full regulatory compliance, including the use of structures already recognised under national law to facilitate the circulation and monetisation of claims.

Option (a) – remaining entirely outside the perimeter of financial regulation – is the most conservative and, consequently, the most restrictive. Funders adopting this approach should design their operations so that they do not qualify as engaging in the "professional activity of granting credit under any form" within the meaning of Art. 106 TUB. This typically implies avoiding any advance disbursement of capital, any remuneration structured as a return on financing, or any systematic collection of claims. While this model minimises regulatory risk, it also significantly limits the operational scope of TPLF activities and may reduce the economic viability of funding large-scale or complex litigation.

Option (b) – obtaining the necessary authorization – involves embracing banking and financial regulation by seeking formal authorization to act as a financial intermediary or as a collective investment vehicle. This path requires undergoing a complex licensing procedure and organising the activity through a structure compliant with the TUB or with the Italian Law on Financial Intermediation (TUF), particularly Art. 35-bis ff. While demanding in terms of structure, capital requirements, and internal controls, this option offers the advantage of regulatory legitimacy and long-term sustainability. Indeed, it enables funders to collect capital from the public, share with supervisory

authorities a clear business plan, and provide transparency on organisational structure and risk management. This could also strengthen the perception of TPLF as a socially and economically valuable tool, especially if regulators are involved in defining, de jure condendo, a stable framework for litigation finance.

Option (c) – using structures already recognised under national law to facilitate the circulation and monetisation of claims – allows operators to remain de jure condito within the bounds of existing law, while relying on already available structures in Italian legislation to manage TPLF operations. For instance, the securitisation framework governed by Law No. 130/1999 may be used to structure the monetisation and circulation of claims. However, this path also requires a detailed analysis of the types of licenses and authorizations possibly involved in each activity. The limitations imposed by specific provisions for the various types of licensed vehicles – such as the ones recognised by Art.115 of TULPS, Art. 3 l. 130/1999, Arts. 106 and 114 TUB – must be carefully considered to ensure that the actual structure and function of the funding operation remain compliant.

In this perspective, each TPLF transaction must be examined individually to determine whether the activity falls under any reserved domains, and to what extent an existing legal model may be adapted without exceeding its permitted scope22.

e) Structuring Contracts and Success Fees, Ensuring Deontological Compliance and Ethical Boundaries

Given the absence of a detailed statutory framework for TPLF in Italy, it becomes critical that contracts be drafted with a functional approach, capable of withstanding judicial scrutiny under Arts. 1322, 1343, and 1418 c.c.23. The structuring of litigation funding agreements demands the active involvement of qualified professionals capable of managing the legal, economic, and procedural complexity inherent in this field. These professionals must ensure that contracts are tailored to the specifics of each operation and firmly grounded in the existing legal framework. This includes respecting the general principles of contract law as well as aligning with constitutional principles involved in TPLF operations.

Furthermore, working within a perimeter of shared ethical standards – guided by deontological rules and potentially reinforced through self-regulatory instruments such as codes of conduct – could play a pivotal role in fostering a responsible funding culture.

A key element in this contractual design concerns the limitations surrounding success fees and the extent to which restrictions or judicial scrutiny on their percentage may affect the economic viability and

[22] In general terms, the suggestion that a few indicators are sufficient to exclude the applicability of financial activity regulations under Italian law fails to consider the structural and contractual complexity of litigation funding. Equally, it would be misleading to rely on the limited Supreme Court decisions issued so far as a basis for legal certainty in this evolving field, as they concern specific factual scenarios (e.g., the airline passenger claims business) and cannot be generalised to more complex and litigation-intensive funding models.

[23] De Nova (n 9); Munari (n 12).

attractiveness of financing complex antitrust litigation, particularly where high risk, long duration, and substantial upfront costs require an adequate return on investment to justify the funder's involvement.

While Italian law typically doesn't intervene in the economic balance of contracts between private parties, there are exceptions when unfairness or exploitation is evident. In principle, funders are free to (a) offer to acquire a claim at a price they deem appropriate, provided the assignor freely accepts it (although enhanced disclosure and transparency obligations may apply when the assignor is not a professional actor), and (b) agree on a remuneration model, requiring an agreed percentage of the amount recovered. In this second scenario, on the one hand it is crucial to ensure that the percentage is not manifestly disproportionate, translating into a speculative abuse.

One the one hand, if the agreement reveals signs of exploitation of a party's state of need or vulnerability, courts may invoke remedies such as rescission for lesion (under Art. 1448 c.c.). On the other hand, even beyond the thresholds of art. 1448 c.c., where the percentage-based remuneration effectively neutralises the funded party's access to a meaningful recovery, or if it results in a de facto expropriation of the awarded sum, the judge could intervene to reduce the funder's fee[24]. Therefore, proportionality between the percentage of funder's remuneration and the actual effort considering time, risk, and resources invested becomes essential to ensuring the sustainability and legitimacy of the TPLF model.

In this context, self-regulation offers an opportunity to clarify the duties and boundaries of funders, prevent opportunistic behaviour, and promote transparency and trust among all parties[25]. Such frameworks can also help counter entrenched biases and scepticism towards TPLF, which often stem from concerns about excessive control, conflicts of interest, or speculative motives. By adopting standards of ethical engagement that prioritise procedural integrity and respect for the claimant's autonomy, the litigation funding industry can contribute to the legitimate development of a sustainable and socially acceptable practice within the Italian legal system.

3. The Key Role of Preliminary Assessment.

Besides the issues related to structures and contractual clauses, a rigorous preliminary assessment plays a pivotal role in determining the feasibility of TPLF operations. This assessment serves multiple purposes: it aligns the funder's economic interests with the claimant's right to effective judicial protection, it ensures that the funding agreement is structurally compliant with Italian and EU legal principles, and it avoids burdening the judiciary with unmeritorious or speculative litigation.

The preliminary assessment becomes the cornerstone for establishing both the sustainability and the "meritevolezza" of the whole operation from the perspective of contractual and procedural law. First and foremost, it performs a balancing function, as it allows reconciling the private, profit-oriented nature

[24] Cass 10506/2017. See also Cass 18128/2005.
[25] ELI (n 4) 21 ff.

of the funder's investment with the constitutional imperative to ensure the effective protection of rights, as guaranteed by Arts. 24 and 111 of the Italian Constitution, and Article 47 of the Charter of Fundamental Rights of the European Union. By filtering out claims that are unmeritorious, or otherwise incapable of producing meaningful judicial outcomes, the assessment upholds the legitimacy of TPLF as a tool for improving access to justice, while at the same time protecting the judicial system from opportunistic or speculative abuses[26]. Indeed, an inadequately substantiated claim would not be funded, since it may expose the claimant and the funding structure itself to economic, legal and reputational losses.

In general terms, the preliminary assessment serves as a qualitative filter to promote the enforcement of rights with a realistic prospect of success. By providing an *ex ante* legal and economic evaluation of the merits, risks, and potential values involved in a specific operation, funders can choose to finance private actions that would not have been filed (due to prohibitive costs, lack of technical expertise, or resource constraints), reasonably expecting to achieve economic results in return.

At a systemic level, this preliminary assessment prevents TPLF from being reduced either to a purely financial transaction or to a merely procedural device. Its function is to connect contractual validity, procedural economy and the effectiveness of competition-law remedies. The funder's due diligence therefore becomes relevant not only for pricing the claim, but also for selecting cases in which private enforcement can plausibly correct an under-enforcement problem without encouraging speculative litigation.

The foregoing requirements should not be understood as a merely cumulative checklist: In a TPLF-funded antitrust action, jurisdiction, competence, applicable law, limitation periods, procedural configuration and standing operate together as a system for allocating legal risk. Their function is not only to determine whether the claim can formally be brought before an Italian court, but also to assess whether the action can be transformed into a fundable project. From this perspective, the legal assessment performs a gatekeeping function: it separates abstract enforceability from practical litigability. Indeed, a claim may be legally conceivable, but still unsuitable for funding.

4. Must Have in the Legal Assessment.

The legal assessment plays a foundational role in TPLF operations. Far from being a mere compliance check, it forms the core of the funder's risk analysis and strategic architecture. A successful TPLF initiative depends on verifying the enforceability of the rights and interests at stake, the procedural viability of the claim, and the compatibility of the action with the overall funding structure and legal system. Each of these elements addresses a specific legal question – concerning jurisdiction, applicable law, procedural deadlines, or contractual frameworks – any miscalculation of which could jeopardize both the investment and the success of the litigation.

[26] Codice di procedura civile, arts 88 and 96.

a) Jurisdiction

The first legal checkpoint in any assessment is the establishment of national jurisdiction. For actions brought in Italy, the Brussels I-bis Regulation (Reg. 1215/2012) applies, with its Art. 7 providing a key basis for special jurisdictions [27]. On the one hand, in matters relating to contracts, Italian jurisdiction exists when Italy is the place of performance of the contractual obligation. On the other hand, the defendant can be sued in Italy in matters relating to tort law considering that the Regulation allows to bring action before the courts of the place where the harmful event occurred (or may occur).

In the context of competition law, this provision has been interpreted broadly by the CJEU, to include both the place of the unlawful conduct and the location where anti-competitive effects materialise. Accordingly, also considering anticompetitive conducts in digital markets, Italian courts may assert jurisdiction whenever the claimant is based in Italy and the distortion of competition affects the Italian market or sub-market, even if the defendant undertaking is domiciled elsewhere.

b) Territorial Competence

Once jurisdiction is confirmed, the issue becomes competence, since the choice of court may affect duration and costs, as well as the predictability of the decision, which is crucial for the funder's risk modelling.

As far as territorial competence is concerned, art. 20 c.p.c. establishes optional competence belonging to the Court where the obligation was incurred or must be performed. This means that the plaintiff may freely choose this forum, and the defendant must comply with the plaintiff's selection, which does not require justification.

It should also be noted that d.lgs. 168/2003 has established the Specialised Business Sections of Tribunals, and that Art. 3 of the same Decree governs their competence for subject-matter jurisdiction. For instance, according to Art. 3 d.lgs. 168/2003 and Art. 33(2) of Law 287/1990 (Italian Antitrust Law), private enforcement of antitrust claims is assigned exclusively to the specialised business courts (Tribunali delle Imprese), whose competence is regulated by Art. 4 d.lgs. 168/2003[28].

c) Applicable Law

Identifying the applicable law is a foundational element of any legal assessment in cross-border litigation, particularly in the context of digital market abuses and antitrust damages. It determines not only the substantive legal framework governing liability, but also key procedural consequences, such as the availability and burden of proof, standards for damages quantification, and the interpretation of limitation periods. In the context of TPLF, where litigation predictability is essential to risk-based funding, strategically resolving this conflict-of-laws question at the outset is critical.

[27] Regulation (EU) 1215/2012 art 4.

[28] F Valerini, 'La competenza per materia sulle domande aventi ad oggetto i contratti a valle di un'intesa vietata per il diritto antitrust' *Judicium* (24 March 2020).

The European framework for determining the applicable law to non-contractual obligations is primarily governed by Reg. 864/2007/EC, commonly known as the Rome II Regulation. This regulation establishes a general rule in Art. 4(1), according to which the applicable law is the law of the country in which the damage occurs, irrespective of the country where the event giving rise to the damage occurred or where the indirect consequences of that event emerge. However, the Regulation also includes special rules for specific subject matters, one of which is competition law. Art. 6(1) and 6(3)(a) of Rome II provide that the law applicable to a non-contractual obligation arising out of an act of unfair competition shall be the law of the country where the anticompetitive conduct produces its effect (on competitors or consumers) and state that "the law applicable to a non-contractual obligation arising out of a restriction of competition shall be the law of the country where the market is, or is likely to be, affected". Such a market-oriented approach is particularly relevant to self-preferencing cases, where dominant digital platforms (such as Google, Amazon, Apple) engage in conduct that simultaneously affects multiple national markets across the EU[29]. In such scenarios, each affected national market may give rise to distinct harm, governed by the law of that country.

In practice, where the Italian market is among those affected – whether through discrimination against Italian business users or harm to Italian end-consumers – Italian tort law will apply pursuant to Art. 2043 of the Italian Civil Code, in conjunction with EU competition law provisions, particularly Articles 101 and 102 TFEU.

While Rome II governs non-contractual obligations, the Rome I Regulation (Reg. 593/2008/EC) governs contractual obligations. This becomes relevant in litigation involving a contract-based claim (e.g., unfair contractual clauses by dominant platforms, nullity/voidness), or when assessing funding agreements themselves. Under Rome I, the applicable law is generally that chosen by the parties (Art. 3 Rome I); absent such choice, the law of the country with the closest connection applies, often the law of the habitual residence of the party performing the characteristic obligation.

For cases involving non-EU elements, or where Rome I or II do not apply, Italy relies on its domestic conflict-of-law statute, namely Law No. 218/1995.

d) Follow-on vs Stand-alone Action

A pivotal distinction in the assessment concerning antitrust cases is whether the claim is follow-on or stand-alone[30].

This distinction significantly impacts the procedural strategy. In follow-on claims, the legal burden is limited to proving the damages and their quantification, whereas in stand-alone actions, the claimant must demonstrate the infringement, the causal link, and the harm suffered – thus increasing both evidentiary complexity and timing-related risks.

What makes follow-on cases particularly attractive for TPLF operators is the legal certainty offered by Art. 9 of Dir. 2014/104/EU, transposed into Italian law by Art. 7 d.lgs. 3/2017, according to which i) a violation of competition law that

[29] D Fauceglia, 'The Amazon Case, the Negotiation Phenomena and the Abuse of Dominant Position. First Reflections on the Self-Preferencing' (2021) 2 *EJPLT*.
[30] Legislative Decree 3/2017 art 7.

has been established by a final decision of competent authority in Italy is deemed to be irrefutably established for the purposes of a damages action; ii) where the infringement has been ascertained by a final decision of a competent competition authority in another Member State, such decision constitutes evidence against the infringer regarding the nature of the violation and its material, personal, temporal, and territorial scope[31].

This provision plays a decisive role in shifting the legal risk profile: once the infringement is definitively established by a competition authority, the funder is no longer exposed to the uncertainty of proving the unlawful conduct. Instead, the assessment can be focused on causation and damage quantification, which are more predictable and manageable components from both legal and economic perspectives.

The approach is well-established in Italian Courts, whose rulings have also highlighted the value of settlement in antitrust proceedings under Art. 10a of Regulation 773/2004/EC and the Commission Notice on the conduct of settlement procedures pursuant to Arts. 7 and 23 Reg 2003EC. Indeed, the first instance ruling of the Milan Court on the Trucks cartel case, clearly reflects the Italian position, stating that such settlement decisions – within the limits established by the relevant Regulation – are binding for national authorities[32].

In this sense, follow-on actions allow litigation funding to rest on a stronger legal foundation, significantly reducing the complexity of due diligence and the risk of failure linked to interpretive or evidentiary disputes over the infringement itself. This framework increases legal certainty, shortens procedural timelines, and enhances settlement leverage.

In contrast, stand-alone actions – while potentially offering a first-mover advantage – require full proof of every legal element, including the violation, making their risk profile significantly higher. These cases may still be considered fundable, particularly where strong *prima facie* evidence exists or where coordinated strategies can support the development of a robust theory of harm. However, they require deeper investment in factual investigation, expert analysis, and legal argumentation, which may affect profitability and timeframes.

Hybrid approaches deserve careful evaluation, especially where foreign proceedings may offer factual basis for claims in Italy. Even outside the follow-on context, private enforcement strategies may be reinforced by activating public enforcement mechanisms.

Where appropriate, claimants and funders may consider stimulating intervention by the AGCM, in order to lay the groundwork for a follow-on action in cases where the economic and evidentiary value of the claim justifies it. In this way, a coordinated approach between public and private enforcement can be a powerful driver for unlocking claims that would otherwise remain unfiled due to asymmetries of power, cost, or information.

e) Time Barriers

[31] G Faella and VC Romano, 'Il danno antitrust: prescrizione e valore probatorio delle decisioni di accettazione degli impegni' Merc concorr regole, 426 ff. See also Trib Milano 4491/2021.
[32] *ibid* para 5.

A decisive factor for funding eligibility of an operation is the statute of limitations pursuant to Arts. 2946 ff. c.c. (establishing general limitation rules) and Art. 8 d.lgs. 3/2017[33] for bringing actions for antitrust damages, bearing in mind that rulings of the EUCJ have clarified that limitation rules, in any case, must not make it practically impossible to obtain full compensation[34].

Despite the rules on limitations (including interruption or suspension) and deadlines are very clear in the Italian legal system, their application becomes more difficult in complex contexts such as digital markets[35]. In these sectors, violations are generally continuous, the direct harm and its consequences may become apparent only years after the infringement, and access to relevant data is often delayed and costly. Accordingly, determining whether the action is time-barred requires mapping the timeline of the conduct, linking it to investigatory milestones, analysing claimant's position and access to information.

Under Art. 8 of d.lgs. 3/2017, the limitation period for antitrust damages actions is five years and is linked not only to the cessation of the infringement, but also to the claimant's actual or reasonably expected knowledge of the conduct, its anticompetitive nature, the harm suffered and the identity of the infringer. Investigations by competition authorities may suspend the limitation period. In addition, Art. 8(2) provides that the limitation period is suspended during investigations by competition authorities and remains suspended for one year after the final decision has become definitive or the proceedings have otherwise ended.

In Italian case law, the issue of when the limitation period starts has been the subject of judicial clarification. According to the Italian Supreme Court, the limitation period for the right to damages does not begin when the unlawful conduct occurs, nor when the damage is merely caused[36]. As clarified by Cass., 7677/2020, the moment in which the entitled party can be considered "reasonably informed" may coincide with the date in which the competition authority has begun its investigation, particularly when the injured party operates in the same relevant market and is expected to monitor its competitors' conduct. More recently in a bundled action concerning the trucks cartel, the Italian Supreme Court has rejected objections based on time-bar defences and confirmed the right to compensation for harmed competitors, pointing out that the limitation period does not begin until the damage becomes objectively perceptible and recognisable[37]

f) Enforcement Configuration: Single Actions, Bundling, or Representative Actions?

In the Italian context the enforcement of claims may be structured in three principal ways: individual actions, coordinated bundling of claims, and collective redress mechanisms. Each of these options carries distinct

[33] Legislative Decree 3/2017 art 8.
[34] Case C-637/17 Cogeco Communications
[35] M Libertini, 'Digital Markets and Competition Policy. Some Remarks on the Suitability of the Antitrust Toolkit' (2021) *Orizz dir comm* 337 ff.
[36] G Scoccini, 'La prescrizione del diritto al risarcimento del danno "antitrust"' (2015) *Giur .it* 2606 ff.
[37] Cass 19729/2025; App Milano 2874/2023.

advantages, risks, and compliance implications, particularly when the funding model must remain compatible with the boundaries of financial regulation.

i) Individual Actions

The individual claim model involves the financing of a single party's action. From a funder's perspective, this structure is the most straightforward: it avoids the complexities of aggregation, maintains a direct contractual relationship with a single claimant, and falls more easily outside the perimeter of regulated financial activities, provided the funding is not systematic.

ii) Bundling

In cases where multiple individuals or entities have been harmed by the same or similar conduct – such as mass torts, unfair commercial practices, or systemic contract violations – a bundled litigation model may be adopted. This model involves the coordinated filing of multiple individual actions that may use common legal arguments, evidence, procedural strategies and share advisory costs.

From a funding perspective, however, this model introduces greater complexity. The serial nature of the activity and the structural coordination among a wide number of claimants may suggest a professional or habitual character of the credit acquisition, thereby triggering potential issues concerning a judicial or regulatory requalification of the funding activity (see, *supra*, spec. 1.c)

iii) Collective Redress Mechanisms

The third route involves collective actions, which in Italy have undergone major reforms over the past decade, aligning with EU policy goals for broader access to justice.

Italy's main domestic representative action mechanism is codified in Articles 840-bis to 840-sexiesdecies c.p.c., as amended by l. 31/2019, which restructured the class action regime, making it applicable beyond consumer law, including any homogeneous group interest.

In parallel, Dir. 2020/1828/UE on representative actions for the protection of the collective interests of consumers was implemented in Italy through d.lgs. 28/2023. This European framework mandates that collective actions must be brought by qualified representative entities and meet strict admissibility conditions. Collective mechanisms are designed to improve access to justice and judicial efficiency. However, they introduce heightened legal and regulatory complexity, especially considering that the Italian model is built on an opt-in mechanism. Indeed, since claimants must explicitly adhere to the action after a judicial decision has declared its admissibility, there are practical barriers for TPLF agreements, particularly in contexts where the harmed parties are numerous and not easily identifiable and where the dissemination of information about the collective action is limited[38].

[38] For the German experience, see P Rott, 'Third-Party Funding, Legal Tech and Collective Consumer Protection: Experiences from Germany' (2026) 34(1) *ERPL* 163.

Opt-in systems introduce critical uncertainty for funders [39], as the progressive formation of class membership makes it impossible to assess at early stage the actual scope of damages to be claimed and, accordingly, the potential financial return of the investment. Moreover, the timing and unpredictability of individual adherence affect the standing and representation strategy of the funded party, the allocation of litigation costs, and the enforceability of the funding agreement itself.

In practice, particularly in complex collective or representative actions, the continued ownership of the claim by the original injured party can introduce significant challenges. This is especially true where the structure of the action or the composition of the class is fluid or uncertain over time, and where procedural or strategic unity is difficult to maintain. In such contexts, claim assignment may offer a more reliable and streamlined tool, both procedurally and economically, if the subjective requirements of the funder and objective characteristics of the claim are met (see *supra* and *infra*).

g) Standing and Interest to Sue

Another indispensable requirement under Italian civil procedure is that the claimant possesses both standing, pursuant to Art. 81 c.p.c., and a concrete interest to sue (under Art. 100 c.p.c.)

In TPLF operations involving claim assignment, the funder's standing is derived from Article 1260 c.c., which allows the transfer of a claim without requiring the debtor's consent, except where the claim is considered strictly personal or where specific limitations arise due to the identity of the assignee. In the context of antitrust damages and similar compensatory claims, such rights are not of a personal nature and are therefore fully transferable. This facilitates the construction of legally coherent funding models and simplifies the procedural framework by concentrating both the substantive title and procedural initiative in the hands of a single actor (the funder or its vehicle), thus reducing the risk of fragmentation and enhancing litigation efficiency.

The legal assessment therefore performs a selective and integrative function. Jurisdiction, competence, applicable law, limitation periods, procedural configuration and standing do not operate as isolated requirements. Together, they determine whether the claim can be transformed into a procedurally coherent and economically fundable enforcement strategy. This is especially important in digital-market cases, where the cross-border character of the conduct and the dispersion of harm can otherwise obscure the link between infringement, forum, claimant and loss.

5. Theory of Harm & Burden of Proof: Legal Complexity in Digital Markets and Antitrust Actions.

In any civil litigation – particularly those supported by TPLF – the theory of harm is the heart of the entire legal strategy. It offers the framework that links the defendant's conduct to a recognisable and compensable injury.

[39] Bugatti (n 2) 572 f.

Across various domains of civil law, the theory of harm must satisfy both legal coherence and economic plausibility. It must articulate the breach of a legal norm, identify the right or interest violated, and demonstrate a causal relationship between that violation and a specific, measurable form of harm suffered by the claimant.

Under Italian law, the foundation for non-contractual liability is Art. 2043 c.c., which requires a wrongful act, a concrete and unlawful damage, and a causal link between the two. This general framework also applies to damages actions in regulated sectors such as competition, with important supplements introduced through sector-specific legislation – for example, d. lgs. 3/2017, which implements Directive 2014/104/EU on antitrust damages actions[40].

Take antitrust litigation as a paradigmatic case. Here, the theory of harm must bridge the legal norms of competition law (under Articles 101 and 102 TFEU, and corresponding national legislation) with the economic realities of market structure, exclusionary strategies, and allocative inefficiencies. In such claims, the task is often complicated by the need to demonstrate how complex abuses impacted on price, quality, innovation, or consumer choice. This aspect is especially salient in private enforcement cases arising in digital markets, where anticompetitive conduct does not always produce immediately visible price effects, and where traditional metrics of market power, exclusion, and consumer harm are complicated by platform dynamics, data-driven discrimination, and self-preferencing behaviours.

From the perspective of the funder, a solid theory of harm provides the legal foundation of the claim and requires a careful economic evaluation, which is essential for pricing the risk and potential economic return. The evidentiary function of the theory of harm is therefore not merely descriptive. It determines which facts must be proved, which counterfactual scenario must be constructed, and which economic evidence is required to transform a market distortion into a compensable loss.

This requirement introduces the challenge of counterfactual causation: the claimant must demonstrate what would have happened without the unlawful conduct. Such counterfactual reasoning is particularly delicate in digital markets, where fast-evolving technologies, opaque algorithmic practices, and network effects may distort both baseline conditions and observable outcomes.

Courts increasingly require rigorous econometric models, simulations, and technical expert reports to support the plausibility of the damage narrative. In recent Italian case law, courts have shown growing sophistication in handling such complexity. For instance, the Milan Court of Appeal (judgment of 19 March 2025) endorsed the use of Weighted Average Cost of Capital (WACC) and counterfactual profit benchmarks as legitimate tools to quantify losses over time, demonstrating judicial readiness to engage with advanced economic arguments, provided the theory of harm is clearly and coherently articulated.

The theory of harm must integrate legal and economic dimensions from the outset, and this requires combining a legal analysis with economic competence so that legal arguments can be supported by a framework capable of

[40] Directive 2014/104/EU arts 3 and 4.

modelling, measuring, and demonstrating the actual harm suffered by the claimant, including through counterfactual scenarios and valuation metrics. At the same time, the theory must also be designed in anticipation of the most likely lines of defence and stressed to assess whether the causation chain is sufficiently strong, whether the damage model is defensible, and whether the court is likely to consider the action legally well-founded.

Importantly, the Italian system establishes a clear baseline for the burden of proof: the party who alleges a fact bears the burden of proving it (Art. 2697 c.c.). This fundamental rule is complemented by a jurisprudentially developed system of presumptions and inversions in specific areas of law. Additionally, the nature of the underlying legal relationship (contract vs tort) profoundly affects the distribution and content of the evidentiary burden.

Where a public-enforcement final decision exists, the theory of harm does not disappear; rather, it changes function. The claimant may rely on the binding or evidential value of the authority's findings as to the infringement, but must still translate those findings into claimant-specific causation and quantifiable harm. As a result, the evidentiary effort can concentrate on demonstrating causation and quantifying the damages, which are more predictable and amenable to economic modelling[41]. This explains why the existence of a public-enforcement decision, although crucial, cannot by itself determine the fundability of a damages action. A finding of infringement reduces one category of legal uncertainty, but it does not resolve the questions of individual causation, pass-on, counterfactual reconstruction, damage quantification and evidentiary access. These elements are particularly delicate in digital markets, where harm may arise through reduced visibility, distorted ranking, exclusion from intermediation channels, loss of data-driven opportunities or deterioration of competitive conditions rather than through an immediately observable price increase. The systemic implication is that TPLF can support private antitrust enforcement only where the public-law finding of infringement is converted into a private-law claim for compensation through a coherent and claimant-specific theory of harm.

6. Anticompetitive Conduct in Digital Markets and Readiness of the Italian System for a Funded Pilot Case.

Anticompetitive conduct by dominant digital platforms, including discriminatory or exclusionary practices capable of foreclosing rivals, is now at the core of European antitrust enforcement in digital markets[42]. While

[41] Consider that the same d lgs 3/2017 facilitates access to key documentary evidence through the mechanism of judicial disclosure. Its art 4 allows the court to order the exhibition of evidence contained in the file of a competition authority, where such evidence cannot reasonably be obtained by the parties or third parties. The provision sets out specific safeguards and limits – particularly in relation to documents linked to leniency applications and settlement proposals – but enables access to a wide range of materials. These include written submissions, internal communications, and factual documents that can significantly support the construction of the theory of harm.

[42] Q Li and C Cauffman, 'Abuse of Relative Dominance by Digital Platforms: A Law and Economics Perspective' (2025) *GRUR Int* 217 ff; OECD, *Abuse of Dominance in Digital Markets* (2020) <https://www.oecd.org/daf/competition/abuse-of-dominance-in-digital-markets-2020.pdf> accessed 27 May 2026; A Licastro, 'Il self-preferencing come illecito antitrust?' (2021) *Riv dir econ* 401 ff.

enforcement has largely been public so far, the question arises whether private enforcement, possibly supported by TPLF, could emerge in Italy as a credible follow-up, especially in light of recent landmark cases and the growing consensus on the market distortions provoked by such practices.

The analysis developed so far does not imply that digital-market abuses are automatically suitable for TPLF-backed litigation[43]. Rather, it suggests that they may constitute a promising testing ground only where a number of cumulative conditions are satisfied: a sufficiently clear public-enforcement record, an identifiable group of harmed parties, a plausible and claimant-specific theory of harm, access to the evidence required to prove causation and quantum, and an expected recovery capable of justifying the costs and risks of litigation. Section 6 therefore approaches digital-market abuses not as an inevitable field of expansion for TPLF, but as a context in which the framework developed in the previous sections can be tested[44].

What makes of cases of abuse of dominance in digital markets interesting from a TPLF perspective is that they synthesize the underlying rationale for litigation funding itself, involving a marked asymmetry of power and resources between claimants and defendants, requiring complex and resource-intensive assessment, potentially hiding high damages and, thus, profitable areas of intervention/bargaining power to settle[45]. Therefore, in digital contexts, TPLF may combine individual economic interests with the social utility of the whole operation and the broader public interest in ensuring markets remain competitive and fair[46].

This section explores whether, and under what conditions, the Italian legal and economic context could support a TPLF-backed pilot case aimed at claiming damages for antitrust violations in digital markets. The analysis is deliberately framed as a feasibility assessment: it does not assume that any public-enforcement finding automatically translates into a viable damages claim but asks which additional elements are required to transform an enforcement precedent into a sustainable private action.

a) Focus: Abuses of Dominance in Digital Markets

Under Article 102 TFEU and its national counterpart (Art. 3 l. 287/1990), abuse of a dominant position includes not only exploitative but also exclusionary practices, aimed at foreclosing competitors or distorting market dynamics. Self-preferencing typically falls into the latter category, as it has been interpreted as a form of discriminatory access to data and a breach of the principle of equal treatment in vertically integrated digital ecosystems[47].

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[43] Poncibò (n 1) 139; Patti (n 18) 119; ELI, *Principles on Third Party Litigation Funding*.

[44] N Petit, *Big Tech and the Digital Economy: The Moligopoly Scenario* (Oxford University Press 2020); V Shannon Sahani, 'Rethinking the Impact of Third-Party Funding on Access to Civil Justice' (2020) 69 *DePaul Law Review* 611.

[45] Poncibò (n 1) 139; Patti (n 18) 119; P Rott, 'Third-Party Funding, Legal Tech and Collective Consumer Protection: Experiences from Germany' (2026) 34(1) ERPL 163.

[46] A Sebok, 'Some Realism About Litigation Finance' (2025) 81 ff; FP Patti (n 18).

[47] P Andreoli-Versbach and J Gans, 'Interplay between Amazon Store and Logistics' (2024) ECJ 460 ff. See also D Fauceglia, 'The Amazon Case, the Negotiation Phenomena and the Abuse of Dominant Position. First Reflections on the Self-Preferencing' (2021) 2 EJPLT.

Through interpretation of the CJEU, the legal standard for identifying self-preferencing as an abuse has been significantly clarified. In parallel, investigations have been launched or completed in other areas, also at national level[48].

Finally, art. 6(5) Digital Markets Act (DMA - Reg. 2022/1925/EU), establishing obligations for gatekeepers, bans self-preferencing practices[49].

b) Effects on the Italian Market

Although the European Commission's antitrust decisions target conducts across the European area, their market impact is felt distinctly in national markets such as Italy. Indeed, the Italian economic context is deeply integrated with global platforms and Italian market operators, for instance, rely on Google Ads and Search for visibility; Amazon and Apple for distribution and app access; Meta platforms.

Therefore, whenever anticompetitive tying, leveraging or discriminatory conduct distorts rankings, visibility, and traffic allocation, the harm becomes appreciable in national terms[50].

c) Preconditions for a Pilot Case: From Theory to Strategy

Among the various legal scenarios in which TPLF could play a role in Italy, abuse of dominance in digital markets represents perhaps one of the most promising test-case. Such abuses arise in highly concentrated markets where vertically integrated platforms may control both infrastructure and market access, and where economic harm is often dispersed across a wide base of affected parties[51]. These features may make the use of external funding economically rational, but only where the infringement, causation and quantum can be supported by verifiable evidence.

In general terms, these abuses capture a practice that is emblematic of the structural challenges in enforcing competition law in the digital economy, arising in highly concentrated markets where vertically integrated platforms control both infrastructure and market access, and where economic harm is often dispersed across a wide base of affected parties. These features make such cases well suited for both individual and collective strategies backed by external funding[52].

Among the various legal scenarios in which TPLF could play a role in Italy, abuse of dominance in digital markets is a useful test case for assessing the interaction between funding, evidence and private enforcement. The conditions for launching a TPLF-backed pilot action in Italy against violations of Art. 102 TFEU in digital markets require a combination of, procedural, and

[48] AGCM, A528 – FBA Amazon; AGCM, A542 – Google Display Advertising.
[49] Regulation (EU) 2022/1925, art 6(5).
[50] For a UK perspective, see Ad Tech Collective Action LLP v Alphabet Inc and Others CAT 38; Dr Rachael Kent v Apple Inc and Apple Distribution International Ltd CAT 67.
[51] For the importance of collective interests, see F De Dominicis, 'Azione di classe e rappresentativa tra bilancio nazionale e prospettive sovranazionali: il ruolo dell'Italia nella "nuova stagione" europea della tutela collettiva e le traiettorie di americanizzazione in atto' (2025) Foro it 383 ff.
[52] JU Franck, 'Damages Actions against Digital Gatekeepers for Infringements of EU Competition Law and the Digital Markets Act' (2025) CRC TR 224 Discussion Paper 671.

economic factors, assessed in the preliminary due diligence (see Sections 4,5 above)[53].

In this context, TPLF targeting abuses of dominance could serve as a proof of concept for litigation finance in Italy, as well as a catalyst for private enforcement against anticompetitive practices in digital market more broadly. This could be particularly true with an action concerning the AdTech sector.

One of the most promising case studies, potentially translatable into concrete legal actions, concerns Google's conduct in online display advertising, which has already drawn the attention of competition authorities and triggered in-depth investigations at both EU and national levels[54].

Against this background, the Google AdTech case may be considered a useful case study for testing the framework developed in this article[55]. Its relevance does not lie in the assumption that any public-enforcement finding against Google would automatically give rise to a viable damages action in Italy. Rather, it lies in the fact that the ad tech sector presents several features that are relevant for a preliminary fundability assessment: the presence of sophisticated market actors, the possibility of identifying categories of allegedly harmed publishers or advertisers, the existence of public investigations concerning the structure of Google's intermediation services, and the potential availability of economic data capable of supporting a counterfactual analysis.

Comparative experience confirms that ad tech claims can be framed as private damages actions, but also shows that their viability depends on demanding procedural and evidentiary filters. In the United Kingdom, the CAT certified collective proceedings concerning alleged harm suffered by publishers and publisher partners in the ad tech sector[56]. A TPLF-backed claim would require a separate assessment of Italian jurisdiction, the applicable law, the identity and position of the claimants, the causal link between the alleged conduct and the loss suffered in Italy, and the methodology for quantifying damages.

The Italian dimension of a potential AdTech claim should therefore be approached with caution. The fact that the AGCM opened an investigation into Google's conduct in online advertising may indicate that the conduct was considered relevant for the Italian market, but it does not, in itself, establish

[53] G Fappiano, 'Il finanziamento del contenzioso: limiti attuali e prospettive future nell'età degli algoritmi' Jus.

[54] AGCM, A542 – Google Display Advertising; Autorité de la concurrence, Decision No 22-D-13; Commission, Google Adtech and Data-related Practices Case AT40670.

[55] The EC has already imposed a €2.95 billion fine on Google for breaching EU antitrust rules by distorting competition in the ad tech market European Commission, Press Release IP/25/1992. Equally relevant for the legal and strategic framing of a private action in Italy is that the AGCM launched an investigation into Google's conduct in the online advertising market, focusing on possible infringements of Article 102 TFEU. Despite the AGCM closed the national investigation due to the intervention of the European Commission targeting the same conduct under examination at the national level, this position reinforces the strategic case for a follow-on claim (following the EC decision), since it offers a first index of how the same anticompetitive practices affected the Italian market (AGCM, A542 – Google Display Advertising).

[56] The reference to UK CAT proceedings is not intended to suggest the direct transposability of the UK collective proceedings regime into Italian law. Rather, those cases are used as comparative indicators of the evidentiary, procedural and economic issues arising when digital-market abuses are translated into private damages claims. See Ad Tech Collective Action LLP v Alphabet Inc and Others [2024] CAT 38; Dr Rachael Kent v Apple Inc and Apple Distribution International Ltd [2025] CAT 67; Robert Hammond v Amazon.com Inc and Others [2025] CAT 42.

the existence, extent or distribution of compensable harm suffered by Italian operators. For funding purposes, the decisive question is whether the alleged market distortion can be translated into claimant-specific losses through evidence that is accessible, reliable and economically measurable.

On this basis, Google AdTech may be described as a candidate for further investigation rather than as a ready-made pilot case, but its attractiveness for TPLF depends on cumulative conditions. Provided that an in-depth preliminary assessment confirms jurisdiction, standing, evidentiary sufficiency, and economic viability, a pilot case could act as a catalyst for broader adoption of TPLF in Italian antitrust enforcement, which has already led to successful outcomes in the trucks cartel case[57].

Digital-market abuses do not represent a paradigmatic case for TPLF in an automatic sense. They represent, rather, a demanding test of its legal and economic rationality. Their suitability for funding depends on whether dispersed harm, informational asymmetry and high evidentiary costs can be transformed, through careful legal and economic assessment, into a coherent damages action. If this transformation is possible, TPLF may contribute to closing the gap between public enforcement and effective compensation. If it is not, litigation funding risks amplifying speculative claims rather than improving access to justice. This conditional conclusion is essential to preserving the distinction between the strategic opportunity offered by digital markets and the legal requirements of a sustainable private enforcement action.

[57] Cass 19729/2025.