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# **BANKS AND BUSINESS NETWORKS**

**MANAGEMENT, GOVERNANCE  
AND FINANCIAL IMPLICATIONS**

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# INTRODUCTION

This work researches the phenomenon of business networks in terms of management and governance processes, and the related effects on relations with the financial system in general, and credit institutions in particular.

More specifically, the research is meant to identify the governance processes of business networks and the relationships that come to be developed within the network. The central element of the analysis is the implementation of the network program, both in terms of organizational aspects and in terms of the governance of relations.

In this context, the work aims to highlight the types of rules and criteria for taking decisions that bring about the implementation of the network contract. In terms of governance rules, the intention is to examine in particular the propensity of the networks to adopt formalized governance mechanisms, in the form of a joint body, for the purpose of coordinating actions aimed at pursuing the objectives of the network. Specific emphasis will be placed on the incentive mechanisms for the parties to the contract, the planning processes and the methods for communicating with the stakeholders and, in particular, with third-party financiers.

Such research approaches respond to the specific need to outline the typical contexts within which decision-making and control processes take place in the context of business networks, in order to study in greater detail the relationships between the “network system” and the financial system.

While there is abundant literature about bank-business relationships, the methods of carrying out the relationships among enterprises integrated within an aggregation system (especially if having legal subjectivity and characterized by an appropriate formalization at the level of governance bodies) and third-party financiers is still an unexplored matter. Above all, the relationships between the “subject” network (or, more accurately, the legal entity representing the network) and the financial system appear to be an interesting field of investigation.

In this context, the implications of belonging to a business network will be analyzed in terms of financial needs, policies to cover said needs, and the assessment of the risks associated with the network contract.

This research allows us to develop some reflections on the bank-business relationship in a context in which the links between enterprises and local banks are particularly strong. On the demand side, therefore, the research project aims to investigate three important profiles from the perspective of relations with the bank.

The first profile highlights the extent to which joining the network changes the financial needs of the contracting enterprises. The second profile focuses on the governance and control processes. In this perspective, it is proposed to research the spreading of specific network governance bodies as well as of formalized procedures for planning and control (with particular reference to the financial needs connected to network investments) at the network level, as well as of each individual contracting enterprise. The third profile deals with researching the degree of satisfaction of enterprises being part of the network in relation to the offer by the banking system of adequate financial tools and services with respect to network needs.

From the point of view of the supply, the project is meant to study in depth the policies of credit institutions with respect to the financing needs posed by the implementation of the network contract and related investments.

In this perspective, the research aims to analyze the criticalities connected to the assessment of the creditworthiness of the contracting enterprises. Specifically, we will focus on the rating models of credit institutions, in order to research their aptitude to incorporate in the assessment of creditworthiness the impacts on business risk deriving from the combination of relationships that develop within the network.

In this regard, the study will assert the need to go beyond the concept of business ratings, to embrace a broader concept of network rating by identifying the relevant factors, with specific reference to the role of the relations within the network as carriers of “soft information”. Such research will make it possible to develop some reflections on the subject of the bank-business relationships, thereby filling a gap connected to the limited understanding of the dynamics related to the measurement of network ratings.

The work is structured as follows. The first chapter proposes an introductory analysis of the forms of aggregation among enterprises, paying particular attention to network aggregations. In the second chapter, the peculiarities of the bank-business relationship are examined in depth, from the point of view of network economy. The third chapter tackles with the difficult issue of determining the rating of the network and of the network companies. The fourth chapter presents the results of the empirical survey conducted both by means of a structured questionnaire to a sample of business networks based in the Friuli Venezia Giulia region, and through a survey conducted through the technique of case studies both on the demand side and on the supply side. Finally, the fifth chapter proposes elements for conclusions, in an evolutionary perspective.

# Chapter 1

## AGGREGATION PHENOMENA AND BUSINESS NETWORKS

SUMMARY: 1.1. Business Aggregations. – 1.2. Aggregation Tools in Network Form. – 1.2.1. Motives and Operational Advantages. – 1.2.2. Potential and Size Limitations. – 1.2.3. Types of Aggregations. – 1.3. The Network Contract. – 1.3.1.A Legal Framework. – 1.3.2. The Organizational Complexity of the Networks. – 1.3.3. Aggregation Models.

### 1.1. Business Aggregations

In the field of management sciences, referring to “cooperation among companies” opens up a wide range of definitions, concepts and terminologies that hide rather different disciplinary meanings and traits (Culpan, 2009).

The disciplinary variety and the number of methodological approaches are an invitation to make a positioning choice within the wide and varied literature on the subject of cooperation among enterprises, useful for providing the interpretation keys that this work sets out to favor.

The choice is to subscribe to the strategic management approach studies that attribute to the cooperation among enterprises a meaning linked to the lasting production of benefits for the partners, so that they preserve the conditions for the sustainability of the competitive advantage. The emphasis on the strategic dimension makes it possible to highlight the essential features that qualify business aggregations:

*The awareness* in the orientation towards the pursuit of shared objectives and the achievement of economic benefits distributed among the partners (purposiveness).

*The durability and dynamism of relationships* (long-term horizon).

*The exchange, transfer and joint development* of resources and skills (interfirm resources transfer).

*The implementation* of specific and complementary activities to consolidate control of the value chain or to explore new business areas (cooperative exploitation and exploration).

*The coexistence* of two different types of risk: the general economic risk linked to obtaining the expected performance from the collaboration, and the relational risk, linked to the undertaking of behavior patterns that are not consistent with the pursuit of the objectives of the ag-

gregation by one or more partner enterprises (performance and relational risk).

Moreover, each aggregation tends to assume a specific configuration that derives from the combination of three basic elements: the characteristics of the partners, the type of economic activities that are the object of the collaboration and the control and governance of the relationships (Albers et al., 2016).

The issue of governance in aggregations involves the decision-making problem in the choice among several available alternatives. The decision-making area concerned highlights three different decision-making levels, organized according to a hierarchical order (Reuer et al., 2016): a) the choice between either supporting investments for the establishment and management of an aggregation or managing a transaction that involves one or more market negotiations, or specific operations involving risk capital (e.g. mergers, acquisitions, joint ventures); b) the decision pertaining to the legal structure of the aggregation, the alternative being either forms that require interventions on risk capital or forms that are independent of capital investments, as they are regulated through contracts or informal agreements; c) the choices concerning the regulation of a wide range of aspects that are decisive for the effective functioning of the aggregation and concerning, among other issues, the methods for distribution of the results gained, the division of tasks, the protection of investments in knowledge, the organization and coordination of operational activities, the management of uncertainty and risk and the sharing of decision-making power.

In comparison with businesses that choose to set up their competitive action solely on the exploitation of internal resources and those that can be acquired through market negotiations, the collaboration strategy exposes businesses to greater uncertainty and risk, the origin of which is traceable to the adoption of opportunistic behavior patterns by the partners, fueled by the possibility of exploiting information asymmetries to their own advantage.

The distribution of decision-making power takes on particular importance in aggregations due to the simultaneous participation of different economic actors, capable of expressing differentiated power relationships that arise, for example, from the exploitation of a position of supremacy on the reference market, from the economic potential of the resources held, and from the ability to govern the sector's technology.

For an in-depth study of this aspect of relational governance, it may be useful to resume a proposal for the classification of aggregations built by cross-referencing the different qualifications undertaken by the following variables: a) the degree of centralization of decision-making power; b) the

spatial location, internal or external to the aggregation, of the subject exercising the prerogatives of governance. The combination of these variables leads to the distinction among three different types of aggregations (Provan and Kenis, 2008):

*Network Administrative Organizations* (NAO), aggregations governed by a super-ordinate and external entity, which undertakes the role of intermediary for the enterprises in the aggregation since it is responsible for carrying out the coordination and organization tasks, leaving individual companies with the responsibility for conducting operational activities, which they often accomplish through bilateral relationships.

*Lead Organization-Governed* (LOG) networks, aggregations that are governed in a centralized way by a member entity appointed to such governance, undertaking the leadership and centralizing decision-making power for itself, based on an evident competitive superiority over the other enterprises.

*Participant-Governed Networks* (PGN), aggregations governed jointly by the companies that are members of the aggregation, according to decentralization schemes and a horizontal distribution of decision-making power.

The last type – the PGN – is considered the simplest and most widespread form of governance in practice, since it is particularly suitable for regulating and organizing collaboration among small-sized enterprises that resemble each other in terms of strategic orientation, structural set-up and levels of performance, aimed at carrying out the development of new products and the creation of new business areas (Venkatraman and Lee, 2004).

The LOG governance structure is typical of aggregations in which economic exchanges of a horizontal type take place, among businesses that compete in different but complementary activities or having a high potential for commercial integration, or of a vertical type, among enterprises that intervene in the same production chain by carrying out economic operations that are combined in sequence to make the product or service available to the final consumer. In both configurations, the key element is the presence of a enterprise which, by virtue of a recognized competitive superiority, undertakes a leadership role in the governance of relations and therefore orients strategic decisions, determines objectives, intervenes in the allocation of resources and defines marketing policies. Partner enterprises are identified and selected through a process of assessment of the qualitative and quantitative level of their assets, resources and skills, which must be functional to the specific needs of the leading enterprise.

Finally, the NAO typology is the direct emanation of a centralized governance structure, entrusted to an external entity, sometimes specifically

created for running and coordinating the network. In this way, partner enterprises can focus on governing the operational side of their relations, organizing the terms and conditions of the exchanges among them. The choice of appointing an external and super-ordinate entity for the strategic governance of the aggregation is supported by the acquisition of some advantages, including the improvement in the legitimacy and reputation of the network, the greater effectiveness in solving specific problems inherent to the network, and the reduction of management complexity which, on the other hand, characterizes the types of governance based on shared decision-making mechanisms.

In the context of non-equity aggregations, the Italian economic fabric has long been fertile ground for the application and dissemination of two types of aggregation that mainly involve medium or small-sized companies: Temporary Associations of Enterprises (*Associazioni Temporanee di Imprese, ATI*) and districts.

The former continue to be the most used form of aggregation in the context of public tenders for the award of contract works that require the setting up of complementary skills and resources, which are difficult to find in one individual enterprise. The latter, on the other hand, have represented for many decades a stable form of organization of economic activities within local areas, where territoriality, sociality and business were perfectly integrated, giving birth to a dense network of economic exchanges that determined the growth and diffusion of wealth of specific geographical areas.

Districts were formally recognized by Law n. 317 dated October 5<sup>th</sup>, 1991, on “Interventions for the innovation and development of small enterprises”, as a *sui-table* tool for promoting the development, innovation and competitiveness of small businesses. In the language of business and economics, industrial districts correspond to limited territorial areas hosting a population of small and medium-sized manufacturing and service companies operating in the same field with various specializations, and therefore interconnected by relationships (Becattini, 1989). Industrial districts have been present since the 1960s and represented a dynamic component of the Italian economy until the early 1990s. Later on, the success of this entrepreneurial formula was significantly reduced due to the combined effect of the economic crisis and of internal forces of transformation, which impacted the traditional district configuration by breaking down the high density of enterprises and the relationships between them.

With reference to the aggregation forms that require, in addition to inter-organizational collaboration, also a financial commitment determined by the participation in risk capital, the national situation highlights three types: consortia, European groups of economic interest and joint ventures.

The consortium is an inter-organizational form of cooperation among enterprises that is particularly consolidated in our legal system, which defines it as the contract by which some entrepreneurs create a new economic entity for regulating or carrying out certain phases of the economic process governed by the respective companies (Art. 2602, Civil Code). Therefore, consortia, even in the form of consortium companies (Art. 2615-*ter*, Civil Code) have a mutual-aid purpose.

The European Economic Interest Group (EEIG), despite its limited success in Italy, is an interesting subject of analysis in the review of the main forms of aggregation between SMEs. The EEIG is a legal entity whose purpose is making it easier to establish collaborative forms between companies having their registered offices in different Member States.

The term joint-venture indicates the establishment by two companies belonging to different countries of a new legal and economic entity, intended to operate for a long period of time in the same business in which the parents companies are already present (horizontal JV), upstream or downstream of the production chain (vertical JV) or diagonally (diagonal JV). Joint ventures are not governed by a dedicated legislation. The regulatory rules of reference will depend, in fact, on the legal form that the aggregation will take in the specific case. The establishment of a JV does not imply, for the parent companies, a loss of legal and financial autonomy, as the operation involves the contribution in the risk capital of a newly established company, or rather, the regulation of the collaboration by means of a contract. A distinction arises, then, between two types of JVs: equity (joint-venture corporation), and non-equity (contractual joint-venture).

## **1.2. Aggregation Tools in Network Form**

### **1.2.1. Motives and Operational Advantages**

Over the past few years, economic and social phenomena have outlined continuous and incessant changes, fueled by multiple and interconnected forces mainly attributable to technological innovation, to the fast diffusion and evolution of new needs, to the reduction of space-time distances and to the emergence of new social sensitivities.

It is no less evident that the managerial tools and practices put in place by enterprises to try to deal with this complexity have also been the focus of innovation processes.

In this regard, an option increasingly activated by small and medium-sized enterprises, and supported by policies and tools developed by institutional actors, is the one based on the potential of inter-organizational coop-



eration (Smith et al., 1995). Through cooperation, multiple advantages can be obtained, both in terms of economic and financial performance and of the strategic strengthening of the competitive position:

*Reduction* of the financial commitment on the part of the individual business for new investments, since the requirement is shared among the partners according to a logic based on the supervision of specific phases of the value chain and on the affinity between new investments and the technical-productive structure of the partners.

Mitigation of the operational risk due to the recalibration of the methods of carrying out economic activities.

*Qualitative and quantitative growth* of the enterprises through a greater commitment to product and process innovation, the increase in the variety of products offered, and the expansion into new market spaces including at the international level.

Essentially, the design and activation of economic production functions with flexible and dynamic boundaries, which go beyond those of the individual enterprise to expand within the perimeter of other enterprises and institutions, marks a significant differentiation from the past that deserves a particular attention on the part of researchers in the corporate and economic fields (Ricciardi, 2010).

The economic-business literature and the policies supporting enterprises implemented by the main institutions of our country highlight the importance of collaborative forms for all types of enterprises and, in particular, for small and medium-sized enterprises (Massari et al., 2015).

Basically, two currents of thought oppose each other. One interprets SMEs as an economic phenomenon in its own right, an original expression of a way of doing business capable of offering an alternative to large dimensions, in which the emphasis on the dimensional problem is dampened in favor of a stronger attention to qualitative growth, and resolved by reference to inter-company relations (Ferraris Franceschi, 1993). The other school of thought believes that SMEs are defective companies as they have not yet become large enough, and that excessive dimensional fragmentation is a brake on the growth capacity of our economy (Nardozi, 2003). This latter position is broadly confirmed by the studies on the national economic system, supported by statistical surveys that attempt to outline the framework of the competitiveness of our country with respect to some reference economic variables, such as, for example, productivity, the wealth generated and innovation.

One of the options increasingly exercised to grow in qualitative but not quantitative terms, too, is the participation in business networks, which at first approximation can be defined as a set of businesses which, while main-

taining their legal autonomy, share objectives, interests and planning and start an economic production fueled by the resources that each enterprise decides to pool, and coordinated through trust-based relationships and/or formal mechanisms.

### 1.2.2. Potential and Size Limitations

The issue of size and the role of small and medium-sized enterprises has always been the subject of a lively debate, also in the field of business and economic research (Simon et al., 2007).

In any case, the economic preponderance of the small and medium size is undeniable. In the European economic context, restricting it to the non-financial sectors only, small and medium-sized enterprises represent 99.8% of the total number of enterprises and create 57.4% of the added value by employing 66.8% of the workforce. This phenomenon takes on even more significant proportions within the national context, where the percentage of the small business segment within the macro-category of SMEs exceeds 82% (Cerved, 2016).

It is therefore natural to wonder whether, and above all how, the primacy of the small size in the Italian production system can withstand the challenge of competition at national and international level, in the face of an evolution of the economy and society increasingly featuring contradictory, unpredictable and ambiguous phenomena. The main weaknesses of the small and medium size, exposed by the highly disruptive effects of the global economic crisis, are well known (Di Bernardo et al., 2009):

*Continuous orientation* towards innovation. The innovative effort requires the absorption of financial and know-how resources that, both in terms of quantity and quality, are unlikely to be available to SMEs. Furthermore, the latter are often unable to fully exploit the economic value of innovations that come to fruition, thus paradoxically fueling the dispersion and discouragement of innovation activities.

*Access to financial capital.* Some constraints on the development of SMEs and their quantitative and qualitative growth also depend on the particular configuration of the banking and financial system peculiar both of our country and of the entire EU context. The financing choices of SMEs are strongly oriented towards the tools made available by banking institutions, which suffer from innovative shortcomings and from projects tailored to the needs of large-sized corporations (Mulier et al., 2016). In this context, the inclination to invest in the corporate structure with expected benefits in the medium-long term tends to falter, thus generating a weakening of the business growth process. Fur-

thermore, there is a lack of financial intermediaries who can play a more incisive role for the SMEs, being an alternative to or supplementing the services provided by banks (minibonds, private equity, venture capital), while the stock market doesn't appear attractive, since companies that are listed on the stock exchange represent a minimal portion of our entrepreneurial fabric (Cesarini and Gobbi, 2016).

*Governance and family control.* The entrepreneur plays a key role in the strategic and operational management of the enterprise, with limited use of decision-making delegation mechanisms which would, on the contrary, be useful for reducing the scope of the phenomenon of centralization of power and of distortions of the decision-making process. The overlapping of the family role with the business role, together with the intermingling of family interests with corporate interests, make the governance of SMEs extremely peculiar, with the entrepreneurial function at risk of affecting the continuity of the business, for better or for worse (Corsi and Migliori, 2017).

*Poor capability* of attracting external skills. SMEs are hardly the ideal context for the development of human resources skills and, moreover, they offer unattractive career paths. The concentration of governance roles in the hands of the entrepreneurs and their family members inhibits the access of managerial figures having proven ability and experience, with a consequent limitation of the growth potential of the wealth of knowledge available. Likewise, shortcomings can be highlighted in the ability to acquire forms of knowledge present in the reference economic environment, capable of activating internal processes for the development of innovation (Brunswicker and Vanhaverbeke, 2015).

*Weakness on international markets.* With the exception of SMEs operating in market niches characterized by the made in Italy appeal, the opening to international markets and the ability to maintain or increase levels of competitiveness beyond national borders are not part of the governance prerogatives of SMEs (Toulova et al., 2015).

### 1.2.3. Types of Aggregations

The identification and analysis of the structural limitations and weaknesses of SMEs take on particular significance from the point of view of interpretative models that solve the complexity of business phenomena by excessive simplification, creating a close connection between company size and competitive success.

Certainly the dimensional variable is heavily involved in the competitive dynamics of all types of businesses, and in small and medium-sized enterprises in particular. However, an intense focus on its potential for explana-

tion would risk reducing the ability to observe and analyze the many alternatives for business growth and expansion that are available to enterprises (Achtenhagen et al., 2017). This is particularly true for small and medium-sized enterprises, where, despite the absence of the dimensional requirements considered to be optimal, excellent competitive abilities can be observed (Serio, 2017).

In general, however, small and medium-sized enterprises do not seem adequately equipped to face the challenges posed by dimensional growth, which still remains the most immediate and, in some ways, the more convenient alternative for guaranteeing business continuity and the preservation of market competitiveness (Serio and Visconti, 2015). Therefore, aggregation becomes the tool and, at the same time, the strategy of a dimensional growth that allows to reduce the impact of the investments that would be necessary to start forms of organic growth, while preserving the objective of broadening the boundaries of the business.

The effectiveness of aggregation as a tool for overcoming the constituent limitations of SMEs is amply demonstrated, not only on a conceptual but also on an empirical basis. The repercussions of the strategic choice of collaboration with other enterprises have been analyzed in their effects on the opening up to international markets (Haase and Franco, 2015; Brouthers et al., 2015), on the wealth of knowledge and skills (Ferreira and Franco, 2017) and on innovative potential (Bouncken et al., 2015).

### **1.3. The Network Contract**

#### **1.3.1. A Legal Framework**

Aggregation processes represent an option that small and medium-sized enterprises can activate in order to overcome the constituent limitations that characterize them and to undertake business development paths both in quantitative and qualitative terms.

As already remarked, the technical methods through which it is possible to create inter-organizational collaboration and, therefore, to configure the aggregation among businesses, fall within a rather articulated and heterogeneous range that include equity-based methods as opposed to non-equity methods.

In the Italian context, while the methods of organic growth of small and medium-sized enterprises through mergers and acquisitions remain definitely rare, in recent years a spreading of aggregation phenomena governed by formal agreements has been observed. The formal agreements include the network contract, according to which “two or more enterprises undertake to jointly carry out one or more economic activities falling within their

respective corporate objects, in order to increase their mutual innovative capacity and competitiveness on the market” (Law 33/2009, article 3, paragraph 4-ter).

The network contract represents a flexible tool capable of supporting strategic action aimed at the growth of small and medium-sized enterprises and consistent with their own specific characteristics. The analysis of the potential of the network contract acquires a particular meaning on a scientific and managerial level in the light of the “figures” that appear to confirm the effectiveness of this aggregation tool and the degree of its diffusion throughout the national context: 6,154 network contracts had been signed as of June 2020, and over 36,000 small and medium-sized enterprises, by virtue and as a result of a network contract, have undertaken cooperation processes governed by the contract (<http://contrattidirete.registroimprese.it/reti/>).

A first aspect worthy of attention is the legal framework of this new tool for the aggregation of SMEs, intended to integrate the framework of the existing contractual models, such as the bilateral ones (e.g.: franchising), multilateral ones (e.g.: joint ventures, temporary associations of enterprises), and the consortium and corporation ones (Arrigo, 2013).

The relevant regulatory provisions state that the network contract, drawn up by public deed or by an authenticated private deed, and filed with the register of companies where each of the enterprises that have joined the aggregation has its registered office, has to contain the following essential elements:

*The corporate name* of the enterprises that have promoted the aggregation process since its origin, with the inclusion of any enterprises that will join after the signing of the contract, as well as the name and headquarters of the network if the joint equity fund is envisaged.

*A list of the economic activities* that the companies intend to carry out jointly.

*The definition of the network program*, containing the statement of the rights and obligations undertaken by each participating enterprise and the methods of achieving the common purpose to be pursued through the establishment of an equity fund, in relation to which the criteria for evaluating the contributions that each party undertakes to carry out and the related management methods have to be defined.

*A statement of the strategic objectives* of innovation and competition and the preparation of adequate performance evaluation indicators so that the pursuit of the planned objectives can be measured.

*The duration of the contract*, the methods for joining in and the hypotheses of withdrawal, with a statement of any reasons for early withdrawal and the conditions for exercising such a right.

*The network governance*, the methods for taking decisions on aspects of common interest and, where envisaged, the joint body that undertakes the commitment to implement the network program, exercises the prerogatives of economic governance and has the power of representation by acting as a joint attorney.

It should be noted that the configuration of the network contract takes place in the mandatory compliance with the essential aspects provided for by the regulatory provisions and, also, given the inclusion of some optional elements, according to aspects defined on the basis of a discretionary choice of the parties to the contract. In particular, the joint equity fund and the joint body are optional elements of the contract.

Furthermore, again at the discretion of the parties, the network can be attributed legal subjectivity, or not. The areas of discretion envisaged by the legislator allow the network to take on a very varied structure, from a mere contractual agreement to a network of legal relationships that brings it closer, at least in the management of relationships with third parties, to a joint stock company. In this way, the participating enterprises can give the formal agreement the configuration that is most consistent with the purposes that the entrepreneurs have set for the collaboration relationship. The aggregations serve for the pursuit of purposes that may be markedly different and, consequently, the governance, coordination and implementation tool must be able to adapt to the purposes and nature of the economic activities carried out jointly.

### **1.3.2. The Organizational Complexity of the Networks**

The bodies, tools and procedures for governing the aggregation on the basis of the signing of the network contract are a second aspect worthy of attention.

In general, it can be said that the regulations do not contain precise provisions on the governance of the network, leaving ample freedom of maneuver to the businesses joining it. The choice not to identify a type of management forms to be taken as a reference for the governance of the network is understandable in the light of the management complexity of the aggregation phenomenon, in particular when it concerns small and medium-sized enterprises accustomed to operating individually or in collaboration with others businesses but without formally defined links.

The methods for governing the network heavily affect the effectiveness of the economic activities put in place to implement the program and the perception of the solidity of the aggregation by third parties with whom the

network interacts. Credit institutions are no exception: since they lack significant data bases on the performance of the network, they integrate the economic measurement by applying qualitative evaluation mechanisms focused exactly on the effectiveness of the network's operation and coordination methods.

Abiding by the need to offer a flexible aggregation tool, therefore able to adapt better to the strategic and operational behavior of small and medium-sized enterprises, the legislator has preferred to leave to the autonomy of the contracting parties the inclusion in the contract of some optional elements that are crucial for the exercise of the prerogatives of economic governance of the alliance: the joint equity fund, the joint body, and the legal subjectivity. Consequently, it is interesting to gain a deeper understanding of these optional elements, by choosing to focus the discussion on the recognition of the reasons that should induce the enterprises of the network to plan their establishment and their methods of operation.

The incentives for the network to equip itself with the joint equity fund are many and significant. First of all, the establishment of the fund ensures that it is the only asset that can be attacked by third parties who have become creditors as a result of the obligations contracted by the network relating to the development of the joint program. In this way, the member enterprises ensure the limitation of liability to the equity amount of the fund. Secondly, the presence of a specific capital endowment of the network has a strong signaling power. The fact that the entrepreneurs provide resources to support the carrying out of joint economic activities testifies to third parties their willingness to engage in the collaboration thus initiated and in maintaining the fundamental conditions of autonomy and stability of the collaboration tool. The establishment of an equity fund whose capacity is aligned in size and quality with the financial commitments undertaken for the development of the joint program can instill greater confidence in third parties who are ready to establish economic relationships with the network. Specifically, credit institutions may be more inclined to disburse loan capital in favor of the network precisely because of the tangible proof of the commitment, including from the economic point of view, of the member enterprises, or to do so at better conditions, assigning the network a better credit rating and reducing the impact of financial charges.

The legislative provision allows contributions to the fund not just in cash, but also in other forms, as it provides that the measure and evaluation criteria of the initial contributions and of any subsequent contributions that each participant undertakes to pay into the fund have to be defined.

Since it is not necessary to define criteria to evaluate contributions in cash, it follows that contributions to the equity fund can also take place in

kind. The regulatory provisions require the contract to regulate the criteria for evaluating contributions in kind, although it does not provide for any specific indication regarding the guidelines to be followed for drafting them. This aspect is particularly critical, since a possible dispute between the network and third parties towards which it is obliged could lead to a request to examine the merits of the evaluation criteria and their compatibility with the limitation of liability (Butturini, 2012).

That is enough to create a serious disincentive to contributions in kind or, at least, to reduce their role within the total assets. Furthermore, contributions in kind pose operational problems also from the point of view of the management of common activities. If an enterprise belonging to the network contributes a critical asset for the performance of economic activities (e.g.: a patent), the full operation of the network will be conditioned on the permanence of the partner who conferred the asset. An extreme consequence might arise in which, because of the withdrawal of that member, the implementation of the joint program becomes impossible, thus creating the condition for the dissolution of the network. Consequently, the contribution with assets in kind, especially if of significant importance for the economic management of the network, could expose the network to the risk of paralysis and of an excessive dependence on the contributing subject, with effects on the business continuity.

In addition to the contribution in kind, the legislation allows the option of the method of contribution through the so-called “dedicated assets” (Article 2447-*bis*, first paragraph, letter a, Civil Code), if that is provided for by the program. The contribution through the establishment of dedicated assets, destined exclusively to a specific business, has important implications. First of all, the enterprise that decides to contribute to the joint equity fund through the establishment of assets destined to a specific business can provide, in the contract relating to the financing of that specific business, that the proceeds of the business itself, or part of them, are intended for the total or partial repayment of that very funding. Therefore, it is possible that a member enterprise may subordinate the payment of capital and interest to the results generated by the performance of the economic activities of the network. And there’s more.

The dedicated assets, the size of which cannot exceed 10% of the enterprise’s net assets (Article 2447-*bis*, last paragraph, Civil Code), and which must comply with the requirements of its establishment’s resolution and publicity pursuant to Articles 2447-*ter* and 2447-*quarter*, Civil Code, enjoys certain benefits with respect to the claims of the enterprise’s creditors, pursuant to art. 2447-*quinquies*. The provision in question has significant effects both on the member enterprise and on the network itself. The



enterprise, in addition to what has already been stated with regard to relations with financiers, is liable for the obligations contracted in relation to the specific deal only with the dedicated assets, preserving the remaining part of the risk capital. The network, in turn, achieves the benefit of protecting the share of the joint fund from the creditors of the member enterprise.

This gives financial stability to the network, which, if financed in this way, does not have to worry about the possible claims of the creditors of the member enterprises, which, otherwise, could attack the joint equity fund, preventing the continuity of the network management in conditions of autonomy. The provision submitting the equity fund to articles 2614 and 2615, Civil Code, as far as compatible, remains unchanged.

Art. 2614 of the Civil Code, interpreted in the context of business networks, establishes that the equity fund consists of the contributions of the members and the assets purchased with them. Furthermore, the fund is indivisible between the members of the network as long as the contract is in place and cannot be attacked by their several creditors. Art. 2615, on the other hand, provides that for the obligations contracted in the name of the consortium (in this case, in the name of the network) by the persons legally representing it (the joint body), third parties can only assert their rights on the equity fund. On the other hand, the network (through the joint fund) and the individual business are jointly liable as to the obligations contracted by the joint body in the name of the individual businesses participating in the network. Finally, in the event of insolvency in relations among the members, the insolvent's debt is divided among all members in proportion to the participation shares.

A further discretionary element of the network contract is the establishment of the joint body. The law requires the explicit identification of the subject appointed to carry out this office, with the statement of the managerial and representative powers attributed to it, being also able to carry out activities, including of a commercial nature, with third parties. Actual business practice shows that the networks that do not adopt a joint body are few in number, and usually made up of a small number of participants who jointly carry out only an exchange of information.

Following the combined effect of the introduction of two distinct regulatory measures which took place in 2012 (Legislative Decree 83/2012, converted into Law 134/2012; Legislative Decree 179/2012, converted into Law 221/2012), the regulatory framework of reference opens up a further element of novelty, providing for the distinction between subject network and object network (or contract network). The amended paragraph 4-ter (Article 3 of Legislative Decree 5/2009) provides for the requirement ac-