AUTORITÀ GARANTE DELLA CONCORRENZA E DEL MERCATO
AGCM

Minority Shareholdings

Ombretta Main

Italian Competition Authority

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Outline

- Minority shareholding (MS) widespread practice in Italy (often in conjunction with interlocking directorships (ID))
- In 2011, ID among competing undertakings in the financial sector were prohibited
- Prohibition has been implemented according to a “targeted system” concerning only potentially anticompetitive ID. ICA involved in designing and implementing the targeted system
- Drawing on its practice, the ICA supports the Commission’s proposal of a “targeted transparency notice system”.

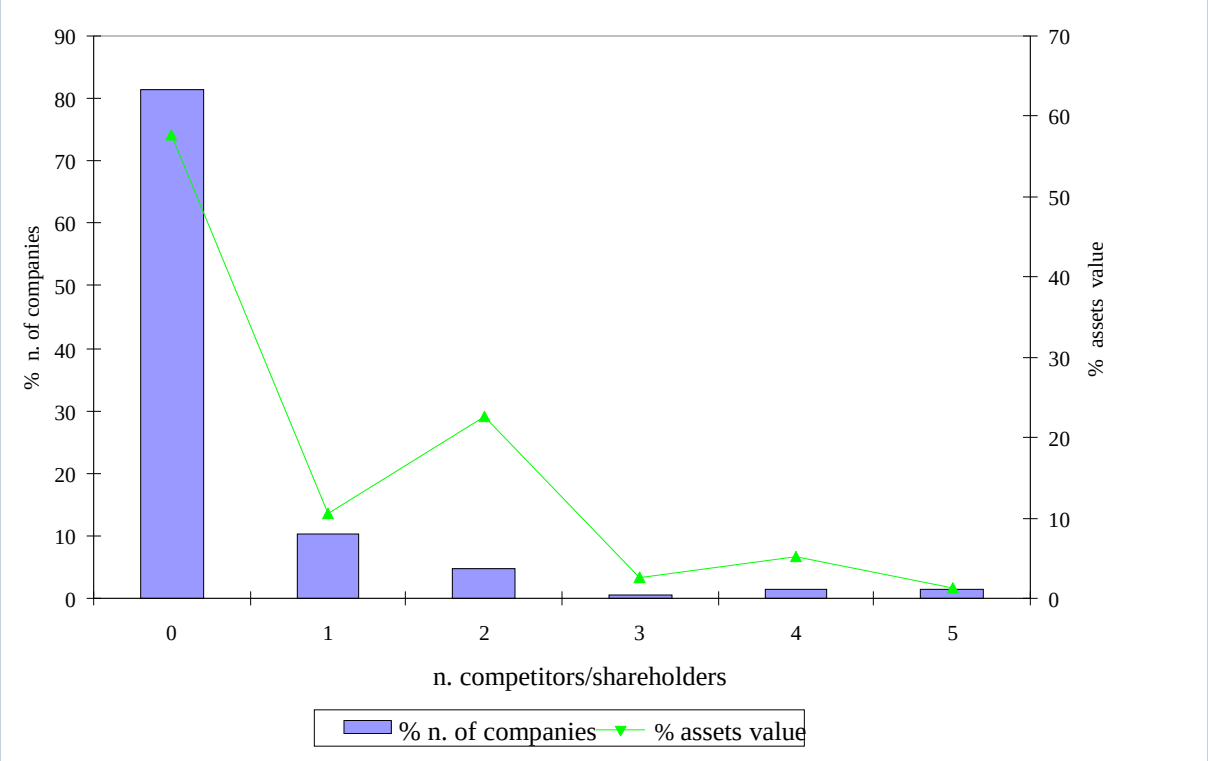
MS and ID in Italy

- The Italian system has been historically characterized by the widespread recourse to cross minority shareholdings and interlocking directorships, particularly in the insurance and banking sectors.
- According to the Commission's statistical analyses, Italy is the country with the highest number of minority stake transactions which would be falling under the Merger Regulation should it cover MS. The said analyses show that 1/3 of the total number of these transactions fall in the financial sector.

MS and ID in the financial sector

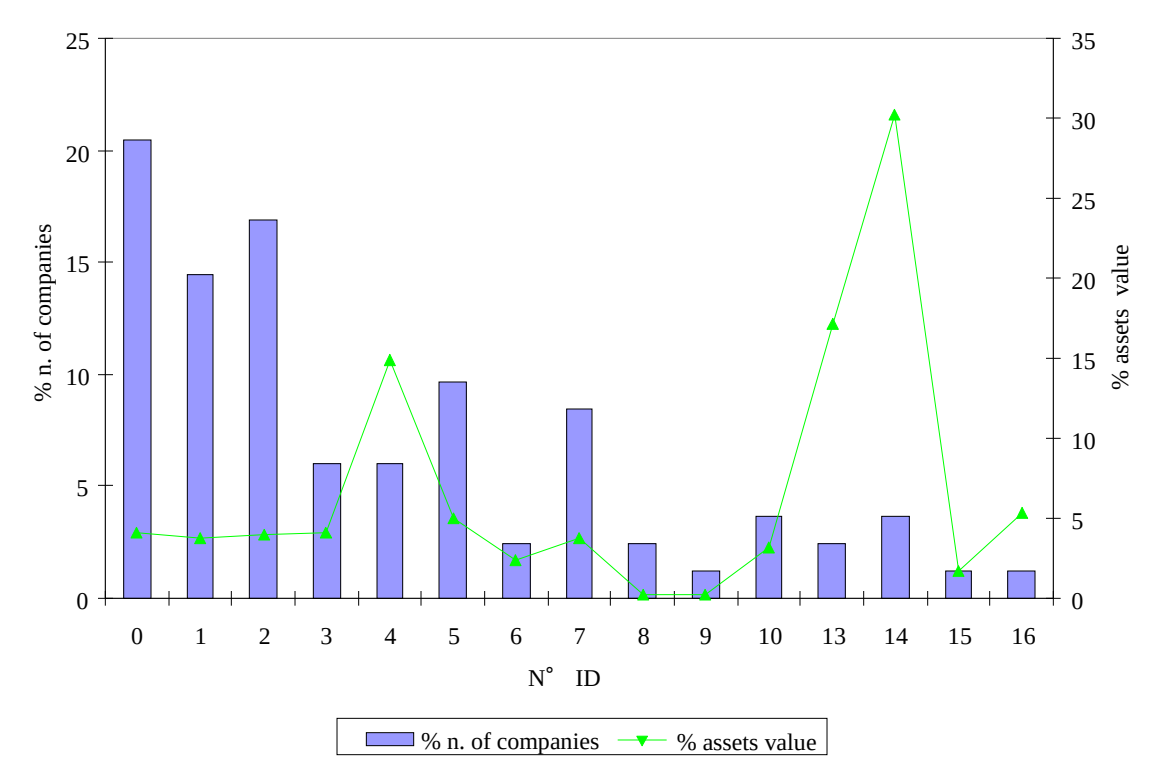
- According to the ICA's sector inquiry on the corporate governance of banks, insurance companies and asset management companies, (2008), Italian financial companies are characterized by multiple links with their competitors.
- In particular, the inquiry showed that, at the time, about 20% of the firms analyzed had their competitors among their shareholders and 80% of the firms were affected by interlocking directorates with competitors. The extent of the above links appeared way above that observed in other European countries.

Shareholding links



19% of companies have competitors among shareholders (42% in terms of assets)

Interlocking Directorates



80% of companies have members in their governance bodies that are also members of competitors' boards (96% in terms of assets)

Competitive risks associated with MS and ID

Given the

- widespread association of ID to MS
- pervasive ID practice

risks of coordinated effects seem particularly relevant

MS + ID can give access to sensitive information which make easier for the undertakings involved to

- reach an anticompetitive agreement
- monitor its application
- detect deviation and retaliate

Italian Legal Framework - MS

The acquisition of a non-controlling minority shareholding does not lead to a concentration under the Italian Competition Law

However non controlling MS (ancillary to a main transaction) have been taken into consideration in the context of:

- the competitive assessment of the merger
- the identification of appropriate remedies

Italian Legal Framework - ID

Law n. 214 of 2011, Section 36, provides that:

No member of management boards, supervisory boards and statutory board of auditors, as well no executive officers of undertakings or group of undertakings which are active on the markets for banking, insurance and finance, shall at the same time serve in corresponding positions in *competing* undertakings

The implementation of ID provisions – a targeted system

Taking into account the pro-competitive purpose of ID provisions, the three enforcement Authorities (Bank of Italy, Insurance Regulator and Securities and Exchange Commission) plus the ICA have agreed to implement a targeted system specifically focused on potentially anticompetitive ID. Guidelines on the criteria for the identification of potentially anticompetitive ID clarified that:

- "competing undertakings" are those active on the same product and geographic markets and which have no control relationship
- only undertakings with annual turnover above 47 million are subject to law 214/2011, section 36,

The ICA's view on the "targeted transparency notice system"

- The ICA shares the WP's assessment of MS and considers that although in principle the acquisition of non-controlling MS might fall within the scope of art 101 TFEU, sometimes the latter might be ill-suited to capture the phenomenon. Thus, a system of ex-ante control might ensure greater legal certainty
- The ICA supports a target transparency notice system, with some qualifications concerning procedural issues:
  - information requirements imposed on undertakings
  - length of the period of time during which the Commission could take up a case after the expiry of the initial waiting time