



EUROPEAN COMMISSION

Brussels,
C (...)

Subject: State aid / Italy (Campania)
Aid No SA.38298 (2014/N)
Project Olio Dante S.p.A. – Istituto Sviluppo Agroalimentare S.p.A.

Madame,

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 (1) 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 5 February 2014, registered on 13 February 2014, Italy notified to the Commission pursuant to Article 108(3) of the TFEU the above-mentioned measure.
- (2) By letter of 1 April 2014 the Commission asked for supplementary information which the Italian authorities submitted on 23 May 2014 and on 25 June 2014.

2. DESCRIPTION

2.1. Title

- (3) Project Olio Dante S.p.A. – Istituto Sviluppo Agroalimentare S.p.A.

2.2. Objective

- (4) The notified measure concerns an equity investment project to be undertaken by Istituto Sviluppo Agroalimentare S.p.A. ("ISA") in the share capital of Dante Oil S.p.A. ("Dante Oil"), a new company belonging to Mataluni Group. The project aims at financing operating activities of Dante company which as

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from January 2014 has started the packaging and marketing of all the olive and seed oils bottled within the Group, both for Italy and abroad, and both its own and third parties' brands. This business project aims to contribute to better efficiency and competitiveness of Mataluni Group.

- (5) The Italian authorities are bound by law¹ to individually notify all interventions by ISA at market conditions.

2.3. Public authority

- (6) ISA is a public company all of whose shares are held by the Italian Ministry of Agriculture, Food and Forestry Policies. It promotes and supports projects of agro-industrial development that aim at structural improvements in income levels of agricultural companies². ISA may either provide investment aid to the sector of processing and marketing of agricultural products by granting soft loans or invest at market conditions by acquiring a minority shareholding in the capital of companies³.

2.4. Beneficiary

- (7) The recipient of the notified measure is Mataluni Group, through the Dante Oil company. Mataluni Group is one of the principal players in the Italian sector of edible and seeds oil.
- (8) Oil mills of Mataluni were founded in 1934. Today the Group is headed by the namesake family of entrepreneurs from Campania, in particular, by Dr. Biagio Mataluni. Twenty years ago until then the artisanal activity (oil mill and packaging) took industrial characteristic, fully integrating the production and marketing into its olive oil production chain.
- (9) The activities carried out within the Group include the production of olive and seed oil (in mills), refining of crude oils, filtering and blending, production of and packaging in PET bottles, manufacturing of labels and cartons for packaging, quality control, distribution and logistics.
- (10) The whole activity is carried out within the industrial complex located in Montesarchio in the province of Benevento. The mills of Mataluni currently comprise a modern factory that covers an area of 160,000 square meters of which 70,000 square meters occupy 5 lines of oil mill, 18 bottling lines, two refineries, a trigeneration and photovoltaic plant, a specialized laboratory CRIOL - Quality Control and Technological Innovation in Oil Industry – a research centre highly specialized and technologically advanced created in 2004 and recognized by the Ministry of Education in 2010 and a department of packaging production which comprises of 9 lines for PET bottles production, 6

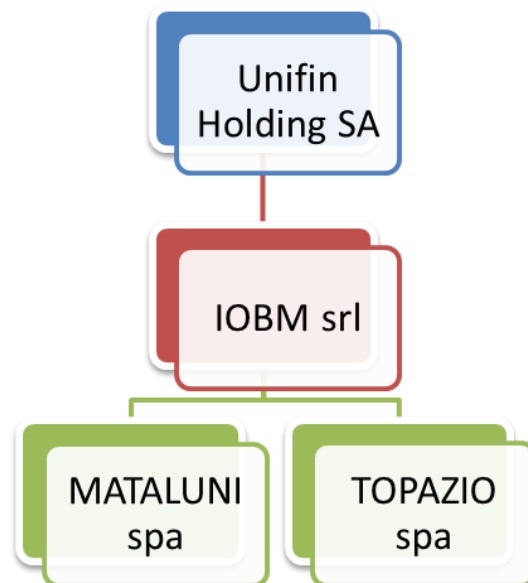
¹ Paragraph 31 of the Decision of the Interministerial Committee for Economic Planning (CIPE) of 31 July 2009 "Modifica della delibera CIPE n. 90/2000 come integrata e modificata dalla delibera n. 58/2002. Criteri e modalita di intervento di "ISA S.p.a.". (Deliberazione n. 65/2009).

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. etc.

³ Delibera CIPE n. 65, parte D.

lines for the production of preforms and 3 for the production of caps with Polygraph Centre for the production of labels (3 lines).

- (11) The annual production capacity of the Group is 100 million liters of oil, of which 70 % seed and 30% olive oil. In 2006 the Group has initiated a plan to acquire brands under the policy of integration of the supply chain in order to start making sales of its own branded products to the GDO⁴ and traditional retailers, thus shortening the supply chain in the field of seed oils (Topazio, OiO, GICO and smaller labels of the Chiari & Forti SpA) and later also in the sector of olive oil (11 brands from Carapelli S.p.A). In 2008, following the acquisition of these trademarks and the restructuring of the sales network, the Group's turnover related to these products increased by 30%.
- (12) In 2009, the Group took over from the Spanish brand SOS CUETARA the brand "DANTE OIL," the label created in 1854 in Italy which now has returned to Italy after more than two decades. Finally, in 2011 a brand Olita Star was acquired.
- (13) Currently the brands owned by the Group include 23 labels including the main ones: Dante, Topazio, Olita and Vero.
- (14) As regards its structure, the Group has undergone a corporate reorganization in 2012 which was in the logic of a segmentation of industrial and commercial processes.
- (15) The Group's current structure is shown below:



- (16) The Unifin Holding SA is registered under the Luxembourgish law and represents the head of Dr. Mataluni's family.
- (17) The IOBM (*Industria olearia Biagio Mataluni Srl.*), 77% of which is controlled by the parent company, is a sub-operating holding company,

⁴ Grande Distribuzione Organizzata (Large Retail Organization).

owning the mills, refinery and major facilities for the polishing, filtration and mixing processes.

- (18) IOBM controls 99.6% of the Mataluni S.p.A., company active in the secondary processing of seeds and olive oil also in the sale of branded oils for third parties (in Italy and abroad) as well as oils under its own brand (abroad).
- (19) Topazio S.p.A, of which 99.9% is controlled by IOBM, engages in the business of selling oil under its own brand in the domestic market, having relationships with GDO, retail and Food Service. This company owns numerous brands including Dante, Topazio, Lupi, Gico, Minerva, Olita and OIO.
- (20) Two consortiums belong to the Group: the Enemont Scarl (active in the production and supply of electricity to companies in the Group) and the Minerva Agricultural Food Scarl (active in the production and processing of specialty oils).
- (21) The proponent subject is the IOBM, with a share capital of EUR 18.125 million. Its shareholding structure is as follows:
 - Trust society Cordusio S.p.A. (Unifin) 77% - full ownership;
 - DR. Biagio Mataluni 11.5% - bare ownership;
 - Mataluni Nunzia 11.5% - bare ownership.
- (22) The Dante Oil S.p.A. was created on 15 November 2013 with a capital of EUR 120,000, paid in cash by IOBM and Fabio Mataluni Srl, another company of the Group Mataluni. At the time of its constitution the IOBM held a 95 % share in the Dante Oil. On 31 December 2013 the shareholder IOBM signed a capital increase of EUR 49.88 million in Dante Oil through the transfer of the business unit related to the production, packaging and marketing of olive oil and extra virgin oil, previously managed by the companies Topazio S.p.A. and Mataluni S.p.A. Following this capital increase Dante Oil has become the owner company within the Mataluni Group of the business and all assets dedicated to the bottling and marketing of olive oil and virgin olive oil, both under the brand "Dante" and customers brands (so-called "private labels").
- (23) Following the share capital increase of Dante Oil in December 2013. Dante Oil is controlled by IOBM which holds the share of about 99.988 % (the remainder being owned by the Fabio Mataluni Srl). The net assets of Dante Oil, including an extraordinary reserve amounting to EUR 26.32 million, are equal to approximately EUR 76.4 million. IOBM, the parent company of Dante oil, will proceed in the first half of July 2014 with the second operation of the conferral of additional tangible assets, which refer to a branch of olive oil company that is currently rented and run by the same Dante Oil, as well as a part of an investment property under construction connected to the Programme Agreement "Olisan", also financed by regional funds. The value of the assets of this second contribution is estimated at about EUR 4.6 million,

which, to the net of trade payables, also transferred, would give a net asset of approximately EUR 2.6 million: this value will be added to the reserves now stationed in equity capital of Dante Oil.

2.5. Legal Basis

- Delibera CIPE n. 65 del 31.07.2009;
- Legge n. 662 del 3.12.1996, art. 2, comma 132;
- Legge n. 700 del 19.12.1983, art. 3, come modificata dalla legge n. 248 del 2.12.2005, art. 10.

2.6. Duration

- (24) The participation of ISA in Dante company shall be minority and temporary. Its duration is foreseen for 8 years.

2.7. Budget and type of intervention

- (25) The planned investments by ISA are estimated at EUR 15 million and are intended to finance the operating activities of Dante Oil within the Mataluni Group, in a new bottling plant at the Montesarchio locality, carrying out the activities of packaging and marketing of all olive and seed oil bottled within the Group. The investments, focused at the development of sales of olive oil and extra virgin olive oil, are in total estimated at EUR 30 million, consisting of 50% of commercial investments aiming at internationalization and 50% of industrial investments.
- (26) Although the investment by ISA is structured as an equity investment, it shows some characteristics of a loan [...]⁵. This is reinforced by the fact that preferred shares (hybrid between debt and regular equity) have been chosen. Also, the funds are earmarked for a specific period and for a specific purpose, as described below.

2.8. Description of the project

- (27) The total investments are estimated to be about EUR 30 million. The objective to be financed is twofold: (i) the completion of capital expenditures necessary to equip the plant in Montesarchio which shall operate the production capacity adequate to the commercial development project (industrial investment), and (ii) market development, particularly abroad (commercial investment).

(i) New plant in Montesarchio

- (28) The new industrial site shall concentrate the bottling of all oils produced within the Mataluni Group, both for Italy and abroad and Group's own brands as well as those of the third parties. It is foreseen to invest EUR 15 million into this objective.

⁵ Covered by the obligation of professional secrecy.

(ii) Commercial development strategy

- (29) The backbone of the project is the internationalization of the brand "Dante" and other Mataluni's own brands, to which, according to the Italian authorities, is attributed a very high potential for development, especially on foreign markets.

Volumi ('000 Lit.)	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2023-2013		
												Cagr 10 anni	delta volumi	
Canada	0	850	1.275	1.658	1.740	1.775	1.824	1.874	1.925	1.978	2.032		2.032	7,9%
USA	44	176	881	2.643	6.607	16.519	17.125	17.752	18.403	19.079	19.778	84,2%	19.734	77,0%
Nord-America	44	1.026	2.156	4.301	8.347	18.294	18.949	19.626	20.328	21.057	21.810	86,0%	21.766	85,0%
Giappone	596	894	1.162	1.395	1.464	1.545	1.630	1.720	1.814	1.914	2.018	13,0%	1.422	
Australia	91	136	272	408	430	452	476	501	528	555	584	20,4%	493	
Cina	8	16	48	95	123	160	174	192	211	234	257	41,5%	249	
Asia-Pacifico	695	1.046	1.482	1.898	2.017	2.157	2.280	2.413	2.553	2.703	2.859	15,2%	2.164	8,4%
Germania	29	86	215	430	645	839	845	851	857	863	869	40,5%	840	
Russia	23	46	115	196	294	382	407	433	461	491	523	36,7%	500	
Est-Central Europa	52	132	330	626	939	1.221	1.252	1.284	1.318	1.354	1.392	38,9%	1.340	5,2%
Resto del Mondo	654	667	680	693	706	719	733	747	762	776	791	1,9%	137	0,5%
Totale Marchi	1.445	2.871	4.648	7.518	12.009	22.391	23.214	24.070	24.961	25.890	26.852	33,9%	25.407	99,2%
Private Labels	493	511	530	549	569	590	612	634	658	682	707	3,7%	214	0,8%
Export	1.938	3.382	5.178	8.067	12.578	22.981	23.826	24.704	25.619	26.572	27.559	30,4%	25.621	100,0%

- (30) Growth forecasts of Dante Oil's sales of own branded products, as detailed in the above table, are based on the following assumptions:

[...]⁶

- (31) [...] The Group intends to focus its growth strategy on the U.S. which is the third world market in the extra virgin olive oil after Italy and Spain, aiming at affirming "Dante" and other Mataluni's brands as the authentically Italian brands [...]⁸.

- (32) As reported in the business plan, the backbone of the project is the internationalisation of the brand Dante and other Mataluni's brands, to which is attributed high potential for development in foreign markets. [...]⁹

- (33) Dante Oil shall operate assets of approximately EUR 75 million, the initial capital being EUR 25 million. The capital increase, hypothesized in two

⁶ Covered by the obligation of professional secrecy.

⁷ Covered by the obligation of professional secrecy.

⁸ Covered by the obligation of professional secrecy.

⁹ Covered by the obligation of professional secrecy.

phases, first in 2014,¹⁰ second in 2015, is designed as shown in the following table:

[...]¹¹

2.9. Terms of intervention

(34) [...]¹²

(35) The investment is designed to take place on the basis of the following assumptions:

- temporary participation of ISA in the share capital of Dante lasting 8 years through the subscription and payment of the total nominal value of the preferred shares of EUR 15 million in two installments, the first one amounting to EUR 8 million, the second one to EUR 7 million;
- both installments are subject to payment by the private shareholders or third parties, respectively, for EUR 7 million through the subscription and payment in respect of ordinary shares in their nominal value;
- considering that the value of the ordinary shares of the Dante Oil was set at EUR 100, it is supposed that this value will be confirmed for preferred shares. It follows that ISA will receive 150,000 newly issued preferred shares.

(36) All preferred shares shall enjoy, from the date of subscription and payment, the following privileges:

- Privilege in earnings compared to ordinary shares (priority in the allocation of profits, higher dividend preference);
- Postponement in bearing losses in respect of the ordinary shares (deferring in the case of the reduction of the capital or the total loss of the capital or in the reduction of the nominal value of shares);
- Privilege in case of liquidation (priority in the repayment of capital whatever reason of dissolution and the right to priority repayment of their nominal value).

(37) During the period in which ISA will hold a participation in the share capital of Dante Oil, its investment will be remunerated on the basis of a mechanism linked to the achievement, in each year, of the specific objectives of production and sale of Dante Oil's own branded oil (i.e. "Dante" and other Mataluni's brands), as shown in the following table:

¹⁰ The increase of 2014 is depicted in the table as including EUR 8 million from ISA and EUR 3 million from IOBM (Gruppo Mataluni) because IOBM already contributed prior to 1 January 2014 EUR 5 million of the EUR 8 million referred to in recital **Error! Reference source not found.**

¹¹ Covered by the obligation of professional secrecy.

¹² Covered by the obligation of professional secrecy.

[...] ¹³

(38) [...] ¹⁴

(39) The remuneration payable to ISA in each year will be paid as follows:

1. in the form of annual dividends calculated on the basis of the mechanism described above;
2. where such dividends could not be paid in one year or where the dividends could not be at least equal to the due remuneration, the proportion of the return due but not paid can be paid to ISA later; however, at the latest as a capital gain at the time of sale of ISA's shares to the private shareholders;
3. the agreements with IOBM also provide that the income accruing to ISA but not paid by Dante Oil cannot exceed a level of total of [...] ¹⁵: in such a case it is foreseen to offset it by means of a periodic stream in favor of ISA directly from IOBM or, failing to do so, ISA will have the right to early withdraw from the investment.

Representation in Corporate bodies

(40) For the duration of its participation in Dante, the following appointments are foreseen for ISA:

- an auditor in the position of the Chairman of the Board of Auditors,
- one member of the Board of Directors of Dante.

Disposal of the investment by ISA

(41) In the 8th year of presence of ISA in the share capital of Dante the output of the ISA shall be regulated on the basis of the following two options: (i) PUT option for ISA (ISA will have the right to sell its preferred shares and IOBM obligation to purchase), and (ii) CALL option for IOBM (IOBM will have the right to purchase and ISA obligation to sell).

(42) The output of the ISA is thus ensured by the obligation assumed by the IOBM to purchase the preferred shares and, in the event of inability to fulfill this obligation, by an agreed process of joint selling of IOBM's ordinary shares and ISA's preferred shares, involving the intervention of a trust and an irrevocable power of attorney, which offers an additional protection for the ISA's investment.

(43) ISA will have the right to sell to the IOBM its preferred shares at a price equal to their market value. The determination of the price will be made on the basis

¹³ Covered by the obligation of professional secrecy.

¹⁴ Covered by the obligation of professional secrecy.

¹⁵ Covered by the obligation of professional secrecy.

of the market value of Dante Oil at the time of exit, calculated according to the mechanism described below.¹⁶

- (44) The market value will be equal to the nominal value of the preferred shares at the time of determination of their price (hereinafter the "capital"), plus the goodwill generated during the period of stay of ISA in the shareholding of Dante (hereinafter "the goodwill"). The basis for calculation of the goodwill for the first year will be the capital subscribed and paid which will be equal to the shareholding held by the ISA. As of 31 December of the first year the market value of the ISA's preferred shares will be equal to the capital increased by the goodwill produced during that same period, calculated as a percentage of capital defined in terms of kilograms of oil of its own brand sold by the company until 31 December of the first year for the months of effective stay of ISA in the shareholding of Dante.
- (45) The basis for calculation of goodwill produced in following years will be equal to the market value calculated for a previous year, increased by the goodwill acquired during the given year.
- (46) The output goodwill produced in the last year of the ISA's presence in the Dante shareholding will be calculated in an analogical way and on the basis of the number of months of effective stay of ISA in Dante's capital in that year.
- (47) The following formula shall be used for the calculation:

$$V_m = \text{Capital} + \Sigma(\text{goodwill}) - \Sigma(\text{return})$$

Where:

V_m is the market value of the final sale of the preferred shares of ISA

Capital is the nominal value of the preferred shares subscribed by ISA

Σ (*goodwill*) is the sum of goodwill produced in each year by Dante, calculated as a percentage of capital defined on the basis of the quantities sold in each calendar year (see table in recital 36 above)

Σ (*return*) is the sum of the returns received by ISA in respect of the investment in own branded oils processed by Dante Oil.

(48) [...]¹⁷

(49) [...]¹⁸

(50) [...]¹⁹

¹⁶ This market value has no impact on the yearly remuneration provided for ISA, including the guaranteed minimum return (see the table in recital (37) of the present Decision).

¹⁷ Covered by the obligation of professional secrecy.

¹⁸ Covered by the obligation of professional secrecy.

¹⁹ Covered by the obligation of professional secrecy.

(51) In the case of exercise of the PUT and/or CALL options prior to the expected duration, a price in addition to the price in favor of ISA shall be foreseen which takes into account the increased expectation of ISA in terms of return on investment compared to the expected duration of the investment. [...] ²⁰

2.10. Key financial data

(52) The Dante Oil S.p.A, operational as from 1 January 2014, received at the end of 2013 the industrial and commercial business units of Mataluni SpA and Topazio SpA, replacing the aforementioned companies in all business relationships in place (in Italy and abroad) for bottled products.

(53) Year 2014 is considered to be the first financial exercise of Dante Oil, with a starting capital assets consisting of:

- Tangible assets of about EUR 24 million;
- Intangible assets of about EUR 97 million;
- Financial assets of EUR 1 million;
- Warehouse for EUR 0.5 million;

(54) Equity and balance sheet liabilities consist of:

- Shareholders' equity of approximately EUR 82 million (of which EUR 50 share capital);
- medium to long net financial debts of about EUR 37 million, [...] ²¹. The transaction is estimated to take place before the entrance of ISA in the capital of Dante Oil;
- TFR ²² of EUR 0.4 million;
- Deferred income of about EUR 3.4 million.

(55) The expected evolution of the economic- financial capital of the Dante Oil for years 2014-2022 is based on the following assumptions:

- Increase in capital to EUR 25 million, of which EUR 11 million in 2014 and EUR 14 million in 2015; ²³
- an increase in sales for a total of EUR [...] ²⁴export growth, mainly to the U.S., [...] ²⁵;

²⁰ Covered by the obligation of professional secrecy.

²¹ Covered by the obligation of professional secrecy.

²² Trattamento di Fine Rapporto/Indemnity.

²³ See footnote 10 of the present Decision.

²⁴ Covered by the obligation of professional secrecy.

²⁵ Covered by the obligation of professional secrecy.

- a percentage of gross margin compared to the value of production substantially stable at the level of [...] ²⁶;
- In the period 2014 - 2016 capitalized commercial investments (projects Internationalization) are foreseen [...] ²⁷;
- The increase in costs of advertising and promotion is foreseen [...] ²⁸;
- The ratio of personnel expenses shall be reduced in the years of the plan because there are no significant increases in the number of employees;

2.11. Peer comparison

Company valuations

- (56) The valuation of Dante Oil has been carried out using the method of discounted cash flow (DCF) in the so called "unlevered" way. This method has been selected taking into account the following elements: a new company is being set up to which an established business already controlled by the Group Mataluni will be transferred, the detailed business plan has been developed and the project is similar to previous investments of ISA. This method estimates the value of the share capital of a company (the "equity value") according to its ability to produce an adequate level of cash flows to meet the expectations of remuneration of a private investor in the long run.
- (57) The development of the assessment was made on the basis of basic data or the assumptions summarized in the following table:

<i>Parametri FCD Unlevered Olio Dante Spa</i>		
Patrimonio Netto (Equity) 2013 (in € '000)	(E)	81.896
Tasso risk-free (BTP 8 anni)	(R _f)	3,80%
Premio di mercato	(P)	10,00%
Beta	(β)	0,7
Costo capitale proprio (Cost of Equity)	$C_e = R_f + \beta \times R_f$	10,80%
PFN (total debt) 2013 (in € '000)	(D)	36.901
Costo lordo debito finanziario totale	(C _{dl})	5,27%
Scudo fiscale	(t)	31,4%
Costo netto debito finanziario totale	(C _d)	3,61%
% Equity su fonti totali di finanziamento	$E_{\%} = E/(D+E)$	69%
% Debito su fonti totali di finanziamento	$D_{\%} = D/(D+E)$	31%
Tasso di crescita di lungo periodo	(g)	2,0%
Weighted Average Cost of Capital - WACC	$C_e \times E_{\%} + C_d \times D_{\%}$	8,57%

²⁶ Covered by the obligation of professional secrecy.

²⁷ Covered by the obligation of professional secrecy.

²⁸ Covered by the obligation of professional secrecy.

- (58) The valuation, based on the assumptions summarized above, determines an estimate of the value of Dante Oil (equity value) of approximately EUR 65 million; therefore, the value before the subscription by ISA corresponds to the share capital of EUR 50 million. ISA subscribes for shares at nominal value, paying a price corresponding to a valuation of the share capital of Dante Oil.
- (59) In order to test the "stability" of this value even in the event of variability of the set assumptions, the table below summarizes how the equity value of Dante may change in case of variation of the two key parameters of an evaluation with DCF method: (i) the rate of long-term growth of free cash flow (g); and (ii) the risk premium (P).

Analisi di sensitività Equity value Olio Dante Spa
(dati in € '000)

		Premio di mercato (P)				
		8,00%	9,00%	10,00%	11,00%	12,00%
Tasso "g"	0,00%	58.859	50.212	42.574	35.782	29.708
	0,50%	65.198	55.622	47.226	39.811	33.218
	1,00%	72.498	61.795	52.493	44.340	37.139
	1,50%	80.994	68.906	58.505	49.468	41.549
	2,00%	91.006	77.185	65.433	55.325	46.544

- (60) With reference to the first of these parameters, the assumption of the 2% growth in the long run is the one prudently considered as the most probable in the theory and practice of evaluation, as it substantially corresponds to the average annual growth rate of GDP measured in a long-term period. The table, however, simulates the change in the value of Dante to the progressive reduction of the growth rate to zero.
- (61) As for the second parameter, it represents the premium claimed in "normal" conditions by a private investor in the capital of agro-industrial company with risk profile similar to that of Dante Oil. For a correct interpretation of the table it should be said that in the event of decreasing growth rate (g) the premium of a private investor should also be reasonably reduced. In other words, if an investor estimates the value on the basis on the most conservative hypothesis, which is that of a long-term rate of zero, he'll be minimizing the risks and therefore expect a smaller premium.
- (62) It can be noted from the table that the valuation of Dante remains consistent with the values derived from the sensitivity analysis.

The reference scenario/market analysis

- (63) The proposed investment concerns the sector of olive and other seeds oil.
- (64) As regards the global markets, the estimates made by the International Olive Oil Council for the harvest year 2012/2013, pointed to world production of approximately 2.7 million tons of olive oil, with a decrease of about 20% compared to the previous year. Such decline was mainly the result of Spanish production who, after some years of notable production, recorded a sharp decline in volumes produced. Over 60% of the world production is

concentrated in the EU with a production level of about 1.7 million tones, recording a decrease of 32% compared to the harvest 2011/2012.

- (65) Spain with a production of about 820 thousand tons is the largest EU producer, Italy, with about 500 thousand tons, represents a share of 28% of the EU production, with a reduction of about 12% compared to the volumes of the previous years.
- (66) The estimates in the Italian olive oil sector are influenced by the different situations in the various regions (sometimes even within the same region) with different production characteristics and outcomes. At the regional level forecasts give the picture of Italy divided in two, with the north and the central regions characterized by an increase in production, and the rest of the country in conditions diametrically opposite.
- (67) The Italian olive oil industry is characterized by a strong dimensional dualism with many small businesses which are nearly strictly agricultural, localized mainly in the south of the country in the vicinity of the areas most suited for olive growth and a few large companies. The mills surveyed in June 2012 by Agea were 4,743. Over the years there has been a phenomenon of contraction in the number of the mills, which in a sense responds to the needs of creating structures able to process larger quantities of olives and to do so through the implementation of newer technologies, with a greater focus on qualitative aspects.
- (68) According to the latest ISTAT data there are approximately 1.2 million olive farms in Italy farming on an acreage of 1.2 million hectares. The ratio of the number of farms and used land provides an important indication of the existence of olive farms with an average size, with nearly 70% farming on land under two acres.
- (69) Italian olive oil sector does not show any clear separation between the first processing of olives in mills and the subsequent bottling of oil. Very often the bottling is integrated within the mill which, if large, is generally comparable to the behavior of an industrial enterprise, buying oil on the market to eventually mix it, bottle it and finally put it on the market.

Consumption and prices

- (70) In 2012 the world consumption of olive oil was approximately 3 thousand tons for a value of the final consumption of more than EUR 9 billion. The biggest consumers of olive oil are Italy, with a market share of approximately 22%, Spain (18%) and the USA (about 10%).
- (71) After several years of declining trend, particularly in Spain, the prices of olive oil on the Italian and Spanish markets have undergone significant growth during 2012, with an increase of 38% in Spain and 28% in Italy.
- (72) As regards the competitive context in the area of extra virgin olive oil and olive oil, the following table shows the market share in values of Mataluni Group and its main competitors in years 2011 to 2012 (provided on the basis

of Nielsen data). It is to be noted that some companies, including Mataluni Group, provide a share of their production to large-scale distribution that is then marketed under their brand name (private labels).

EVO TOTAL ITALY VALUE SHARE			
BRAND	2011	2012	DIFF %
CARAPPELLI	10,62	11,05	0,43
MONINI	10,19	9,62	-0,57
BERTOLLI	8,90	7,94	-0,96
FARCHIONI	7,30	7,35	0,04
CORICELLI	4,19	4,34	0,15
DESANTIS	3,22	3,27	0,05
DE CECCO	3,06	3,17	0,11
DANTE	2,00	2,05	0,05
SASSO	1,93	2,03	0,10
COSTA D'ORO	1,63	1,81	0,18
SALOV	2,55	1,80	-0,75
SALVADORI BRUNO	1,50	1,49	0,00
SAN GIORGIO	0,84	0,61	-0,22
PRIVATE LABEL	20,16	21,60	1,44

The export

- (73) According to data published in March 2014 the Italian exports of olive oil in 2013 amounted to about 344 thousand tons for a value of EUR 1.3 billion, which confirmed the forecasts²⁹ of the historical record, with an increase of 10% compared to the previous year. The greatest increase in value comes from emerging markets, with a 32 % increase in Oceania and 16% on Asian markets. There have been consistent increases also on the more traditional markets, with a 10% increase on the EU market and 6% increase on the US market. Within the EU internal market the largest consumer of the Italian oil is Germany, ahead of France and UK. On the non-EU markets the purchases remain stable in China while there has been a leap forward in Japan (+18%), surpassing France and becoming the third reference market after the USA and Germany.
- (74) There has been growth in the imports of oil from abroad, Italy being today the world's largest importer. The value of imports in the first seven months of 2013 grew by 14%. Almost half of the foreign oil comes from Greece; between January and July 2013 purchases from Greece have tripled thus bypassing Spain. These imports are followed by imports from Tunisia.

The competitive framework and benchmark analysis

- (75) The following table shows the competitive framework of the Italian olive oil sector:

²⁹ Predictions on 2014 exports have not yet been made.

	2012			2011			2010		
Ragione Sociale	Equity	Dividends	Dividends/ Equity (%)	Equity	Dividends	Dividends/ Equity (%)	Equity	Dividends	Dividends/ Equity (%)
BUNGE ITALIA S.P.A.	-2,90	-	-	0,3	-	-	15,5	-	-
CARAPELLI FIRENZE S.P.A.	332,4	-	-	327,3	-	-	341,8	-	-
OLEIFICIO SALVADORI S.R.L.	16,8	-	-	16,1	-	-	16,8	-	-
PIETRO CORICELLI S.P.A.	30,1	-	-	29,4	-	-	28,9	-	-
MONINI S.P.A.	32,8	3,0	9,1%	31,9	3,0	9,4%	31,0	3,0	9,7%
FARCHIONI OLII S.P.A.	19,8	0,14	0,7%	19,6	0,17	0,9%	19,4	0,14	0,7%
COSTA D'ORO S.P.A.	8,9	0,2	2,2%	7,8	-	-	8,1	-	-
OLEARIA DE SANTIS S.P.A.	26,6	0,2	0,8%	25,1	0,09	0,4%	26,6	0,2	0,8%
BASSO FEDELE E FIGLI S.P.A.	7,7	-	-	7,5	-	-	6,7	-	-
Dati in EUR ml									

- (76) The benchmark analysis was performed by comparing the indicators of profitability, financial solidity and strength of assets of Mataluni Group, calculated on the basis of data from the period 2010-2012 with the companies marketing olive and other seeds oil on the Italian market.
- (77) According to the Italian authorities, the main competitor of Dante Oil is Carapelli Firenze SpA, with brands Bertolli, Carapelli and Sasso. Carapelli is part of the Spanish group DEOLEO, listed on the Madrid Stock Exchange and controlled by Spanish banks.
- (78) With regard to the data on the dividends paid by Dante Oil's competitors to their shareholders, the Italian authorities claim that it was not possible to obtain the relevant data as regards the dividends paid to the shareholders of the companies that are part of international groups (Carapelli Firenze and Bunge Italy). For other companies which are not listed on a stock exchange, the Italian authorities proceeded with the analysis of the relevant data.
- (79) The Dante Oil being the new company, the Commission analyzed the indicators 2010-2012 relating to the IOBM, which showed the following:
- In three years, a higher gross operating margin (EBITDA³⁰/value of production) compared to the average of the sample identified;
 - In 2011 and 2012 a net operating margin (EBIT³¹/Value of Production) higher than the average of the sample identified;
 - A return on invested capital below the average: however, in this regard it is important to note that the industry average is greatly influenced by the data of *Monini*, a company with dividends/equity much higher than the average of the sector. Leaving aside the exceptional case of *Monini*, the

³⁰ Earnings before interest, taxes, depreciation and amortization

³¹ Earnings before interest and taxes

profitability data of the proposed investment actually appear to be at better levels than the average of the sample of the selected competitors;

- NFP³²/EBITDA higher than the sample, the result mainly of the recent policy of acquisition of trademarks;
- A degree of dependence on external financial sources that appear to be adequate in 2012, with a ratio of debt/equity equal to about 1.

(80) [...] ³³

(81) The average expected return for ISA seems by approximately 2-3 percentage points higher compared to transactions closed in 2010, i.e. before the crisis of the financial markets that has characterized 2011 and also the beginning of 2012.

(82) In comparison to the EU reference rate equal to 0.53% for Italy on 1 May 2014, the expected returns for ISA provide [...] ³⁴. These spread values appear to be consistent with the investment policies of ISA and congruous with the reasonable expectations of a private investor, taking into account the risk profile of the investment and the supporting guarantee framework.

3. ASSESSMENT

3.1. Application of Article 107(1) of the TFEU

(83) 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.

(84) 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.

(85) The Commission document "Application of Articles 92 and 93 of the EEC Treaty to public authorities' holdings" ³⁵ 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 (so called "Market Economy Investor Principle", hereafter "MEIP").

(86) Pursuant to paragraph 3.2. (i) of the said document, the MEIP can be taken to apply where a new company is set up with the public authorities holding the entire, majority or minority interest, provided the authorities apply the same criteria as a provider of capital under normal market economy conditions. Further on, paragraph 3.2. (iii) specifies that the MEIP applies where the

³² Net Financial Position

³³ Covered by the obligation of professional secrecy.

³⁴ Covered by the obligation of professional secrecy.

³⁵ Bulletin EC 9-1984.

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

- (87) The submitted business plan concerns Dante Oil Company, a new company within the Mataluni Group with a majority shareholding held by private investors (c.f. recital (32)) and a minority holding held by the public investor (ISA).
- (88) The acquisition of share capital by ISA in Dante Oil will take place at the same or preferential conditions as applying to the majority shareholders, whose contribution in cash has already been complemented by the transfer of non-cash assets essential to the project implementation (c.f. recital (22)).
- (89) The Italian authorities confirmed that in line with the established practice, prior to the subscription and payment of the preferred shares, ISA will instruct a specialist company to carry out a due diligence on the project in general, which will also cover the contributed non-cash assets. The non-cash transfer of December 2013 has already been verified and an expertise by specialized technicians appointed by the Court of Benevento was obtained and the balance sheet of Dante Oil, confirming the value of this contribution, has already been audited by PWC³⁶.
- (90) ISA will receive a number of preferred 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.
- (91) 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 notified measure will be assessed on the basis of the MEIP as further developed in the jurisprudence of the EU courts³⁷ and the Commission's decisional practice³⁸.

Viability of Dante Oil/Mataluni Group

- (92) Dante Oil being the newly created company, the Commission proceeded with the analysis of the provided financial data of Mataluni Group in order to determine whether the Group is or not in difficulty within the meaning of the Community Guidelines on state aid for rescuing and restructuring firms in

³⁶ PricewaterhouseCoopers SpA.

³⁷ Case C-334/99, *Germany v. Commission* [2003] ECR I-1139, paras 133 and following; 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] ECR II-17, paras 104 and following.

³⁸ 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).

difficulty³⁹ (hereafter "R&R Guidelines") as in the affirmative case such the investment by ISA might fall under the rules of rescue and restructuring.

- (93) Pursuant to the R&R Guidelines, points 10 and 11, the firm is regarded as being in difficulty where:
- in the case of a limited liability company more than half of its registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months,
 - in the case of a company where at least some members have unlimited liability for the debt of the company, where more than half of its capital as shown in the company accounts has disappeared and more than one quarter of that capital has been lost over the preceding 12 months,
 - 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.
- (94) According to the balance sheets for the financial years 2010-2012 as well as the additional information provided by the Italian authorities, the companies belonging to Mataluni Group have not suffered from capital losses, neither have they 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.
- (95) On the basis of the above analysis it has been established that Mataluni Group is not in difficulty within the meaning of the R&R Guidelines.
- (96) As regards Dante Oil, it appears to be adequately capitalized in relation to the investments that it is foreseen to carry out. Also, Dante Oil belongs to a group of one of the principal players on the Italian market of edible oils, holding a well-established position both on the domestic and export markets.

The financial position of the majority shareholder is sound.

- (97) The economic and financial position of IOBM which currently holds nearly 100% of the Dante Oil company, is sound with a solid equity base and stable profit margins. It is a well-established company for which positive results are confirmed in the long run, with revenues have been steadily increasing over the last three years, with a return always positive and in line with or superior than that of competitors.

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

- (98) The entry of ISA in the capital of Dante Oil is expected to occur at a value of EUR 100 per share, ISA thus receiving 150,000 newly issued preferred shares (cf. recital (35)). As from its entry into the capital of Dante Oil, ISA will have

³⁹ OJ C 244 of 1.10.2004, p. 2.

the right to the guaranteed return at a rate [...] ⁴⁰, calculated pursuant to a mechanism based on quantities of oil sold under Dante Oil's own brands (c.f. recital (37)).

- (99) This return appears to be at a level that is higher than the average in the relevant market, although the Commission bears in mind that no data from the relevant competitor(s) are available. However, the Commission takes note that to this equity investment a series of "safeguards" is connected (minimum rate of return, preferred shares, repurchase obligation on the part of controlling shareholders, collateral in the event of failure to repurchase). In addition, the mechanism that connects the yield of ISA to the quantities processed and not simply to the economic result appears very favorable to the investor, since it is protected from the impact of any problems related to business decisions of the Group that could potentially result in harm to a minority shareholder. Therefore, the risks involved are considerably lower than in a pure equity investment.
- (100) Furthermore, the business plan estimates that in the next few years the sales of Mataluni's own branded products ⁴¹ will reach such levels that ISA's yearly remuneration should increase [...]. ⁴²
- (101) As already noted above in recital (26), the proposed investment shows some characteristics of a medium to long-term loan. It seemed therefore useful to compare the expected return for ISA with the conditions obtained by the Mataluni Group 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 the aspect relating to the yield, which shall be in line with normal market conditions).
- (102) [...] ⁴³
- (103) Based on the assumptions of a business plan, the contractual arrangements for the return on investment for ISA and the input and output timelines, the expected profitability for ISA appears consistent with the profitability of the sector and is higher than the average return on equity (ROE) ⁴⁴ of the main competitors of Mataluni Group identified in the oil sector (see the benchmark analysis; recitals (75) and following).
- (104) The return on investment also appears to be consistent with the investment policies of ISA and corresponds 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, the accompanying guarantee framework.
- (105) As regards the latter, ISA's holding in Dante Oil's capital is secured by several guarantees which offer an additional protection for the ISA's investment:

⁴⁰ Covered by the obligation of professional secrecy.

⁴¹ See the table in recital (32) of the present Decision.

⁴² Covered by the obligation of professional secrecy.

⁴³ Covered by the obligation of professional secrecy.

⁴⁴ See column "dividends/equity" in the table of recital (75).

- (a) Preferred shares have priority over ordinary shares in case of dividends and liquidation of the company. They have a guaranteed minimum earning and higher security level than ordinary shares;
- (b) Guarantee of the reacquisition of shares (PUT option): ISA will have the right to sell and IOBM obligation to purchase;
- (c) Guarantee for the payment of the exit price: in the event of inability of IOBM to fulfil the obligation to purchase the preferred shares, a mechanism has been set up to jointly sell the IOBM's ordinary shares and ISA's preferred shares, involving the intervention of a trust and an irrevocable power of attorney.

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

- (106) The controlling shareholder, being a private investor, has been investing the majority of the capital of Dante Oil and resources necessary for the implementation of the business plan. It shall be underlined that Mataluni Group has transferred the non-cash assets (its well-established business unit) essential for its activities, to Dante Oil. Thus, Dante Oil has become the owner company within the Mataluni Group of the business and all assets dedicated to the bottling and marketing of olive oil and virgin olive oil (c.f. recital (22)).
- (107) Further, a mechanism is foreseen to protect the investment of ISA in the case of exercise of the PUT and/or CALL options prior to the expected duration. In such an event, a price in addition to the price in favor of ISA shall be foreseen which takes into account the increased expectation of ISA in terms of return on investment compared to the expected duration of the investment (c.f. recital **Error! Reference source not found.**).
- (108) Also, in order to guarantee the payment, in the event of inability of IOBM to fulfil the obligation to purchase the preferred shares, a mechanism has been set up to jointly sell the IOBM's ordinary shares and ISA's preferred shares [...] ⁴⁵ (c.f. recital (42)).
- (109) Given that Dante Oil holds non-cash assets essential for keeping Mataluni Group business operating, the above scenarios seem unlikely.
- (110) Therefore, the measure contains several safeguards which enable to exclude a disengagement of the private investor.

Potential aid elements

- (111) 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, which refers to State aid when the holding is a short-term one with duration and selling price fixed in advance.

⁴⁵ Covered by the obligation of professional secrecy.

- (112) In the case at hand, while the duration of the project is fixed (cf. recital (24)), the [...] ⁴⁶ rate of return will depend on the quantities of oil sold by Dante Oil under its own brands during ISA's presence in its capital, within [...] ⁴⁷ levels. The selling price will depend on the market value of Dante Oil at the time of exercising the exit option, including the value of goodwill created during ISA's participation (cf. recital (44)). Moreover, the 8 years duration of the investment is not considered as being short-term. As a result, the Commission considers that paragraph (iii) of Section 3.3 does not apply to the notified intervention.
- (113) Furthermore, the structure of equity investment follows the structure of MEIP measures financed by ISA in the past and approved by the Commission ⁴⁸.
- (114) In view of all the conditions described above, the Commission considers that the participation by ISA in Dante Oil'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 Dante Oil with capital at better terms than what it would have been able to obtain on the market.
- (115) In the light of the above, the measure in question does not confer any economic advantage onto the Dante Oil. 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

- (116) The Commission has accordingly decided:
- that the measure does not constitute aid.
- (117) If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>.

- (118) Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Agriculture and Rural Development
Directorate I — Agricultural Legislation and procedures
Unit I.2 — Competition
Office: Loi 130 5/94A

⁴⁶ Covered by the obligation of professional secrecy.

⁴⁷ Covered by the obligation of professional secrecy.

⁴⁸ E.g. N 102/2007 "GIV Verona"; N 342/2004 "Valle del Leo"; N 164/2000 "Floramiata", N 423/2010 "Amalattea", SA. 35180 "Ferrarini" and SA. 36178 "CCDP".

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Yours faithfully,
For the Commission

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Member of the Commission