EUROPEAN COMMISSION

Brussels,
C (....)

Subject: **State aid / Italy (Emilia Romagna and Lombardy)**
Aid No SA.36178 (N/2013)
Project Consorzio Casalasco del Pomodoro – Istituto Sviluppo Agroalimentare Spa

Sir,

The European Commission ("the Commission") wishes to inform Italy that, having examined the information supplied by your authorities on the measure referred to above, it has concluded that the measure does not constitute aid within the meaning of Article 107 of the Treaty on the Functioning of the European Union (hereinafter "TFEU").

In taking this decision the Commission has relied on the following considerations:

1. Procedure

(1) By letter of 1 February 2013, registered on 4 February 2013, Italy notified to the Commission pursuant to Article 108(3) of the TFEU the above mentioned measure.

(2) By letter of 26 March 2013 the Commission asked for supplementary information which the Italian authorities submitted on 12 June 2013.

2. Description

2.1. Title

(3) Consorzio Casalasco del Pomodoro – Istituto Sviluppo Agroalimentare S.p.A.

2.2. Objective

(4) The notified measure concerns an investment project to be undertaken by Istituto Sviluppo Agroalimentare S.p.A. (hereafter "ISA") in the share capital of Consorzio Casalasco del Pomodoro (hereafter "CCDP). The project is designed as a capitalization program to achieve financial and assets' balance after the significant investments of previous years, thereby creating the basis for further development, with the ultimate aim of maximizing the final price for the conferred products.

(5) The Italian authorities are bound by law[1] to individually notify all interventions by ISA at market economy conditions.

2.3. Public authority

(6) ISA is a public company whose shares are held integrally by the Ministry for Agriculture, Food and Forestry Policies of Italy. It promotes and supports projects of agro-industrial development that aim at structural improvements in the income level of agricultural companies[2]. ISA may either provide investment aid to the sector of processing and marketing of agricultural products by granting soft loans with a maximum duration of 15 years or invest at market conditions by acquiring a minority shareholding in companies' capital[3].

2.4. Beneficiary

(7) The beneficiary of the notified measure, CCDP, is a large company[4] active in the sector of processing and marketing of agricultural goods. The CCDP is a cooperative[5] with a mutualistic objective. Its capital is not fixed at a specific amount but it has an upper limit of the capital share per member of EUR 100.000, except for financial investors.

(8) CCDP was founded in the late seventies. The shareholding of CCDP grew gradually in the 1980ies due to self-processing[6] and the creation of a processing plant for tomatoes, and further in the nineties with the diversification of production which included sauces and ketchup under customers' brands.

(9) Today CCDP is one of the leading companies in Italy in the field of industrial tomatoes, with approximately 3.4 million tons of raw materials processed in 2011, a production value of over EUR 250 million, 600 employees and a turnover in 2012 of more than EUR 213 million. It is one of the main operators in the production of sauces and condiments made from tomatoes, both for third parties and under its own brands (Pomì and Pomito). CCDP is also present in other areas of the food sector such as beverages, juices and tea for third parties and soups for third parties and under its own brand (Pais). About 60% of the CCDP products are intended for foreign markets, the rest being sold in Italy.

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[1] Paragraph 31 of the Decision of the Interministerial Committee for Economic Planning (CIPE) of 31 July 2009 "Modifica della delibera CIPE n. 90/2000 come integrata e modificata dalla delibera n. 58/2002. Criteri e modalita di intervento di "ISA S.p.a.". (Deliberazione n. 65/2009).

[2] Examples of ISA's interventions include investments in such companies as Conserve Italia S.C.A., Giv Verona S.p.A., Rigoni di Asiago S.p.A., Amalattea S.p.A., Ferrarini S.p.A.

[3] Delibera CIPE n. 65, parte D.

[4] CCDP falls outside the scope of the definition of micro, small, medium-sized enterprises as stipulated in the Annex of Commission Recommendation 2003/361/EC, Art. 2 (1).

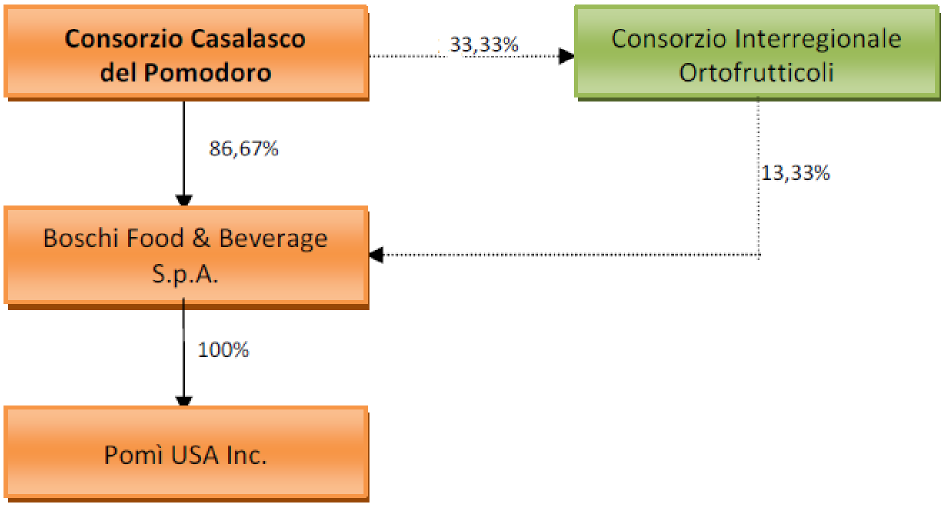
[5] The cooperative type of company is governed by Codice civile, libro V, Titolo VI: cooperatives are companies with variable capital and mutualistic objectives carrying out activities in favour of their members which confer goods produced by them to the cooperative. Conferring members are remunerated on the basis of quality and quantity of the conferred products.

[6] I.e., the decision taken by the first members (tomato growers) to establish Casalasco Consortium as a cooperative of which they were both owners and members conferring goods. Through this cooperative, the farmers could themselves process their tomatoes rather than selling their production to third parties.

(10) From 2007 to 2011 CCDP has assumed the leading role in the group of companies that includes the subsidiary Boschi Food & Beverage SpA (hereafter "Boschi"), and the "Pomì USA Inc.", a company established in the United States.

(11) In January 2012 the acquisition of Boschi by the CCDP was completed. The acquisition included assets of approximately EUR 53 million (land, buildings, plant and machinery, equipment, receivables and other assets) and liabilities of approximately EUR 23 million (suppliers, indemnity of employees transferred together with the branch and other debts) for a net amount of approximately EUR 30 million. The acquisition was financed through a mortgage transaction. This merger aimed to take advantage of significant synergies of the two companies, in particular in terms of streamlining the production facilities, as well as the optimization of purchase and sales management.

(12) Organization of the CCDP:



(13) According to the Italian authorities ISA has already made an investment into the capital of the CCDP. The investment of EUR 6.5 million, paid in two tranches, took place in 1999 and shall mature in 2014. This investment was made in the form of a mortgage loan at a subsidized rate and was authorized by the Commission's decision SG(99) D/4058 of 4 June 1999. It aimed at financing the technological modernization of the factory in Rivarolo del Re.

(14) The outstanding part on 31 December 2012 amounted to approximately EUR 0.9 million and it is expected to be reduced to EUR 0.55 million by the end of 2013. The remainder is foreseen to be paid as detailed below:

	Date	Original amount	30/06/2013	31/10/2013	31/12/2013	30/04/2014
Investment 1	21/07/1999	3.356.970	380.184	380.184	191.442	191.442
Investment 2	8/11/1999	3.098.741	534.993	359.703	359.703	181.389

		6.455.711	915.177	739.887	551.145	372.831

(15) Notwithstanding the payment schedule above the Italian authorities confirmed that the CCDP would entirely repay the outstanding amount prior to the currently proposed investment.

2.5. Legal Basis

(16) The legal basis of the measure consists of:

a) Deliberazione CIPE n. 65 del 31.07.2009

b) Legge n. 662 del 3.12.1996, art. 2, comma 132

c) Legge n. 700 dell'19.12.1983, art. 3, come modificata dalla legge n. 248 del 2.12.2005, art. 10.

2.6. Duration

(17) The minority participation of ISA in CCDP will be temporary. A duration of the investment between 7 and 10 years is foreseen.

2.7. Budget and type of intervention

(18) The proposed intervention is designed as an equity investment into the share capital of the CCDP. According to the Italian authorities the intervention is proposed at conditions which would be acceptable for a private investor operating under normal market conditions. The overall budget of the investments is estimated at EUR 24 million, with a contribution by the CCDP of EUR 12 million.

(19) Although the investment by ISA is structured as an equity investment, it shows some characteristics of a loan (e.g. guaranteed minimum and limited maximum return, fixed term, no participation in losses). This is reinforced by the choice of so called participating shares (cf. recital 21 below) which bear some similarities with preferred shares (hybrid between debt and regular equity). Also, the funds are earmarked for a specific period and for a specific purpose, as described below.

2.8. Description of the project

(20) The proposed capitalization shall provide the CCDP with necessary resources for the 2012-2020 phase of optimization and efficiency improvements which follows the previous development phase 2008 – 2011. This development was characterised by large investments into plants optimization, IT investments and investment into offices to enable integration between the former staff of Boschi with that of the CCDP. The upcoming phase will concentrate on the development of production and marketing of the CCDP, particularly with regard to investments into rationalization of tomatoes processing. For the years after 2012, in addition to investments into the optimization and maintenance of current establishments, commercial activities aimed at developing new

products and new markets are also foreseen, in order to maximize the benefits from the investments made in the previous phase.

2.8. Terms of intervention

(21) The investment plan provides for an overall increase in shareholders' equity of EUR 24 million, consisting of the issuance of shares for ISA in a value of EUR 12 million and a corresponding cash contribution by the CCDP members. The CCDP has already provided for the subscription of the share capital by contributing shareholders, whose effective contribution will take place simultaneously with the signing of ISA's shares.

(22) ISA shall become the holder of so called "participating shares" which is an equity instrument provided for in Title IV of the Statute of the CCDP. Such shares enjoy several privileges, including the right to priority in the reimbursement of capital for the full nominal value in case of dissolution of the CCDP, and will be subordinated to all other shares in bearing losses. The reduction in the share capital of the CCDP as a consequence of losses would not affect the nominal value of the participating shares, except for the part of loss exceeding the total nominal value of all other shares, i.e. after the full reset of the nominal value of all the other shares.

(23) ISA's investment is foreseen in two installments of EUR 6 million each (originally planned in 2012 and 2013). The entry of ISA into the capital of CCDP is foreseen on the basis of the following assumptions:

- ISA's participation will amount to EUR 12 million, through the subscription and issuance of 24 000 participating shares with the nominal value of EUR 500 each;
- the cooperative members will subscribe the corresponding amount of approximately EUR 12 million (the amount is not precisely fixed as it depends on deductions from the amount that the CCDP pays its members for their conferred production in the year when the investment takes place, and thus on the quantities conferred by the CCDP's members in a given year[7]).

(24) The shares of ISA will enjoy the following privileges:

- minimum yield of 4.25% of the nominal value of the shares;
- supplementary variable yield depending on the performance of the company, determined by the price of tomatoes fixed for the conferring members;
- postponement in the event of losses compared to other types of shares;

[7] The deductions for the capital increase are usually a percentage of the sums owed by the cooperative to its members for the conferred goods, the quantity of which depends on annual yield. This means that in the case of contributions smaller / larger than expected also the share capital subscribed in the first two years could be lower/higher. In any case, according to the Italian authorities, ISA will subscribe to a capital increase of EUR 12 million only if the contribution from private partners is at least of the same amount. If it is lower, then the contribution of the ISA would be reduced accordingly.

- priority in the repayment of the nominal value, in case of an eventual liquidation of the company;

- in the event of non-payment of the dividend at a minimum rate of 4.25% in one year, recovery of the minimum yield of that year in the next year or at the time of termination;

- in the event of non-payment of dividend in any two years ISA will have the right to early terminate its participation in the capital of CCDP. In such case the payment of the due dividend will be ensured through the reserve fund capitalized with EUR 2 million, specifically created for this purpose prior to ISA's entry into the CCDP capital[8].

Corporate bodies

(25) For the duration of its participation in the CCDP, ISA will have the power to make the following appointments:

  - an auditor in the position of the Chairman of the Board of Auditors,

  - one member of the Board of Directors of the CCDP.

Disposal of the investment ISA

(26) ISA will commit to withdraw not before the 7th year following its entry into the CCDP capital, except in the case of early withdrawal pursuant to recital 23 (last indent), and no later than after the 10th year.

(27) The exit value for ISA will be determined by the sum of the following elements:

- the initial investment (EUR 12 million),

- the goodwill value of the company produced during ISA's presence, calculated as an annual fixed percentage (4.25% of the investment) plus a spread based on "performance" (in terms of prices paid annually to conferring shareholders higher than the basic price arising from the inter-sector agreement in Northern Italy).

(28) Calculated as detailed above, the goodwill will be between a minimum of 4.25% (guaranteed annual return) and a maximum of 8%, determined as the sum of the minimum guaranteed return and an additional spread of up to 3.75% per annum (variable return), as shown in the following table, based on information by the Italian authorities:

[8] CCDP has already allocated EUR 1 million. According to information from the Italian authorities, the remaining EUR 1 million will be allocated before ISA's investment takes place.

Prezzo di liquidazione nell'anno			*Rendimento Fisso Base*	*SPREAD*	*Remunerazione ISA*
fino al	prezzo interprofessionale		4,25%	0,00%	4,25%
dal	prezzo i.p. al	prezzo i.p. +12,00%	4,25%	0,25%	4,50%
dal	prezzo i.p. +12,01 al	prezzo i.p. +14,00%	4,25%	0,75%	5,00%
dal	prezzo i.p. +14,01 al	prezzo i.p. +16,00%	4,25%	1,50%	5,75%
dal	prezzo i.p. +16,01 al	prezzo i.p. +18,00%	4,25%	2,50%	6,75%
oltre	prezzo i.p. +18,01 al		4,25%	3,75%	8,00%

(29) The following is an example of calculating the price of shares of ISA at the end of each of the 8 years of stay in the capital of CCDP:

- 1 July 2013 subscription by ISA of an amount of € 6 million;
- 1 July 2014 subscription by ISA of an amount of € 6 million;
- Annual expected dividend of 4.25% of the nominal value of the shares held by ISA.

Anno	**Valore Partecipazione ISA a inizio anno k€ (A)**	**Percentuale del Valore di mercato della Partecipazione ISA**	**Mesi di permanenza ISA nella compagine sociale**	**Avviamento = (Valore inizio anno * Percentuale del Valore di mercato della Partecipazione ISA * Mesi di permanenza ISA/12) (B)**	**Dividendi erogati ad ISA, relativi al medesimo anno (C)**	**Valore di mercato Partecipazione ISA fine anno (A+B+C)**	**IRR**
2013	6.000	4,50	6	135	-128	6.008	
2014	6.008	5,00	12	300			
2014	6.000	5,00	6	150	-383	12.075	
2015	12.075	5,75	12	694	-510	12.259	
2016	12.259	5,75	12	705	-510	12.454	
2017	12.454	5,75	12	716	-510	12.660	
2018	12.660	6,75	12	855	-510	13.005	
2019	13.005	6,75	12	878	-510	13.373	
2020	13.373	8,00	12	1.070	-510	13.933	**6,05%**

(30) The above perspective of the return for ISA is based on the following scenario:

- During the years of ISA's presence in the capital of CCDP a gradual increase in sales of about 30 million by the year 2020 is expected, corresponding to an average annual growth of about 2% compared to the value of production estimated in 2012. This shall result from the gradual increase in the amounts sold and of prices:
  - compared to 2011, in 2012 an increase of 7% in volumes of sold half-processed tomatoes, 6% of the end product under customer's brands and 8% of tomato-based end products under the CCDP own brand was recorded. These growth rates are assumed to remain constant;
  - in 2013-2015 the amount of end products made from tomatoes shall increase annually by 3%, while the amount of half-processed tomatoes is expected to increase by 1%;

- from 2015 onwards an increase in the range of 1%-2% in the prices of finished products made from tomatoes is expected (both under CCDP's own brand and third party brands).

2.9. Key financial data

(31) The Italian authorities provided consolidated balance sheets for the period 2009-2011, presented under the international reporting standards (ISA/IFRS[9]), and the civil balance sheet[10] for the year 2012[11]:

(32) As to the financial situation of the CCDP, the following can been observed from the balance sheets:

- The capital structure of the CCDP on 31 December 2012 has been characterized by a net invested capital of EUR 166.8 million, compared to net assets of about EUR 44.4 million. From a financial point of view the structure appears balanced, with the stable sources of funding (equity and debt in the medium-long term) exceeding fixed assets which are to be covered;

- the inventories showed an increase of approximately EUR 27.7 million, due to both higher quantities in stock and higher prices of raw materials, with the related effects on the valuation of end products and goods in the warehouse;

- The net debt at the end of 2012 has reached about EUR 119.7 million which constitutes a significant decrease compared to the year 2011 (EUR 137 million). The Italian authorities explain the CCDP debt levels in the context of the acquision of Boschi which nearly doubled the CCDP turnover, as well as its assets and the working capital, the inevitable consequence having been a progressive increase in financial exposure. The increase in the NFP has stopped in 2012 and from the current year the Italian authorities expect its gradual decline. In this regard, the Italian authorities confirmed that, so far the banking system has always supported the growth of the CCDP, first with the acquisition of Boschi and then for the internal credit lines so that the Central Credit Register of the Bank of Italy did not show up to date situations of trespass or open financings for the CCDP.

- Investments: in the last four years investments reached approximately EUR 50 million. In 2012 total investment amounted to around EUR 10 million for the continuation of the modernization of the production structure, in particular as regards the reorganization of the processing of fresh tomatoes in the factories of Fontanellato and Rivarolo del Re. From 2013 onwards replacement investments and/or maintenance for about EUR 4 - 4,5 million per year are foreseen;

[9] International Standards on Auditing/International Financial Reporting Standards.
[10] The civil balance sheet, unlike the consolidated one, presents only the financial values of the Consortium Casalasco as a reality in its own right. The consolidated balance sheet incorporates, instead, also the values of assets, liabilities and income of all subsidiaries.
[11] The consolidated balance sheet for 2012 will presumably be available in the course of July, however, according to Italian authorities it will not bring major differences compared to the civil balance sheet.

- The 2012 civil financial statements have shown a value of production of nearly EUR 240 million, which represents a slight decrease of 4% compared to 2011 when the production value was at EUR 250 million, but an 8.3% increase compared to 2010 when the production value reached EUR 220 million. In the previous years the production values were fairly stable, having been at EUR 218.4 million in 2009 and EUR 216 million in 2008;

- In 2011, sales of tomato products, which represent about 60% of the CCDP revenues, increased by 4.7% in value, while sales of fruit juices and other beverages that represent more than 30% of the revenues have been substantially stable;

- The profit margins in 2012, compared to the value of production, appear to be essentially in line with the previous year, with EBITDA[12] in the range of 6.9% (6.9% in 2011, 7% in 2010 and 6.4% in 2009) and EBIT[13] of 3.2% (2.7% in 2011, 2.5% in 2010 and 2.6% in 2009). There have been substantially stable values during the last five years which demonstrate the company's ability to maintain adequate profitability in the medium term, despite undergoing industrial and social changes such as those connected with the acquisition of the Boschi company;

- Cash flows: In the period examined the CCDP shows a constant and growing ability to generate positive cash flow, which rose from EUR 7 million in 2008 to over EUR 11 million in 2011. These cash flows were partially absorbed by the need for working capital, above all the warehouse as a result of the continuous increase in sales, especially from investments, which peaked in 2008-2009 (acquisition of Boschi). In 2011, in particular, there was an increase in the production of net cash flows of approximately EUR 9.3 million compared to the previous year: against a gross cash flow generated by operating activities of about EUR 11 million (in line with 2010), there was a lower amount of cash absorbed by the working capital requirements. The cash requirements for investments were approximately EUR 10.9 million, a decrease of approximately EUR 1.8 million compared to 2010;

- The Italian authorities point out that that the profit earned in 2011 and in previous years has been reduced as a consequence of the repayment of a large part of turnover to the contributing members in the form of a return higher than the price paid by the inter-sector agreements[14]. In the production year 2011, the price paid to the CCDP contributing members for the tomato production was EUR 9.35 per metric quintal (inter-sector price EUR 8.8), a significant increase compared to EUR 8 per quintal in 2010 (EUR 7 inter-sector price);

- In 2011 the CCDP has recorded a final NFP of about EUR 137 million, after contributions by shareholders (as capital) that in the four years (2008-2011) exceeded EUR 15 million,

[12] Earnings before interest, taxes, depreciation and amortization.
[13] Earnings before interests and taxes.
[14] Inter-professional agreements (*accordo interprofessionale*): Agreements within the agri-food industry which represent a model of collective bargaining used by the producer's groups in processing, marketing and distribution in order to organize, under the best conditions, the supply of agricultural products on the market.

- Broadening the analysis to the entire five-year period (2008-2012), it can be noted that the NFP has increased by about EUR 44 million, compared to an overall increase of net invested capital of about EUR 65 million. This demonstrates the CCDP's ability to generate significant cash flows from operations, though partially absorbed during this period by the large investments made and above all by the increase in working capital requirements related to the continuous significant increase in turnover.

3.2. Peer comparison

Company valuations

(33) The company valuation was carried out with the use of the market criterion which assesses the company by reference to prices in the market for companies considered “comparable” in the same industry, trying to establish, in relation to the degree of “likeness” of the company assessed to the reference sample, parameters reasonably usable for the company being valued.

(34) This criterion was chosen with regard to the examined business plan, which sets out the economic-financial and market objectives of the company, incorporates the proposed capital increase and therefore shows the impact expectations for further growth.

(35) The foregoing assessment has been carried out with the aim to verify whether the valuations underlying this equity investment would also reflect the value assessments of the market.

The reference scenario/market analysis

(36) The proposed investment concerns the sector of manufacturing and processing of tomatoes: the tomato-based products account for 60% of the revenues of the CCDP.

(37) Italy, with about 150 companies active in tomatoes processing is the leader on the European market of tomato derivates and the third largest world producer, following California and China. The strong point of Italy appears to be the processing of the pulp, while for the United States and China it is the production of tomato concentrate.

(38) Generally, the Italian sector of tomato derivates is a market of very big volumes; the market of canned tomatoes has a total volume of 508,000 t/year for a value of EUR 627.5 million. Data for the year ending in June 2011 showed a slight decrease (-1.2%) in volume compared to the previous period. The decline was even greater in value (-3.8%) due to the decrease in prices.

(39) In 2010, approximately 5.1 million tons of domestic tomatoes were processed in Italy, which represents more than half of the entire European production, while data for 2011 show a decline of down to 4.9 million tons. The production dynamics in recent years have been influenced, apart from the climatic conditions, also by changes in the way of support for the sector, specifically the Community support scheme which in 2008-2010 provided for

partial coupling (transitional regime), related for 50% to the cultivated land. As from 2011 it has instead been characterized by complete decoupling, i.e. aid to farmers completely decoupled from production, resulting, according to Italian authorities, in a potential competitiveness loss.

(40) On the agricultural side, the lack of programming led to an overproduction, with annual production targets of 4.6 to 4.8 million tons becoming nearly 6 million in 2009 and over 5 million in 2010, resulting in lower prices.

(41) As from 2011, with the entry into force of the decoupled system, the production planning and annual price agreements are increasingly becoming the main point of reference for the sector, representing the effective tool of the interpretation of market dynamics and strategic planning. According to the Italian authorities, in the medium term the reform should lead to positive changes, such as preventing over-production by creating the desired balance between demand and supply of raw material.

(42) The tomato sector has different segments with different dynamics and dimensions: the main one is that of tomato sauces with a share of 49.5%, followed by pulp with 25.4% and peeled tomatoes with 19.3%. All these sectors have suffered a slight decrease in volumes in 2011, with the exception of sauces which is stable sector. This phenomenon also reflects changes in lifestyle, rewarding increasingly products "ready in a minute" which favors sauces and may go to the detriment of peeled tomatoes.

(43) Tomato sauces are characterized by a strong market penetration: at present 93.3% of Italian families do buy at least one package during the year. The main distribution channel is the GDO[15] (43%, with an increasing trend). 26% of the Italian market belongs to private labels which increase the pressure on prices for brand manufacturers.

(44) Due to low margins and strong pressure on prices, there has been a decline in the use of traditional advertising, with increased focus on online and in-store advertising. In this context, the packaging plays a fundamental role to communicate the positioning and the quality of the product.

(45) The present market puts strong focus on taste and quality. Control and traceability of the supply chain, environmental record and high safety standards in the selection and processing of tomatoes are the key success factors, followed by the service. In contrast, as noted earlier, a critical element is the price of raw material, increasingly under pressure from international competitors, also in consequence of the reduction of EU aid. Price competition squeezes margins; therefore, it has become necessary to improve profitability, rationalize costs and to search for higher value-added niches. Internationalization offers a space for development, given the opportunities offered by markets which have suffered less from the crisis and given that in some countries there is a demand for premium brands.

The export

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[15] "*Grande distribuzione organizzata*" - a retail establishment (department store) offering a wide range of goods.

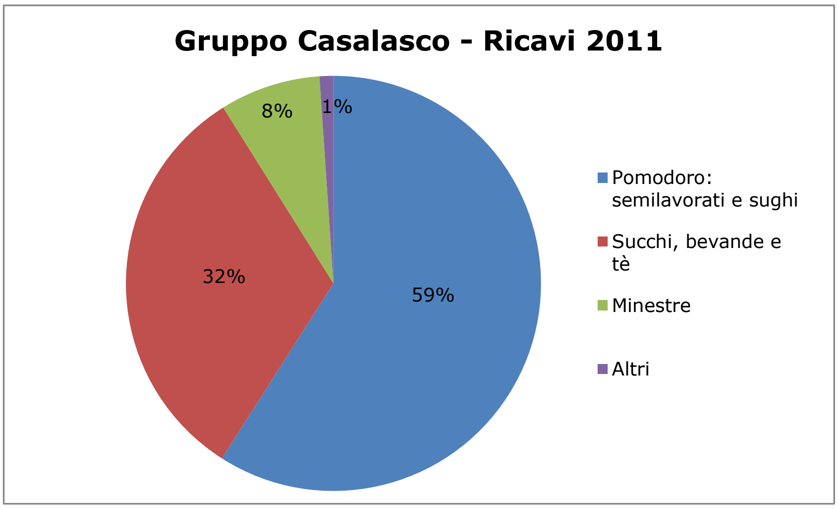
(46) The production of canned tomatoes is one of the most internationalized sectors. Exports of canned tomato in 2010 amounted to more than 1.7 million tons with a value of about EUR 1.3 billion. An increase of export volumes in 2010 (approximately +12%) nevertheless led to a decrease in value (-1.8%) due to the general decline in average prices. Within the EU (+0.8% in value) Germany is the first import market with 374 000 tons, followed by the UK and France, but there are also imports to some smaller markets, such as Sweden, the Czech Republic and Romania which have reached important import levels.

(47) In total exports the non-EU markets are particularly important, in particular the United States, Japan, Saudi Arabia and Australia.

The competitive framework

(48) On the present Italian tomato market the CCDP is one of the most important companies, from the production to processing of fresh tomatoes and the packaging of sauces and condiments, both under its own brands (Pomì and Pomito) or through customers' brands. The production of juices and drinks represents another strategic sector for CCDP, covering about a third of total revenues in 2011.

(49) The breakdown of the CCDP production is as follows:



(50) Out of approximately 150 companies present on the Italian tomato market, the following companies were identified as CCDP's direct competitors: *Conserve d'Italia*, *La Doria*, *AR Industrie Alimentari*, *Antonio Petti Fu Pasquale* and *Mutti*. Currently the market leader in the sector of canned tomatoes in Italy is *Conserve d'Italia* with the brands Cirio, De Rica and Valfrutta (14.5% of the relevant market).

Benchmark analysis

(51) The benchmark analysis was performed by comparing the indicators of profitability, financial solidity and strength of assets - calculated on the basis of data from the period 2009/2011 of the companies which have turnover comparable to the CCDP. *Conserve d'Italia*, a market leader was included in

the comparison despite a considerably greater size, because it operates both on the market of canned tomatoes and of fruit juices.

	2011							2010							2009						
Denominazione	Ricavi (k/000)	Ebitda/ Valore Produz.	Ebit/ Valore Produz.	PFN/ Ebitda	PFN/PN	ROE	ROI	Ricavi (k/000)	Ebitda/ Valore Produz.	Ebit/ Valore Produz.	PFN/ Ebitda	PFN/PN	ROE	ROI	Ricavi (k/000)	Ebitda/ Valore Produz.	Ebit/ Valore Produz.	PFN/ Ebitda	PFN/PN	ROE	ROI
CONSERVE ITALIA COOP. (*)	940.616	6,3%	2,5%	5,1	1,3	0,0%	4,3%	933.190	6,5%	2,6%	4,9	1,3	0,6%	4,5%	963.405	6,9%	3,4%	4,9	1,6	1,5%	6,0%
LA DORIA SPA (*)	484.275	5,9%	3,5%	3,9	1,0	7,0%	7,4%	443.553	8,9%	6,2%	2,5	0,8	11,4%	12,6%	445.928	12,9%	8,9%	1,9	1,0	17,8%	18,2%
AR INDUSTRIE ALIMENTARI SPA	240.630	5,2%	0,6%	10,4	1,0	*neg.*	0,6%	262.075	6,7%	2,2%	8,4	1,0	1,3%	*2,0%*	272.182	11,3%	7,8%	4,0	0,9	10,0%	8,3%
ANTONIO PETTI FU PASQUALE SPA	164.701	2,8%	1,6%	10,3	2,0	*neg.*	3,6%	157.924	2,5%	1,3%	12,5	2,1	2,9%	*2,8%*	201.521	2,9%	2,0%	6,4	1,7	3,7%	6,2%
MUTTI SPA	134.405	10,0%	6,8%	3,1	1,0	13,2%	*10,9%*	127.977	15,1%	12,2%	1,6	0,8	25,1%	*21,5%*	117.777	15,0%	11,7%	1,8	1,2	29,3%	23,7%
CONSORZIO CASALASCO COOP. (*)	220.515	6,9%	2,7%	7,8	3,8	2,8%	3,9%	211.587	7,0%	2,5%	8,8	3,8	4,7%	3,1%	198.344	6,4%	2,6%	8,9	4,4	8,1%	3,6%
Media		*6,2%*	*2,9%*	*6,8*	*1,7*	*5,7%*	*5,1%*		*7,8%*	*4,5%*	*6,4*	*1,7*	*7,6%*	*7,7%*		*9,2%*	*6,1%*	*4,6*	*1,8*	*11,7%*	*11,0%*
Mediana		*6,1%*	*2,6%*	*6,4*	*1,2*	*4,9%*	*4,1%*		*6,8%*	*2,5%*	*6,7*	*1,2*	*3,8%*	*3,8%*		*9,1%*	*5,6%*	*4,4*	*1,4*	*9,0%*	*7,2%*

(*) consolidato

(52) The results of the analysis show the following for CCDP in comparison with the averages of the main players in the relevant sector:

- A ratio EBITDA/production value of approximately 6.4% to 7.0% in the period under review, which is lower than the average of the operators identified in the three-year period 2009 to 2010 but higher than in 2011; however, this indicator is in line with that of the market leader *Conserve d'Italia*;

- It is important to note that the industry averages are greatly influenced by the data of *Mutti*, a company actually smaller in size than other identified companies, but with excellent results high above the averages of the sector. Measured against *Mutti*, the profitability data of the CCDP actually appear to be at better levels than the averages of the sample of the direct competitors;

- It is to be noted that a majority of identified competitors (*La Doria, AR Food Industries, Breasts, Antonio Petti and Mutti*) are for-profit corporations, and therefore with a logic of economic profit substantially different from the CCDP, which, being a cooperative, operates with mutualistic purposes, i.e. transferring to the shareholders, through the mechanism of the rebate, a significant share of its economic results;

- There is a higher degree of dependence on external financial sources, gradually decreasing but still higher than the average of the selected operators, especially as regards CCDP's NFP/NP ratio equal to 3.8 in 2011, compared with the average of the competitors of 1.7. At the same time, the ratio NFP/EBITDA in 2011 was largely in line with the average (7.8 *vs*. 6.8), which demonstrates the ability of the CCDP to generate consistent profit margins to cover, and progressively reduce the financial requirements resulting from the significant growth in recent years.

(53) As already noted, the characteristics of the proposed investment by ISA bear some similarity to those of a medium-to long-term loan, albeit with a variable yield depending on the actual performance of the CCDP. In this regard the Italian authorities confirmed that in compliance with IAS this investment will be classified in ISA's balance sheets as long-term credit.

(54) The table below shows the conditions of financing granted to the CCDP in 2011 and 2012. It can be noted that the average of interest rates of these

financing transactions was approximately 4.2% in 2011 and 4.25% as of December 2012, taking into account the average 2011 Euribor at 6 months (1.64%) and Euribor from December 2012 (0.22%) and the values of spread (2.5% and 4%) foreseen under these financial contracts.

Istituto di Credito	Data di stipula	Scadenza	Importo origine	Residuo al 31/12/2011	Condizioni	Media Euribor 2011 (3 o 6 mesi)	***Spread***	**Tasso**
Mutuo Unicredit	29/07/2011	31/07/2015	2.500.000	2.355.690	euribor 3m + 2,25%	1,39%	2,25%	3,64%
Mutuo Banca Pop. Verona e Novara	27/12/2011	31/12/2015	1.500.000	1.500.000	euribor 3m + 3,50%	1,39%	3,50%	4,89%
Mutuo Veneto Banca	02/11/2011	31/05/2015	1.500.000	1.467.503	euribor 6m + 3,70%	1,64%	3,70%	5,34%
Mutuo BNL	11/03/2011	30/11/2016	1.260.000	1.260.000	euribor 6m + 1,50%	1,64%	1,50%	3,14%
					Media Ponderata		***2,71%***	**4,20%**

Consorzio Casalasco del Pomodoro

Mutui accesi 2012/2013

Istituto	Importo originario	Importo residuo al 14/06/13	data accensione	data scadenza	tasso applicato	valore euribor (14/06/13)	spread applicato	TASSO TOTALE
VENETO BANCA	500.000,00	432.282,30	21/12/2012	30/11/2015	eurib 6 m +3,90%	0,25%	3,90%	4,15%
BNL (MADE IN LOMBARDY)	134.122,09	117.356,83	11/12/2012	30/11/2016	eurib 6 m +1,5%	0,25%	1,50%	1,75%
BANCA CREMONESE	1.000.000,00	842.444,00	13/12/2012	13/12/2015	eurib 3 m +4,25%	0,21%	4,25%	4,46%
MPS (pool)	3.200.000,00	3.200.000,00	24/04/2013	13/07/2017	eurib 3 m +5,50%	0,21%	5,50%	5,71%
RIVAROLO MANTOVANO	400.000,00	381.865,88	4/02/2013	31/12/2017	eurib 3 m +4,00%	0,21%	4,00%	4,21%
ICCREA	1.600.000,00	1.527.463,48	4/02/2013	31/12/2017	eurib 3 m +4,00%	0,21%	4,00%	4,21%
POPOLARE EMILIA ROMAGNA	1.500.000,00	1.500.000,00	15/02/2013	31/03/2021	eurib 3 m +5,30%	0,21%	5,30%	5,51%
POPOLARE MANTOVA	2.000.000,00	2.000.000,00	22/05/2013	31/12/2015	eurib 3 m +3,75%	0,21%	3,75%	3,96%
							MEDIA	**4,25%**

(55) The minimum guaranteed return of 4.25% for ISA corresponds to the average interest rate and the average expected return for ISA of 6.05% appears higher by nearly 2 percentage points compared to the conditions granted by the banking system to the CCDP in recent operations in the medium/long term.

3.4. Assessment

3.1. Application of Article 107(1) TFEU

(56) Pursuant to Article 107(1) TFEU, aid granted by a Member State or through State resources in any form whatsoever that distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is prohibited, insofar as it affects trade between Member States.

(57) ISA is an entirely public company whose shares are held integrally by the Ministry of Agriculture, Food and Forestry Policies of Italy. Therefore, the investment involves resources that are imputable to the State.

(58) The Commission document "Application of Articles 92 and 93 of the EEC Treaty to public authorities' holdings"[16] stipulates in section 3.2 that there is no aid when fresh capital is contributed in circumstances that would be acceptable to a private investor operating under normal conditions of a market economy.

(59) Pursuant to paragraph 3.2. (iii) of the said document, the MEIP can be taken to apply where the public holding in a company is to be increased, provided that the capital injected is proportionate to the number of shares held by the authorities and goes together with the injection of capital by a private

[16] Bulletin EC 9-984

shareholder; the private investor's holding must have a real economic significance.

(60) As detailed in recitals 22 and 23 above, ISA will receive a number of shares corresponding to the invested amount; therefore, the capital injected by the public investor will be proportionate to the number of shares it will hold.

(61) The acquisition of share capital by ISA in CCDP will take place at the same conditions as those applying to the CCDP's private shareholders which shall subscribe the corresponding amount in the form of cash contribution. Therefore, it can be concluded that the private investor's share in this investment has a real economic significance.

(62) Hence, in line with Section 3.2. of the Commission document "Application of Articles 92 and 93 of the EEC Treaty to public authorities' holdings" the assessment of the notified measure is being based on the MEIP as further developed in the jurisprudence of the EU courts[17] and the Commission's decisional practice[18].

The financial position of the CCDP is sound.

(63) The financial position of the CCDP is sound with a solid equity base and stable profit margins. It is a well-established company with strong growth and positive results confirmed in the long run. CCDP is one of the market leaders, whose revenues have been steadily increasing over the last three years, with a return always positive and in line with or superior to that of most of its competitors.

(64) The analysis of the CCDP dynamics over the past 7 years shows a continuous growth of the value of production up from EUR 51 million in 2005-2006 to above EUR 250 million in 2011. According to the Italian authorities this development was made possible, apart from the acquisition of the business of Boschi, by the successful acquisition of customers of major international importance and by the steady growth of the product volumes delivered by its members.

Viability of the CCDP

(65) The Commission analysed the provided financial data in order to determine whether the CCDP is a company in difficulty within the meaning of the Community Guidelines on state aid for rescuing and restructuring firms in difficulty (hereafter "R&R Guidelines") in order to see whether the notified measure might have to be assessed under these rules. To this end, points 10 (c)

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[17] Case C-334/99, Germany v. Commission [2003] ECR I-1139, para. 133 and following and Joined Cases T-228/99 and T-233/99, Westdeutsche Landesbank Girozentrale and Land Nordrhein-Westfalen v. Commission [2003] ECR II 435, para. 255; and Joined cases T-129/95, T-2/96 and T-97/96, Neue Maxhütte Stahlwerke GmbH and Lech-Stahlwerke GmbH v Commission [1999] II-17, para. 104 and following.

[18] Decisions of 22 December 1998 on Aid No N 191/1998 (Pomella), 3 February 2000 on Aid No N 652/1999 (Granarolo), 4 August 2000 on Aid No N 164/2000 (Floramiata), 14 October 2004 on Aid No N 342/2004 (Valle del Leo), 21 September 2005 on Aid No N 170/2005 (Conserve Italia), 10 July 2007 on Aid No N 102/2007 (GIV Verona).

and 11 of the R&R Guidelines were applied for the assessment, as the CCDP is a cooperative type of company.

(66) Pursuant to the R&R Guidelines, points 10 (c) and 11, the firm is regarded as being in difficulty where:

- it fulfils the criteria under its domestic law for being the subject of collective insolvency proceedings,

- the other usual signs of a firm in difficulty are present.

(67) According to the consolidated balance sheets for the financial years 2009-2011 and civil balance sheets for 2012, as well as other information provided by the Italian authorities, the CCDP has not suffered from capital losses, neither has it shown the usual signs of a firm in difficulty, such as diminishing turnover, growing stock inventories, excess capacity, declining cash flows, mounting debts, rising interest charges and/or falling or nil net asset value. (cf. recital 31)

(68) The credits lines of the CCDP appear sufficiently large and only partially used: the Italian authorities have presented the findings of the Central Credit Register[19] of 28 February 2013 (latest available data) which revealed no trespassing or unpaid positions (cf. also recital 32).

(69) Further, the Italian authorities have verified that the CCDP has not been subject to bankruptcy proceedings or debt restructuring.

(70) On the basis of the above analysis it has been established that the CCDP is not a company in difficulty within the meaning of the R&R Guidelines.

The profitability of the intervention is sufficient with regard to its risks.

(71) The entry of ISA in the capital of the CCDP will occur at a value of EUR 500 per share (cf. recital 22). As from its entry into the capital of the CCDP, ISA will have the right to the minimum guaranteed return of 4.25%, increased by a spread based on the performance of the CCDP (cf. recital 23). The rate of return for ISA will oscillate between the guaranteed minimum of 4.25% and a possible maximum of 8%. Based on the evidence presented by the Italian authorities this forecast appears reasonable (cf. recital 29).

(72) Furthermore, a benchmark analysis was carried out in order to verify the reasonability of the proposed rate of return in comparison with the returns offered on the relevant market by the competitors. This analysis showed that the expected return for ISA is consistent with the profitability of the sector and is above the average ROE[20] identified for the main competitors of the CCDP.

(73) As already noted above in recitals 18 and 52-54, the proposed investment shows some characteristics of a medium to long-term loan. It therefore seemed

[19] Central Credit Register is an information system on the indebtedness of the customers of banks and financial institutions supervised by the Bank of Italy.
[20] Return on Equity.

useful to compare the expected return for ISA with the conditions obtained by the CCDP on the debt capital market, in order to verify both the reasonableness of the expectations of ISA compared to a private investor's expectations and the respect for the MEIP (in particular relating to the yield, which shall be in line with normal market conditions).

(74) The loan financing of the CCDP (cf. recital 53) has been moving in the spread of 120-150 basis points which suggests a rating of BBB-BB (under the normal collateral assumption). Italian government bonds (10 year gross yield), which can be considered at similar risk, stand currently at 4.4%. The investment into the CCDP capital offers a comparable initial guaranteed rate, however, it has the upside potential of a rate of 8 %. Moreover, German government bonds (10 year gross yield) stand at present at 1.6%. Adding a risk margin of 200 bsp would give a rate of return of 3.6%, which is approximately 0.6 percentage point lower than the guaranteed minimum return. Therefore, the profitability of the investment seems adequate.

(75) ROI[21] also appears to be consistent with the investment policies of ISA and corresponding to the reasonable expectations of a private investor, taking into account, on the one hand, the risk profile of the investment, and on the other hand, a series of connected "safeguards" (minimum guaranteed rate of return, repurchase obligation by the majority shareholder, non-participation in losses, collateral in the event of failure to pay dividends for any two years). Therefore, the risks involved are considerably lower than in a pure equity investment.

(76) As regards the "safeguards", ISA’s holding in the CCDP’s capital is secured by additional guarantees:

(a) Participating shares have priority over other types of shares foreseen in the Statute of the CCDP in case of dividends and liquidation of the company. They have a guaranteed minimum earning and higher security level than other shares;

(b) Guarantee of payment of the minimum return: a reserve fund of EUR 2 million will be created prior to ISA's investment with the aim to guarantee the payment of the minimum fixed return (cf. recital 23, last indent).

The State’s participation should not be accompanied by the disengagement of the private investors.

(77) The CCDP's private shareholders are prepared to subscribe simultaneously a cash-contribution equal to the investment of ISA. This investment is directly linked to previous major investments into the development undertaken by the CCDP. The adequate capitalisation shall create an important framework for the valorisation of these investments and future growth.

[21] Return on Investment.

(78) Further, the payment of dividends will be secured through the mechanism giving ISA the right to early terminate its participation in the capital of CCDP and to be paid through the reserve fund of EUR 2 million, specifically created for this purpose.

(79) Therefore, the measure contains sufficient safeguards to prevent a disengagement of the private investors.

Potential aid elements

(80) Certain elements of the described investment may still raise the question whether they involve an aspect of aid within the meaning of paragraph (iii) of Section 3.3 of the Commission document (above recital (57)), which refers to state aid when the holding is a short-term one and with duration and selling price fixed in advance.

(81) In the case at hand, while the duration of the project is fixed, though providing some flexibility (cf. recital 16), only the minimum rate of return is fixed, while the actual yield will depend on the performance of the CCDP during ISA's presence in its capital, within the minimum and maximum fixed levels. The selling price will depend on the market price of the shares of CCDP at the time of exercising the exit option, including the value of goodwill created during ISA's participation (cf. recitals 26). As a result, the Commission considers that paragraph (iii) of Section 3.3 does not apply to the notified intervention.

(82) Furthermore, the structure of equity investment follows the structure of MEIP measures financed by ISA in the past and approved by the Commission[22].

(83) In view of all the factors described above, the Commission considers that the participation by ISA in the CCDP's share capital is proposed in circumstances that would be acceptable for a private investor operating under normal market economy conditions. The proposed intervention will not provide the CCDP with capital at better terms than what it would have been able to obtain on the market.

(84) In light of the above, the measure in question does not confer any economic advantage onto the CCDP. Since one of the conditions of Article 107(1) TFEU is not fulfilled, it can be concluded that the proposed measure does not constitute State aid within the meaning of that Article.

4. CONCLUSION

(85) On the basis of the above considerations, the Commission decides that the notified measure does not constitute State aid.

(86) If this letter contains confidential information, which should not be published, please inform the Commission within fifteen working days from the receipt of the present letter. If the Commission does not receive a reasoned request by

[22] E.g. N 102/2007 "GIV Verona"; N 342/2004 "Valle del Leo"; N 164/2000 "Floramiata", N 423/2010 "Amalattea", SA. 35180 (2012/N) "Ferrarini".

this deadline, you will be deemed to have agreed to the publication of the full text of this letter in the authentic language on the following webpage:

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Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Agriculture and Rural Development
Directorate M — Agricultural Legislation
Unit M.2 — Competition
Office: Loi 130 5/94A
B-1049 Brussels
Fax No: 0032 2 29 67 672

Yours faithfully,
For the Commission

Dacian CIOLOŞ
Member of the Commission