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**Potential distortion of competition
by non-controlling minority
shareholding***

Gabriella Romano

Italian Competition Authority

***The views expressed are personal and do not express the
position of AGCM**



AUTORITA' GARANTE
DELLA CONCORRENZA E DEL MERCATO

AGCM faced the issue concerning **minority shareholdings** and **interlocking directorates** in:

I. Merger cases (case by case approach):

C8027 Intesa/SanPaolo (2006)
C8660 Unicredit/Capitalia (2007)
C8277 UBI/BLP (2007)
C9182 MPS/Antonveneta (2008)

II. Sector Inquiry pursuant to article 12 of Law no. 287/90 in the field of corporate governance of banks and insurance companies - IC36 (general view) (2008)

C8027- Intesa San Paolo (1)

- Start of a consolidation process in the banking sector in Italy (before the financial crisis)
- 1° merger proceedings by AGCM (before Bank of Italy)
- The merger concerned the 1° and the 2° competitor in the banking sector
- Pursuant to article 6 of Law no. 287/90, the “*Authority shall appraise concentrations subject to notification under section 16, to ascertain whether they create or strengthen a dominant position on the domestic market with the effect of eliminating or restricting competition appreciably and on a lasting basis. This situation shall be appraised taking into account the possibilities of substitution available to suppliers and users, the market position of the undertakings, the access conditions to supplies or markets, the structure of the relevant markets, the competitive position of the domestic industry, barriers to the entry of competing undertakings and the evolution of supply and demand for the relevant goods or services...*”.
- L. 287/90 does not mention minority shareholders or interlocking directorate



C8027- Intesa San Paolo (2)

Affected markets: all financial markets (banking, insurance and investment services)

Insurance market life class I

Banca Intesa active both individually and through JV with Generali (Intesa Vita)

San Paolo active individually (Eurizon): San Paolo was a full competitor in respect both to Banca Intesa and Generali

Market shares life class I

Post-merger entity : **21%**

Generali Group (individually): **22%**

Financial ties between post-merger entity and Generali Group

- ✓ Generali Group had a minority shareholding (5%) in Intesa Sanpaolo
- ✓ Generali Group had relevant members in Intesa Sanpaolo board
- ✓ Joint Venture Intesa Vita



Due to the above mentioned financial ties, AGCM assessed that the **post-merger entity** and **Generali Group** would have convergent interests to avoid strong competitive strategies; moreover, Generali Group would have incentive to use the minority shareholding and members in board of directors to **maximize joint profits**

Generali Group and the post-merger entity could not be considered as full competitors, so their market share was to be considered jointly: 43% life class I

Assessment: the merger created a **dominant collective position** between Intesa Sanpaolo and Generali Group in the insurance market **life class I**

Remedies

Structural remedy: divestiture of an insurance business unit to a suitable purchaser to create the conditions for the rise of a new competitive entity or for the strengthening of existing competitors

Behavioral remedies:

- post-merger entity could not distribute Generali and Intesa Vita insurance policies through San Paolo branches and some other distribution channels. Aim: not to strengthen access to distribution network
- Generali members in the post-merger entity board could not take part in discussions/decisions concerning insurance sector



A] Ties with Mediobanca (leader in corporate finance)

- Unicredit and Capitalia both had **minority shareholdings** in Mediobanca (respectively, about 8,6% and 9,3%)
- Unicredit and Capitalia both participate **shareholders agreement** of Mediobanca
- Unicredit and Capitalia both participate **board of directors** of Mediobanca

Mediobanca, Unicredit and Capitalia = important players **corporate finance and investment banking markets**

B] Ties with Generali (leader in insurance sector)

- Unicredit and Capitalia both had **minority shareholding** in Generali (respectively about 3% and 1%)
- Unicredit and Capitalia both participate at the **shareholders agreement** on Generali
- Generali had **minority shareholdings** in Capitalia (2%) and Unicredit (1%)
- Generali participate at the **shareholders agreement** on Capitalia



C] Ties between Mediobanca and Generali

- Mediobanca had minority shareholding in Generali (16%, 1° shareholder)
- Mediobanca appointed board of Generali, including the members who had offices also in Unicredit and Capitalia;
- AGCM in past proceedings had already assessed *de facto* control by Mediobanca on Generali
- As assessed in C8027, Generali had strong relationship with Intesa Sanpaolo

Unicredit, Capitalia and Generali = important players **insurance sector**

D] Merger effects (concerning ties among competitors)

- Strenghtens the ties between the Post-merger entity and Mediobanca (the minority sharholdings of Unicredit and Capitalia in Mediobanca sum up together)
- Also through Mediobanca, strenghtens the ties between the Post-merger entity and Generali



- Considering the position of Unicredit and Capitalia in the affected market (such as corporate finance and insurance markets), the merger created a dominant position (on the basis of a traditional analysis)
- The distortion of competition was strengthened by the above mentions. The Post – merger entity is not a full competitor neither of Mediobanca (important player in corporate finance market) and Generali (important player in insurance market)

EI Remedies

Structural remedy: reduce the shareholding in Mediobanca

Behavioral remedies: Prohibition to develop partnership or other commercial agreements with Generali and to have shareholding in Generali

Post – merger entity board members, appointed also in Mediobanca or Generali boards', could not take part in discussions/decisions concerning investment banking and insurance sector

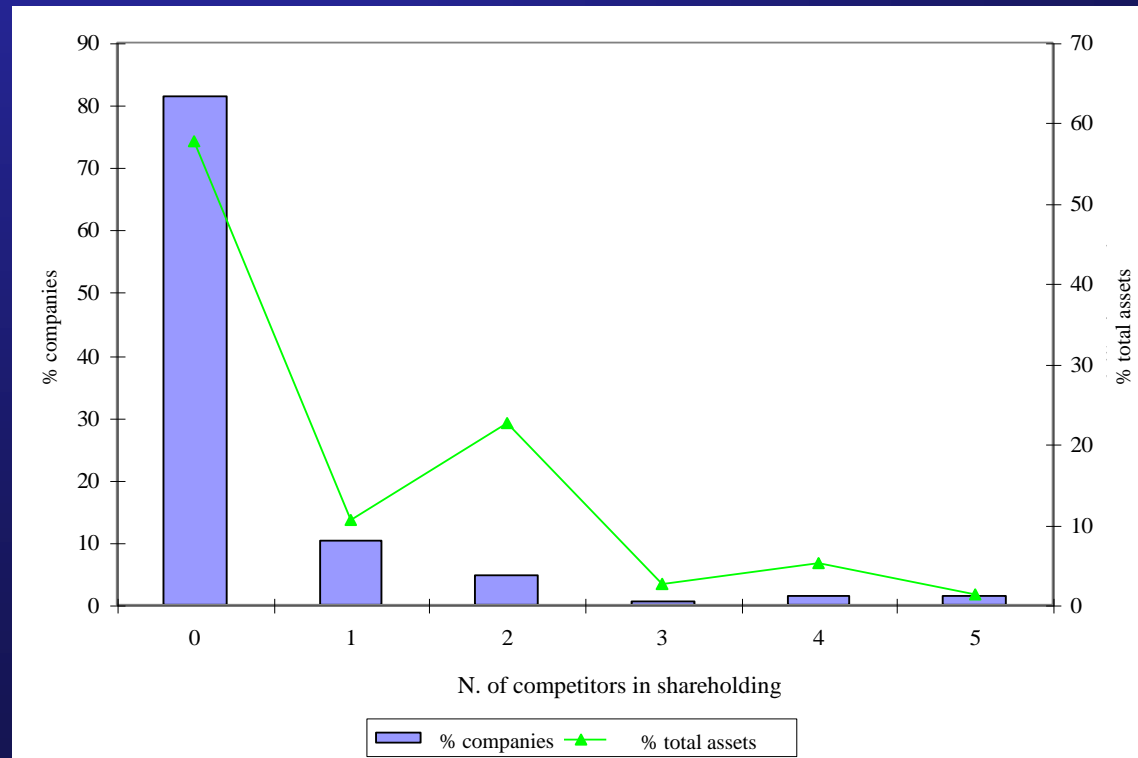


The sample:

- ❑ **83 banks** – all banks (single bank or group) with more than 50 branches, represented more than 86% of total branches in Italy
- ❑ **41 insurance companies** – all i.c. with market share $\geq 10\%$, represented more than 80% life insurance premiums e more than 90% non–life premiums
- ❑ **20 asset management companies** – a.m.c. with market share $\geq 10\%$, represented more than 90% of invested assets in investment funds

IC36: minority shareholdings (1)

Almost **20%** of the sample had competitors as shareholders (more than 40% in terms of total assets)



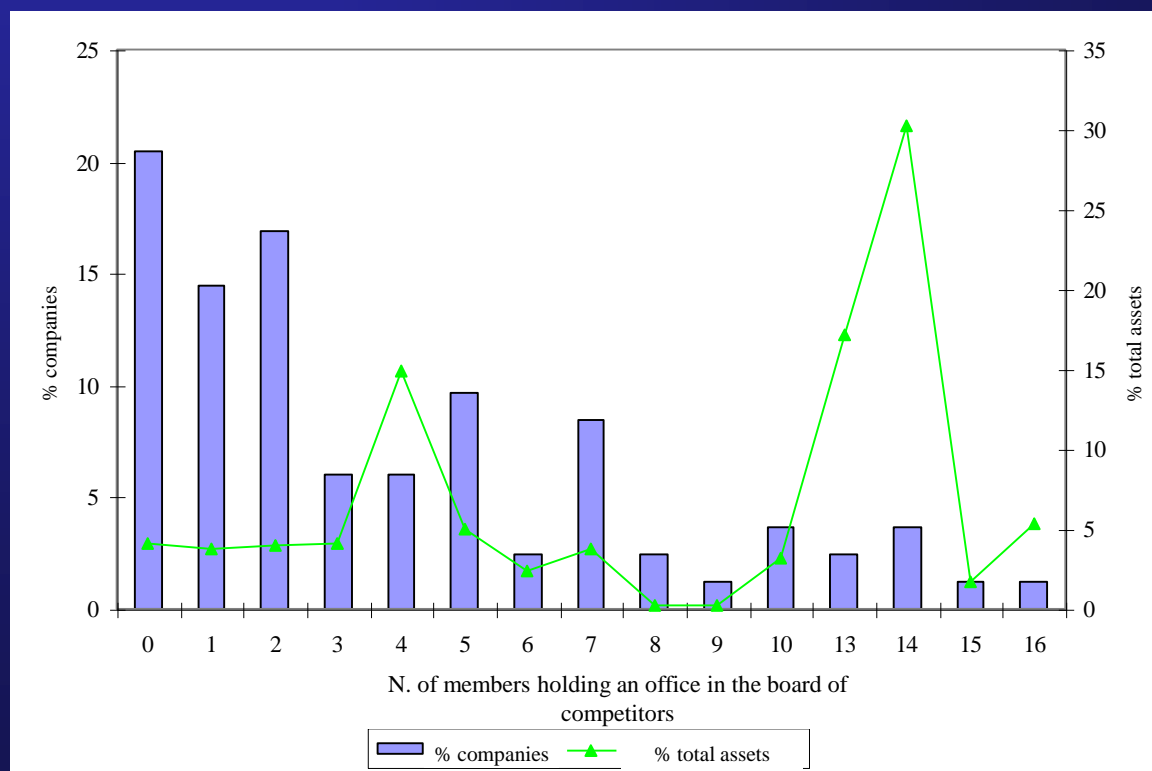
IC36: minority shareholdings (2)

- more than 67% of the companies with competitors were listed
- 18 banks (almost 50% in terms of total assets), in 12 cases shareholders were banks themselves (competitors of the same kind)
- 6 insurance companies (about 21% in terms of total assets)
- 3 asset management companies



IC36: interlocking directorates (1)

About 80% of the companies had at least one member of the board of directors holding the same office in the board of competitors (96% in terms of total assets)



IC36: interlocking directorates (2)

Firms most affected (at least 10 members in the board with two or more offices)

Group	N. of members holding an office in the board of competitors	Total number of members in governance bodies	% of members holding more than one office of the total members in governance
GENERALI	16	113	14,2
PREMAFIN	15	94	16,0
INTESA SANPAOLO	14	69	20,3
MEDIOBANCA	14	27	51,9
UBI	14	106	13,2
CASSA DI RISP. DI SAN MINIATO	13	34	38,2
UNICREDIT	13	89	14,6
BANCA SELLA	10	40	25,0
REALE MUTUA	10	18	55,6
BPM	10	87	11,5



IC36: interlocking directorates (3)

- 89% of the companies with competitors were listed (>97 % in terms of total assets)
- 36 banks (about 93% in terms of total assets), in 27 cases concerned competitor were of the same kind
- 22 insurance companies (about 21% in terms of total assets), in 17 cases concerned competitor were of the same kind
- 6 asset management companies



International comparison (listed companies)

Country	Number of firms	Firms affected
Germany	16	7
France	30	8
Netherlands	6	0
Spain	16	0
UK	17	8
Italy	29	23

Before IC36, legislation did not have specific provision on financial ties and interlocking directorates

After IC36, article 36 Law no. 201/2011 prohibits interlocking directorates in the financial sector

Merger cases and sector inquiry IC36 confirm:

- **minority shareholdings** - both with or without right to vote – may contribute to create collusive equilibrium and may lead to higher prices in affected markets
- **Interlocking directorates** - may amplify the potential distortion of competition through exchange of information concerning commercial strategies