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**“STARTUP - HOW TO ENTER INTO A  
MARKET, FROM AGENCY TO  
ACQUISITION”**

**CONTRACTUAL NETWORKS  
BETWEEN ENTERPRISES: THE  
ITALIAN EXPERIENCE**

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## 1. INTRODUCTION

The spine of the Italian economy is represented by so-called “small and medium enterprises” - “SMEs”, most of which are family-owned: according to a report carried out by the Italian Ministry for the economic development and circulated in August 2012, there are almost 6.500.000 registered enterprises in Italy,<sup>1</sup> each of which employs on average 3.9 employees, whilst the enterprises employing less than 10 persons represent 95% of the total. This entrepreneurial tissue represents a structural limit of the Italian economy, and has prompted the legislator to elaborate a new type of contract called *contratto di rete tra imprese* (“contract of network between enterprises”): introduced in the Italian legal system with a Decree Law of February 2009,<sup>2</sup> the legislation on the *contratto di rete* has been substantially amended and improved first in 2010 and then only very recently, in August 2012, as part of the Monti Government measures aimed at promoting “development”, such that today we are faced with a “second generation” of contract of network. The contract is aimed at facilitating the system that represents the true brand of origin of the “Made in Italy” (“*piccolo è bello*”), whilst preserving the history and the traditions that have their value also on the market. The new contract of network is therefore aimed at overcoming the main difficulties encountered by SMEs in making investments in term of innovation, research and development, as well as their inability individually to achieve significant economies of scale or to engage in ambitious industrial projects.

This type of interaction among enterprises is gaining attention at the European level, since on one side, several policies already made make reference to “networks between enterprises” and on the other, the Commission is also starting to distinguish between “clusters” and “networks” of firms.<sup>3</sup>

## 2. NATURE OF THE NETWORK

The “network between enterprises”, by its nature a multilateral contract, is defined as the contract through which two or more enterprises undertake to perform together one or more economic activities which are not outside their respective business plans, in order to mutually increase each other’s innovative capacity and competitiveness on the market. As a contract, it draws the usual requirements and discipline from the Civil Code and particularly from the part on the “contract in general”.

According to certain authors, commenting on the “first generation” of contracts, the network should not be seen as a new type of contract, but rather as a set of requirements and binding obligations that, where satisfied, would allow the participants to benefit from certain tax reliefs and other

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<sup>1</sup> Source: Report of the Ministry for the economic development of February 2012, available at <http://www.sviluppoeconomico.gov.it/images/stories/documenti/Rapportofebbraio2012.pdf>.

<sup>2</sup> Art. 3, para. 4-ter of Law Decree February 10, 2009, no. 5, converted with modifications by Law of April 9, 2009, no.33, and amended by Law Decree of May 31, 2010 no. 78, converted into Law of July 30, 2010, no. 122; as subsequently amended by Decree Lay June 22, 2012 n. 83 (so-called “Decreto Sviluppo” – development decree) converted with amendments by Law August 7, 2012 n. 134 (published on the Official Gazette n. 187 of August 11, 2012). For some bibliographical indications, see F. MARIOTTI, Detassazione degli utili destinati al fondo patrimoniale comune per incentivare le reti di imprese, *Corriere Tributario* 12/2011, p. 951; M. MALTONI-P. SPADA, Il “contratto di rete”, *Studio* n. 1-2011/I del Consiglio Nazionale Notariato, available at <http://www.notariato.it/en/highlights/news/archive/pdf-news/1-11-i.pdf>; F. Cafaggi (a cura di), *Il contratto di rete*, Commentario, Il Mulino, Bologna, 2009; F. Cafaggi, P. Iamiceli, *Contratto di rete. Inizia una nuova stagione di riforme?*, *Obbligazioni e Contratti* 7, luglio 2009, pp. 595-ff.; P. Iamiceli (a cura di), *Le reti di imprese ed i contratti di rete*, Giappichelli, Torino, 2009; F. Cafaggi, (a cura di), *Contractual networks, inter-firm cooperation and economic growth*, Edward Elgar, 2011. For additional information and updates visit the web page of RetImpresa - Agenzia Confederale per le reti d'impresa, <http://www.retimpresa.it/index.php/it>.

<sup>3</sup> Review of the Small business ACT for Europe, Brussels 23.2.2011, COM (2011) 78 final. See, F. Cafaggi, *Contractual networks and the small business act*, *European review of contract law*, 2008, p. 493 ss

incentives, such as those for the manufacturing districts (*distretti produttivi*).<sup>4</sup> In this sense, any contract, in theory, could be qualified as a ‘network between enterprises’, if the relevant formal and substantive requirements were satisfied. In such event, the contract would naturally have to satisfy also the requirements of the underlying type of contract. These observations lose part of their validity and justification following the recent amendment of August 2012<sup>5</sup> (on which more *infra*) that introduce a “second generation” of network contracts, allowing the network to be considered a “subject of law”, thus the new network contract resembles more a joint venture than an ordinary contract.

Moreover, in practice, what has resulted to be more attractive for enterprises so far are not so much the tax benefits, but rather the creation of an integrated and flexible cooperation - collaboration structure among two or more enterprises. Two broad categories of networks have been created so far:

- Networks characterized by a horizontal integration, among enterprises engaged in the same businesses; and
- Vertically integrated networks, consolidating chains of supply and import/export.<sup>6</sup>

Several purposes can be served by becoming a member of a network, from improving each participant’s competitiveness to realizing economies of scale and granting a better access to loans and financing from the banking system, to promoting a common trademark. The major innovation introduced by the August 2012 amendments is that members of “second generation” registered networks are given the possibility of putting into place a “separation” of the network’s own fund from the assets owned by each of the members individually. As a result, claims by network’s creditors can be satisfied only on the dedicated funds - a crucial feature, which is likely to increase the number of network contracts in the next years.

In conclusion, “second generation”<sup>7</sup> networks are a flexible instrument that can easily, but not necessarily, become something close to a juridical person enjoying a certain degree of separation of assets from its members: the network, upon enrolment in the Registry of Enterprises, acquires what is referred to as “legal subjectivity”, that is, the ability to assume rights and obligations of its own, and a certain degree of separation of its assets from those of its members – the assets of the network alone are responsible for the obligations incurred by the governing body - but not what as referred to as a “perfect patrimonial autonomy”. Hence whilst the network qualifies as a “subject of law”, it does not amount to a “legal entity” of its own (which implies a perfect autonomy). This situation is similar to the status of a partnership or of a non-recognised association that are subjects of law (*soggetti di diritto*) but not legal entities of their own (*persone giuridiche*).

### 3. REQUIREMENTS AND CONSTITUTION

The requirements of a contract of network are the following:

- a) two or more enterprises;
- b) the indication of the strategic targets relating to innovation or increase of competitive power on the market;
- c) agreed means of measuring the advancement toward the targets;

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<sup>4</sup> Law of December 23, 2005, no. 266. See MALTONI, *supra* note 2, p. 2.

<sup>5</sup> Law of August 7, 2012, no. 134. Conversion as law with modifications of the Law decree of June 22, 2012, no. 83.

<sup>6</sup> While antitrust aspects are beyond the scope of the present paper, it should be noted that the network will have to comply with all applicable European and Italian antitrust laws.

<sup>7</sup> This is the definition given in the Report of May 2012 of the Ministry for the economic development, p. 2, available at [http://www.sviluppoeconomico.gov.it/images/stories/documenti/Analisi\\_Contratti\\_di\\_rete\\_28\\_maggio2012.pdf](http://www.sviluppoeconomico.gov.it/images/stories/documenti/Analisi_Contratti_di_rete_28_maggio2012.pdf).

- d) a definition of the network's project and program, containing rights and duties of each participant and the means of reaching the common target;
- e) term of the contract;
- f) whether other enterprises are allowed to join, and how;
- g) rules for the passing of resolutions on issues relating to the network.

Two other elements, the creation of a common fund and the existence of a managing committee, became optional after the 2009 amendment. However, the former is still a condition to benefit from the tax reliefs<sup>8</sup> and, even more importantly, to prevent network creditors from satisfying their claims on the assets of individual members.<sup>9</sup>

The general rules applicable to the common fund established by the network are drawn from arts. 2614 and 2615 of the Civil Code,<sup>10</sup> which regulate the particular form of "aggregation" known as *consorzio* (consortium). The basic concept laid down by these provisions is the separation of the network's fund from the member's own assets: on one side the members cannot demand the division of the fund during the term of performance of the activity (or project); on the other side there is a "patrimonial segregation" between the fund and the members of the consortium. As a result of the above, creditors of the fund cannot, generally, claim their credits against the members of the consortium who set up the fund and *vice versa*, the personal creditors of a member cannot satisfy his claim over the fund. Initially the possibility to extend to the network the discipline on assets separation was seriously put in question, however the August 2012 amendment has removed any doubt by expressly allowing some degree of patrimonial autonomy of the network, stating that, if a network's fund is established, network creditors can be satisfied only on the network's fund for all liabilities resulting from the performance of the network's program.<sup>11</sup>

A member whose corporate structure is that of a *Società per azioni* (stock company), is expressly granted the option of funding the network by way of creating a dedicated fund for this specific affair, thus realizing a double step of assets' separation.<sup>12</sup>

Apart from this general remark, the contract establishing a network may have any lawful purpose or justification. "Networking" can involve cooperating in any form or area of industry, by way of exchanges of information or integration of the chain of supply and production, by putting together facilities and infrastructures, by realizing common R&D or sharing technologies and patents, by negotiating better conditions with counterparts and banks, and so on.

An essential element of the contract of network is the network's program or project, where all rights, prerogatives and duties of the members participating to the network should be laid out. The practical experience has shown that the agreement between members on what can or should be done and what is forbidden is the most delicate part of the contract, and the crucial element of the network's creation. Often the elaboration of the contract and of the network's program is assisted by the network's leader, while other times it is the confederation of industries (*Confindustria*) that has supported and promoted it.

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<sup>8</sup> See Declaration of the IRS of June 13, 2011, p. 4.

<sup>9</sup> This new possibility, which was questioned before, is specifically granted by the August 2012 amendment referred to in note 2 above.

<sup>10</sup> A reference defined "difficult" by MALTONI, *supra* note 2, p. 2.

<sup>11</sup> To be sure the law makes reference only to "obligations undertaken by the managing committee in the implementation of the network's program". Therefore it can be doubted that network's members will be shielded in case of tort liability.

<sup>12</sup> This possibility is granted by art. 2477 Civil Code and essentially entails an additional separation between the corporation's own assets and the segregated fund, in the sense that the creditors of one or of the other cannot avail themselves of the resources of the corporation (if they are special affair's creditors) or of the segregated fund (if they are corporation's "ordinary" creditors). In this hypothesis the "specific affair" would be the creation of the network itself.

The setting up of a committee for representing and managing the network is not an essential element, albeit it is certainly something that is and will be often part of the contract. Alike, the participants might choose to open offices and branches to better serve the network's purposes, as well as to use a logo or register a trademark.

As to formal requirements, the main one is that the agreement must be executed in a notarised form.<sup>13</sup> It is debatable whether this is to be interpreted as a requirement for the existence of the contract itself or only for the purpose of registering the contract with the Registry of Enterprises (for each of the companies involved). It appears that the more correct interpretation is that the contract itself can well produce its effects if the formal requirements of the particular type of contract are satisfied. On the contrary, the effects of the network are conditional upon the contract being registered in the Registry of Enterprises: hence, to the formal condition of the execution in a notarised form. Each and every modification of the network, as to its content or participants, must be performed in a notarised form and registered with the Registry of Enterprises for each of the enterprises involved.

Following the mentioned recent amendment, if the network has a fund and a managing committee the requirement can be satisfied by registering the network itself in the Registry of Enterprises of the place where the registered office is located. By doing so the network becomes a subject of law (close to a legal person), and thus can be the centre of rights and duties.<sup>14</sup>

#### 4. EFFECTS

It is not easy to assess the effects of a network between enterprises purely from a legal point of view. Before August 2012, the main legal consequence of the network's creation was the tax relief and only if the network chose to create a specific fund. It was clear, thus, that the justification for creating a network lied somewhere else, e.g. in the creation of the network itself. This has changed with the last amendment of August 2012, which has given the network the possibility of becoming a "subject of law" and patrimonial autonomy: a tremendous legal consequence, the impact of which on the practice rests entirely to be seen.

Let us begin from this last point: under the previous regime, the networks could not be considered as a "subject of law". It followed that rights and duties could not be "owned" by the network itself, but had to be referred to each of the members. Moreover, despite the creation of a fund, the members' liability for network's operations was considered joint, several and unlimited. More specifically, the network's creditors (eg creditors of operations implying implementation of the network's program) could satisfy their credits both on the network's fund as well as on the members' assets.

The August 2012 amendment has radically changed the situation: if the network has a fund and a managing committee, it becomes an autonomous subject of rights and duties as soon as it is enrolled in the Registry of Enterprises. Moreover, the existence of a fund produces the effect of separating, to a certain extent, each member's assets from the network's assets. In this sense, the law explicitly

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<sup>13</sup> For sake of simplicity we use the expression "notary's deed". As specified by the "*DL Sviluppo*", Decree Law of June 22, 2012, no. 83, converted into Law 134/2012, this expression should be meant to encompass also a document executed by the parties whose identities are confirmed by a notary public (*scrittura privata autenticata*) or a document signed by means of a digital signature, pursuant to art. 25 D.lgs. March 7, 2005, no. 82.

<sup>14</sup> The reluctance in acknowledging that the network actually becomes a "juridical person" comes from the circumstance that in Italy a distinction is made between entities and juridical persons. All entities, associations, foundations, consortia, companies and corporations, can be the centre of rights and duties: i.e. they all are equally capable of being a "subject of law" (*soggetto di diritto*). However, only those entities that enjoy a perfect patrimonial autonomy can be considered legal entity (this is the case, for example, of corporations and registered associations) and only after their constitution is sanctioned by way of registration in suited registries (the Registry of Enterprises or the Registry of non-profit corporations " - persone giuridiche"). As the network's assets are not entirely separated from that of its members, it cannot be said to be a legal entity (*persona giuridica*).

provides that creditors of obligations undertaken by the managing committee in the implementation of the network's program, can satisfy their claims only on the network's fund and cannot direct their attention toward the members' own assets. These networks, defined "second generation" networks, are surely a more effective and attractive tool to achieve inter-firm cooperation and coordination than the previous regime, which only provided for tax reliefs.

These fiscal benefits entail that the sums that each participant sets aside for being transferred to the network's fund are not part of the taxable income,<sup>15</sup> in other words each member of the network contract can benefit from a so-called "suspension" of taxes in respect of the sums that are destined to the investments listed by the common program previously approved.<sup>16</sup> The benefit can be equally claimed by the founding members of the network, as well as by those who become members at a later stage. This tax benefit applies only if the sums are later actually transferred to the network's fund and only if they are used to implement the network's program, which should be the object of a close scrutiny by the Tax Administration. It is worth noting that each member can subtract up to 1 million euro of assets per tax year, but claimed benefits cannot exceed 20 million euro (for tax year 2011) for the Tax Administration: if more than 20 million euro are claimed, the benefits will be proportionally reduced for each claimant.<sup>17</sup>

With reference to these incentives, the Italian legislator, according to the procedure laid down by art. 108(3) TFEU,<sup>18</sup> addressed to the European Commission the question of whether this could be considered a State-aid, prohibited as such by art. 107(1) TFEU.<sup>19</sup> The Commission answered by granting a green light to the proposed measures, as it found them to be not sector specific, nor territorially selective nor otherwise limited by reference to the size of the enterprises or the scope of the project (not even *de facto*).<sup>20</sup>

While the August 2012 amendment has improved the legal significance of the network, relevant effects pertain also to extra-legal (strictly speaking) areas, such as efficiency, management, governance, and funding. Setting up a network allows the various enterprises to achieve a number of objectives, from the optimization of a chain of supply or chain of production, to the common use of certain resources (laboratories, facilities) or of certain key personnel. An important feature of the network is that it might allow easier access to loans and financial resources in general, in that the single participant benefits from belonging to a greater entity, or from the umbrella of a bigger network participant. A further example could be represented by a network designed to have access to a specific public procurement or to certain incentives or public funds (especially of European origin). On this latter note, several Italian Regions have started issuing public funds specifically dedicated to the creation of new networks or to financing existing ones.

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<sup>15</sup> See C. BUCCICO, *Il contratto di rete e la sua disciplina fiscale*, AIDPT 2012, pp. 11-17, available at <http://www.aipdt.it/wp-content/uploads/2012/05/Contributo-Clelia-Buccico.pdf>.

<sup>16</sup> Acknowledged by the Ministry for the economic development. The first list has been approved with Decree of March 31, 2011.

<sup>17</sup> The Plan for growth (a law decree expected for the end of September 2012) will provide a special focus on networks, especially as a means for internationalization. Expected changes include an extension of the tax benefits until December 2014; an increase of the maximum assets to 2 million euro; an amendment to the code of public contracts to include networks and the possibility for enterprises to exchange workers without the burden of double hiring procedures. See the article of Sole 24 Ore of August 28, 2012, available at <http://www.ilsole24ore.com/art/notizie/2012-08-28/decreto-crescita-entro-settembre-063647.shtml?uuid=Ab6hncUG>.

<sup>18</sup> Art. 108(3) TFEU: "The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the internal market having regard to Article 107, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision".

<sup>19</sup> Art. 107(1) TFEU: "Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favoring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market".

<sup>20</sup> Brussels, 26.01.2011 C(2010)8939 final, State aid N 343/2010 – Italy Support to set up companies' networks (*reti di impresa*).

## 5. NEW MEMBERS JOINING THE NETWORK; TERMINATION

The network is thought as something naturally open to the participation of new members. However, this should not be intended as a prohibition of closed networks. Sometimes a network will be closed because of the particular purpose (e.g. when it is the chain of supply of a larger firm: only those firms that are in the chain are meaningful network participants). Other times it will be the choice of the participants to envisage their new entity as something restricted. Whether the network is open or closed and what are the rules for the adhesion of new members it is a matter that should be defined in the network contract itself.

In principle the network itself is not seen by the law as something perpetual, and a fixed and predetermined duration is an essential element. In practice, however, nothing prevents the parties from indicating a long duration or from renewing the network at its expiration. As for every long-term contract, it could be necessary or convenient for a member to exit from the network. Once again, the place to look is the contract itself, which could require an advance notice, prevent exiting or provide a penalty for exiting the network, such as liquidated damages or non-competition (subject to the usual requirements of proportionality and limitation in time and space, as well as to antitrust laws). The contract might also provide for a mechanism for excluding a member under certain circumstances, as well as special procedure to be followed. More importantly a participant will be automatically excluded if it loses the needed requirements for being part of the network. This could happen if a firm is liquidated or cancelled from the Registry of Enterprises, or admitted to bankruptcy proceedings.

The network itself could cease to exist for many causes: at the expiration of its duration, if no intention to renew it is shown by its members; by mutual consent, if all members agree to terminate the network; because only one member remains in the network; if all intended targets are reached; and for any other cause of termination indicated in the contract.

## 6. CASE-STUDY

Certain data reports show that, as of July 6, 2012, there were **412 network contracts** in existence, involving some **2136** enterprises, in 19 Regions and 97 Provinces.<sup>21</sup> As to the corporate nature of the participants, the vast majority is made of stock companies (“Società di capitale”) **1453**, followed by **301** partnerships (“Società di persone”), **233** sole partnerships (“Imprese individuali”), **111** cooperatives (“Società cooperative”, and **38** other forms of company, as well as **2 non profit foundations**. The growth rate between May 2011 and May 2012 was about 34%. While half of the contracts are “low density”, involving up to 3 enterprises, 2012 has shown an increase of “medium” (4-6 enterprises) and “high” (6+) networks. The reports show that 38.5% of the companies involved in a network increased their turnover of up to 80% in export trade.

We hereby examine two case-studies on how the device of the network has been employed in practice, and what are the reasons for it, the RIBES network, in the biomedical sector, and the Gucci’s chain of supply and production. The two experiments differ substantially not only because the areas of industry, technology vs. leather goods, are quite different, but also because they entail a different degree of involvement of the leader: while ESAOTE chose to be part of the network, Gucci did not.

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<sup>21</sup> See, e.g., Report of the Ministry of Development of May 2012, available at [http://www.sviluppoeconomico.gov.it/images/stories/documenti/Analisi\\_Contratti\\_di\\_rete\\_28\\_maggio2012.pdf](http://www.sviluppoeconomico.gov.it/images/stories/documenti/Analisi_Contratti_di_rete_28_maggio2012.pdf). The report also notes that only less than a third of the network contracts involves firms from different Regions. The most active Region is Lombardy, followed by Veneto and Tuscany. The most active sector is B2B services, followed by infrastructures and building and mechanics.

## **6(a) RIBES: a network among ESAOTE and smaller enterprises in the biomedical industry – toward innovation and competition**

ESAOTE S.p.A. is one of the world's leading producers of medical diagnostic systems (namely: diagnostic ultrasound imaging systems, Dedicated Magnetic Resonance (MRI) imaging systems and electro-medical systems (ECG)). While R&D are internal to the enterprise, ESAOTE outsources around 85% of its production to its suppliers. Because ESAOTE could not afford losing any of this valuable elements, it chose to constitute the RIBES network to be composed of ESAOTE itself and other 13 enterprises<sup>22</sup> spread between Tuscany, Liguria, Lombardy, Campania and Veneto. The revenues of the group total some 550 million of euro, out of which around 330 are produced by the sole ESAOTE. RIBES (Rete Imprese Biomedicali Esaote) is designed to achieve three main objectives: to improve intra-network efficiency, quality and innovation, to increase its competitive capacity in the market and to guarantee an easier access to funding to the smaller participants of the network. ESAOTE's idea of creating the network received a strong and early support by the Confindustria Firenze, which also assisted the enterprises in the crucial passage of the network contract drafting process. RIBES could also avail itself of the close cooperation of the Banca CRFirenze and of the whole Intesa banking group, as a financial partner.

As to the first three keywords, this is pursued with the following strategy:

- Efficiency: because the network, acting as a unitary subject, can obtain better tariffs, services as a stronger contractual actor
- Quality: by activating common certifications that allow an increase of competitiveness of the network
- Innovation: through common researches, development of new products and common use of the various laboratory of the network

RIBES represents, thus, a unique use of the network contract. In this case, the network is not only a way for SMEs to gain size, strength and competitiveness *vis-a-vis* competitors, but is a working deal between the leader and its chain of supply to allow the network to gain, together, new levels on the international market. ESAOTE is protected, because its chain of supply is better placed and is more secure. The chain can benefit from the umbrella of the leader, without losing its identity and without requiring the leader from internalizing the production it previously outsourced.

The active participation of the Intesa Sanpaolo banking group represents something new in the networks' panorama, but it is something highly relevant and important. It renders possible to better achieve one of the purposes of net-building, which is to access to more favourable lines of credit. Moreover, it allows to consider each business not as a single entity, possibly supported by the leader, but as a part of the network and for this participation to have more favourable loans and banking conditions. Intesa Sanpaolo closely worked with the RIBES network in the phases of creation, and was able to provide an organic and systemic financial offer to the network.

## **6(b) GUCCI's perspective of the network – autonomy and independence of the chain of supply**

Three networks have been set-up by the enterprises belonging to the Gucci supply chain, operating in three different areas, whilst Gucci S.p.A. itself is not a member of any: 1) P.re.Gi.<sup>23</sup> – small

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<sup>22</sup> Esaote (GE-FI); Btp Tecno (SA); Omcf (FI); Provvedi Meccanica (FI); Df Elettronica (FI); Intercomp (VE); Pastorino Giacomo (GE); Elemaster (LC); O.M.S. Ratto (RM); Seco (AR); Sy.O. (SP); Elesta (FI); L&G Elettronica (GE); Softeco (GE).

<sup>23</sup> Rete P.re.Gi., acronym of Rete Pelletterie Giancarlo, is a network of seven business of the small leather goods sector, with 11 million of revenues. The leader is the florentine Pelletterie Giancarlo and members are BUD (Florence), Bernini Roberto (Florence), Pelletteria B.L.Z. di Barzagli Simonetta & C. (Florence), Leather Style di Fanfani Milvia & C. (Florence), Pegaso Rifiniture di Tinti Manuela (Arezzo), Pelletterie Le Iene di Coppola Francesco (Florence).

leather goods; 2) Almax<sup>24</sup> – purses; 3) F.a.i.r.<sup>25</sup> – suitcases. In each of the three networks there are enterprises pertaining to the various phases of the chain, from leather tanning, to cut, to finalization. The goals are various: not only encouraging innovation, efficiency and communication of know-how, but also realizing economies of scale, improving credit-access or credit-conditions and guaranteeing transparency of the whole chain of supply and production.

Interestingly enough, Gucci is not part of any of these contracts, while actively supporting and promoting the creation of ethically oriented networks. In the idea of Gucci's management, the decision of not becoming a member of the contract supports the independency and autonomy of the network, avoiding the risk of binding the chain of supply to the Gucci brand. Gucci's promotion encompasses activities from suggesting best practices and goals to counseling (organization, technology, education, and finance).

This experience represents yet another example of the creation and use of networks to handle and coordinate production processes, with multiple aims. On one side there is a desire of increasing cooperation and efficiency among the components of the chain, on the other side, the network, as a stronger counterpart in contracts and banking relations, is able to obtain more favorable conditions and to spread the advantage among all participants. It is noteworthy that also this experiment was carried out under the supervision and aid of the Confindustria of Florence, as in the RIBES case.

### 6(c) “Rating Project”

As we have seen, one of the common purposes of the network is to enhance each individual enterprise's ability to access to loans and funds in general. Being part of a network could mean for the SME more favourable loans conditions or even whether or not a line of credit will be granted by the bank (or by investors). As Confindustria itself reported, one of the most worrying elements for SMEs in these times of crisis is access to sources of credit. For this reason, and with the scientific assistance of the Associazione Premio Qualità Italia and of the Agenzia RetImpresa, the *Progetto Rating* born from the agreement between Confindustria and Barclays Italia. The project aims at developing an agreed methodology among enterprises and banks to improve existing models of bank rating. These models are consolidated in the Basel 2 and Basel 3 systems. In particular the new elements to be taken into account are:

1. rating of individual enterprise's productive model in terms of sustainability;
2. rating of networks;
3. identification of enterprise's strengths and weaknesses in order to propose strategies of improvements and development.

The model improves the dialogue between the enterprise and the bank, adding to pure economical and financial criteria, an overall assessment of the governance, management and ability to networking. The first experiments allowed to take into account all these non-traditional elements in order to provide a more realistic and efficient rating of the participants to an inter-firm network.

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<sup>24</sup> Rete ALMAX, named after the leader Pelletteria ALMAX of Florence, is a network of eight firms (suitcases and purses) with 20 million of revenues and 300 employees. Member are Becattini Giovanni (Arezzo), Samar di Montaleone Salvatore e C. (Florence), Pelletteria Demipelle di Grazia Maria Laura (Florence); Miranda Bernardo (Florence), Pelletteria Vittoria (Naples), Pelletteria Anna di Pellecchia Luisa (Naples), Nanni Pelletterie di Allocca Massimiliano (Naples).

<sup>25</sup> Rete F.a.i.r., acronym of Firenze Accessori In Rete (purses) is a network of nine, including manufacturers of leather machineries and a tanning company, for a total revenues of 45 million and 200 employees. The leaders are B&G and Del Vecchia (Florence) and members are Conceria Settebello (Pisa), MIPA di Passarello Gaetano & C. (Florence), Fustellificio Toscano (Arezzo), Teknopell di Roberto Fissi (Florence); Robot System Automation (Pisa), I.C. Service Logistica (Florence), Pelletteria Rui Jin (Florence), Conti e Vannelli (Florence).

## 7. CONCLUSIONS

Aggregation of enterprises and business is a crucial element both in Italy as well as in the rest of Europe. SMEs are not only a component of the Italian productive tissue, but also a character of many other countries. Italy has tried to solve SMEs' problems and weakness by first elaborating industrial clusters, but this solution only partially solved the problems. Network contracts aim at providing a better, more flexible and efficient, bottom-up approach of solving SMEs' frailties. Other European Member States are focusing their incentives on the aggregation of enterprises. One example for all is the case of Germany, which is encouraging the creation of clusters, something that Italy has already experimented.

The attention toward SMEs can also be observed at the European level, too. Both the CIP and the COSME, i.e. the pluriannual financial plans of the EU, have as their main object SMEs. More interestingly from our point of view, the COSME plan for 2014-2020 specifically mentions the need to improve development of network and clusters as a necessary means to improve the framework conditions for the competitiveness and sustainability of the Union Enterprises.<sup>26</sup>

In conclusion the network contract is a valuable tool that could help Italian SMEs to work together and achieve what would otherwise be out of reach for individual enterprises. While the network has already drawn the attention of enterprises in its primitive form, it is likely that the features of "second generation" contracts (subjectivity and assets separation) will make it one of the strategic elements for the development and internationalization of Italian SMEs.

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<sup>26</sup> COSME Article 6 - **Actions to improve the framework conditions for the competitiveness and sustainability of Union Enterprises:** "(a) measures to improve the design, implementation and evaluation of policies affecting the competitiveness and sustainability of enterprises, including disaster resilience, and to secure the development of appropriate infrastructures, *world class clusters and business networks*, framework conditions and development of sustainable products, services and processes". (emphasis added)

## MOST COMMON METHODS OF ENTERPRISES AGGREGATION – SUMMARY

Type	Form of the contract	Governance	Liability	Duration	Formalities
<b>Network</b>	Notary deed or private agreement notarized  Open to further adhesions	Possibility to delegate powers to a common representative (including a physical person or someone external to the network)	Common rules on contractual and proxy liability  If the network is registered, members are not liable for network's liabilities	Predetermined	Mandatory inscription in the Registry of Enterprises for each member  OR Registration of the network itself
<b>Consortium</b>	Notary deed or private agreement notarized  Open to further adhesions	Administrative organ (e.g. Board of Directors, Sole Director, ...)	Limited to the consortial fund + subsidiary and joint liability of members	Predetermined	Mandatory inscription in the Registry of Companies and filing of assets and liabilities situation if the consortium has external relevance
<b>TAF (Temporary Association of Firms)</b>	No formal requirements  No further adhesions	Collective and irrevocable proxy to the association leader	Joint and unlimited in horizontal TAFs / <i>pro quota</i> and jointly with the group leader in vertical TAFs	Until the specific work is completed	No formality is required
<b>Consortial company</b>	Notary deed only  Open to further adhesions	Administrative organ (e.g. Board of Directors, Sole Director, ...)	Derived from the company type chosen (corporation or partnership) if not in contrast with the consortial nature	Predetermined	Derived from the com type chosen (corporation or partnership)