Discussion papers

Tender offers and takeover bids in Italy from 2007 to 2019

Empirical evidence and discussion points

F. Picco, V. Ponziani, G. Trovatore, M. Ventoruzzo; with an introduction by R. Lener

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Abstract

This paper aims at providing a description of the impact of the Takeover Directive on the Italian capital market by presenting an analysis of the tender offers and takeover bids launched in Italy in the period between 2007 and 2019.

After a brief historical excursus on the genesis and evolution of the European and Italian frameworks, the study focuses on the characteristics of the participants in the offers and of the advisors who assist them; on the purposes for which takeover bids are promoted in Italy, with particular attention to the phenomenon of delisting; on the premiums, the acceptance rates, and the market performance of the target securities.

The survey, based on a proprietary database of over 20,000 data, although it covers all the offers launched in the period, focuses particularly on offers concerning shares. It shows that less than half of all those offers involve a change of control and only a small minority are hostile offers. In most cases, the offers included a delisting program, either as their own purpose (voluntary delisting offers launched by the controlling shareholder) or as an objective "associated" with the acquisition/change of control. The data show a recent upward trend in the incidence of delisting, which has gone from 50% to 90% in the last 5 years of analysis. These data seem interesting not because of their absolute value, but in consideration of the increased average size of the companies whose shares have been delisted and, secondly, of the circumstance that this tendency to delist occurred in a market phase that was essentially not negative. The average premium paid to shareholders is approximately 13%, with higher values in offers aimed at a business combination and in voluntary offers. The returns, both absolute and relative to the index, of the target shares are on average negative in the 12/36 months following the bid. Notably, the relative return is equal to -5.9% after 12 months and -6.8% after 3 years. Differentiating the results on the basis of the voluntary or mandatory nature of the offers, it can be seen that all the ex-post return configurations are significantly lower in the case of mandatory offers.

Without pretending to draw policy considerations or prospects for reform of the current regulations, the study proposes an analytical and objective framework that leaves, at the disposal of scholars, regulators and market operators, evidence potentially suitable for generating future research contributions.

JEL Classifications: G15, G18, G34, G38.

Keywords: corporate governance, tender offers, takeovers, financial markets, delisting

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Introduction

by R. Lener (*)

Drawing a systematic and not contradictory regulation on takeover bids is a difficult task. Any regulation, even if perfectly designed, is bound to change, especially when the legislator is forced to adapt to the changing market trends.

In general, any regulation on takeover bids, especially mandatory ones, is the result of a complex mediation between a plurality of vested interests, all deserving some form of protection. By way of example: avoiding market disturbances; protecting small shareholders; distributing the control "premium" among all shareholders; facilitating the transfer of control of listed companies; ensuring the stability of ownership structures. And even if we opt for the "market", for the contestability of companies, it seems inevitable, for example, to give small shareholders a portion of the control "premium". Also because experience shows that securities that do not benefit from the "premium" on the occasion of a transfer of control suffer from a depression in prices that cannot be justified merely in terms of discounted liquidity.

In this regard, it seems useful to remember how the regulation has developed over time.

The first intervention by the Italian legislator was, so to speak, very pivotal. Indeed, the Italian Parliament, perhaps to break with the past, imposed from scratch an absolute passivity rule (Article 16 of Law No 149/92), which could not be removed even with the permission of the shareholders' meeting. In that regime, neither the directors nor the shareholders could resort to defensive measures against hostile buyers.

It was obviously an excessively rigid solution. In fact, analyses on the "costs" of listing demonstrated how the excess of "passivity" could lead companies to protect themselves statutorily, to reduce the float to the minimum, or to ultimately renounce listing.

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The 1998 Consolidated Law shifted the focus, following the orientation that was meanwhile emerging in the Community (the Directive on takeover bids was in the gestation phase), restoring decision-making centrality to the shareholders' meeting, considering it more correct and above all more efficient for the final decision on defensive measures to be remitted to the shareholders, to avoid the risk of conflicts of interest of the directors.

After a long and arduous gestation, in 2004 the European legislator finally succeeded and gave birth to the Directive on takeover bids, making however unsatisfactory compromise choices, and ultimately leaving the national legal systems to freely choose the solutions to be adopted.

The entire regulation is in fact subjected to a legislative opt-out mechanism (see, for example, Article 9 (2) and (3); Article 11), partly tempered by a truly unique statutory opt-in mechanism (see Article 12 (2)). Hence, the resulting scenario is uneven: each national legal system can decide whether to implement the "suggested" rules, or even just one of them, for example by imposing passivity but not the breakthrough, or rather the opposite. Yet, the loophole of resorting to the principle of reciprocity is also left to the national legislator.

The Directive was implemented in Italy in 2007. The national legislator had about three years to think about it and therefore, it must be assumed that he thought carefully before introducing the new rules. And he did it virtuously: no opt–out. The passivity and neutralisation rules always apply. The passivity is instead strengthened, since the legislator takes this opportunity to specify that shareholders' meeting authorisation is also necessary for the measures already approved, but not yet fully or partially implemented at the time of the launch of the takeover bid.

However, at the end of 2008 a complete revival arrived with the crisis in the financial markets. In fact, starting from Legislative Decree 185 of 2008, the legislator, adapting to the choices made by most European parliaments, chooses to render both the passivity and the neutralisation rule optional.

At that time, the Government and then the Parliament were probably driven by the fear that the market depression phase would have favoured hostile takeover bids - even by Italian bidders, but the fear was mainly directed abroad - and therefore, the attempts to change the controlling group, and along therewith the management of the listed companies, at low cost.

Today, a similar ratio probably supports the legislative choices on the subject of the golden power, also conceived from the perspective of protecting the domestic market.

The Discussion Paper fits into such a (necessarily) changing context, illustrating, for the first time in these terms, how the legislation on takeover bids has been concretely applied in the Italian legal system, after the implementation of the 2004 Directive.

The purpose of the Paper is not to propose new legislation. But certainly useful ideas feeding reflections for the legislator emerge from the survey carried out.

In fact, as mentioned above, much has changed in the dynamics of the corporate control market in Europe and Italy since the first European Commission survey on the application of the Directive was conducted (in 2012). And it is fair to ask whether the objectives originally set have actually been achieved, even more so if they are still relevant, and what the margins for improvement of the regulation are.

The reassuring picture - of substantial appreciation of the new legislation by respondents - that emerged from the Commission's survey was, however, based on a small sample, so that it was difficult to assess the real impact of the Directive on European financial markets. Moreover, the Commission foresaw that, although takeover bids theoretically promoted market efficiency, this was not always reflected in practice, since the preconditions - rational behaviour of investors, sufficient market information, absence of transaction costs - could not always be met.

In its survey, the Commission was fully aware that while certain provisions of the Directive favoured public offerings - for example, the neutrality rule of the administrative body, the neutralisation rule, the squeeze-out rights, the sell-outs - others - starting from the same mandatory bid rule - may serve as a deterrent to takeover bids.

In the years that followed, shareholder activism grew, stimulated also by the two Shareholders Rights Directives, the trend towards concentration of ownership of listed companies was further strengthened, the use of dual-class shares became more substantial, and efforts to promote a single capital market at European level were stepped up. All this is part of an increasingly closed domestic market, characterised also by a prevalence of foreign investors in the acquisition of control operations.

Among the many aspects analysed, the survey conducted by the Paper's editors discloses an inversely proportional relationship between the growth in the concentration of share ownership and the trend of hostile acquisitions, which naturally prefer a more fluid market, in which changes in control are mostly the result of "friendly" transactions between historical controlling shareholders and new buyers, rather than a strictly regulated market.

It must also be said that a legislative intervention would also be desirable from the perspective of the Capital Markets Union. Although in the reflections on the steps necessary to reach the still fluid (idea of) Union, the reform of the regulation of corporate acquisitions has not been particularly considered – however long it has been spoken about - the interrelationship between the issues is evident: a review of the objectively unsatisfactory common regulation of the takeover bids cannot be ignored in order to increase competitiveness and accelerate the circulation of control of listed companies on European equity markets, creating a level playing field across Member States.

To propose a review of the regulation, it is necessary to have a clear idea of how it has been applied. And in this regard the present study is really very useful. This work, which is based on a hand collected database, created specifically for research purposes, covers the entire field of tenders promoted in our system starting from the implementation of the Directive to date.

First, the characteristics of the participants in the bids (par. 3.1 and 3.2) and also of the consultants who assisted them (par. 3.3) are analysed. Then, the purposes, at least those evident or otherwise recognisable, for which tender offers have been promoted in Italy, are highlighted (par. 3.5), with particular focus on the phenomenon of delisting that increasingly has been showing up as the ultimate reason for the takeover bid, which certainly does not appear to be of great satisfaction from a market perspective (par. 3.4).

The data reported at the end of the empirical survey also allow for an interesting evaluation of the prices offered and therefore of the premiums actually awarded (par. 3.6). Useful insights also come from the analysis of the acceptance rate(par. 3.7) and the stock market performance of securities before and after the bid (par. 3.8). The advantage of the study is that of allowing the phenomenon of public tenders to be read in a long-term context, without being limited to individual transactions, as has been often the case so far.

Sixteen years after the enactment of the Directive, Consob feels the need, so to speak, to reopen the debate on takeover bids, starting, however, not from the aforementioned classical theoretical perspectives of balancing the interests at stake, but from the evidence gathered and clearly classified.

The Paper deservedly provides, in this way, a valid empirical support for the broader reasonings that will certainly follow, by accurately photographing the "state of health" of the legislation on public tenders in Italy.

1 The Directive on takeover bids and the "harmonisation" of the European regulation thereon

Takeover bids arise in the early 1950s, mainly in the United States, as a market solicitation tool for the acquisition of shareholdings in listed companies also through private agreements between investors and directors of the target company[1].

In a market context such as that of the United States, characterised by public companies, the increasing use of this form of acquisition of significant stakes soon contributed to a situation of serious uncertainty in the dynamics of "corporate control", with inevitable repercussions on market stability. In the absence of *ad hoc* rules, in fact, the lack of information available to the target company and investors in general radically precluded the possibility of evaluating the terms of the initiative, thus preventing the Issuer's shareholders from consciously opposing or supporting the offer, and the market as a whole from making rational choices.

Hence the development of a broad doctrinal debate[2] and the push towards the adoption of rules governing such offers, defining their terms and conditions and establishing specific rights and duties for the issuer and the bidder, as well as the prerogatives of minority shareholders and the defensive measures available to the managers of the target company[3].

The doctrine, in particular, has highlighted that an "optimal" system of rules should be able to balance two objectives that are sometimes in tension with each other: the promotion and development of an efficient market for corporate control, thus favouring transfers of control capable of generating value, and the protection of minority shareholders from the danger of an extraction of private economic benefits by bidders, majority shareholders or their directors[4].

For this reason, the economic and legal studies, both of a purely theoretical nature and based on empirical analysis of data[5], so far have alternatively focused on

1 The theoretical question of the necessity of a civil regulation of public tenders is much older. In this regard, the first doctrinal debates on the subject date back to the first half of the twentieth century, driven by the incipient development of the mass and industrial production systems. In Italy, as to the favour of the introduction of a regulation of the phenomenon, see A. Scialoja, 1902; against Vittorio Scialoja's opinion, recalled in Pandolfelli G., Scarpello G., Stella Richter M., Dallari G., 1942.

2 For international literature, see *ex multis*, Souther, 2016; Straska and Waller, 2014; Cuñat, 2012; Bris and Cabolis, 2008; Martynova and Renneboog, 2008; Rossi and Volpin, 2004; Nenova, 2003; DeAngelo and Rice, 1983; Grossman and Hart, 1980.

3 In response to a wave of hostile takeover attempts, the US system adopted the *Williams Act* in 1968, with the primary purpose of protecting the shareholders of the target company from hostile takeovers, thus filling the gaps in current federal and state company law not applicable to takeover bids (for a more in-depth reconstruction see, among the many, Sautter, 2015). At the same time, in England, in the same year, the *Takeover Panel* was established and the *City Code on Takeovers and Mergers* was issued, "*in response to mounting concern about unfair practice*", reflecting the collective opinion of the operators in the acquisitions' sector. The measure was aimed at creating an "orderly" framework for the execution of corporate acquisitions, while protecting both investors and shareholders of the target company, through the introduction of the principle of equal treatment during the offer (for further details see Lee, 1982).

4 McCahery, 2004; Berglöf and Burkart, 2003; Wang and Lahr, 2017

5 Finally, the recent study (2017) by Wang, Y. and Lahr, H., *op. cit. sub note 4*, whose theoretical formulations were based on the manual collection of data on takeover bids.

the functionality of the mandatory bid rule[6], as a key provision in a takeover regulation, or on the impact of greater dissemination of ownership, squeeze-out rights as well as sell-outs and the neutrality rule in the regulation of acquisitions[7].

This debate is also widely reflected in the European law, which has introduced a harmonised regime with the so-called Takeover Directive (2004/25/EC).

The aforementioned Directive, in particular, required Member States to revise or to implement the rules on takeover bids,[8] basing them on general principles (*Article 3* of the Directive) such as equal treatment of the shareholders of the target company, the protection of minority shareholders, transparency of information, a level playing field and the safeguarding of the target company's interest, all in order to ensure a more conscious participation by the recipients of the offer.

Pursuant to these principles, the Directive prescribed the conditions that give rise to the obligation to launch an offer, rules on the bid price, the bid procedure and the communications to be provided in the context of public tenders, while assigning specific tasks and powers to the national supervisory authorities.

Briefly reviewing the main points of the Directive, it is worth mentioning first of all the imposition on all Member States to set a mandatory bid, based on the principle of equal treatment. Notably, Article 5 provides that "*Where a natural or legal person, as a result of his/her own acquisition or the acquisition by persons acting in concert with him/her, holds securities of a company as referred to in Article 1(1) which, added to any existing holdings of those securities of his/hers and the holdings of those securities of persons acting in concert with him/her, directly or indirectly give him/her a specified percentage of voting rights in that company, giving him/her control of that company, Member States shall ensure that such a person is required to make a bid as a means of protecting the minority shareholders of that company. Such a bid shall be addressed at the earliest opportunity to all the holders of those securities for all their holdings at the equitable price as defined in paragraph 4.*" The "equitable price" of the bid, a pivotal element of the Directive, for the European legislator must be at least equal to the "*highest price paid for the same securities by the offeror, or by persons acting in concert with him/her, over a period, to be determined by Member States, of not less than six months and not more than 12 before the bid referred to in paragraph 1.*" *(Article 5 (4).*

Member States also had to lay down an obligation to make immediately public the decision to promote a bid and to inform the Supervisory Authority thereof, with the possibility to require the Supervisory Authority to be informed before such a decision is made public. As soon as the bid has been made public, the administrative

6 Rossi S. e Volpin P., 2004, op. cit. sub note 2; Nenova T., 2003, op. cit. sub note 2; Bebchuk, 1994.

7 Armour, 2007; Bebchuk, 2002; Yarrow, 1985.

8 It should be recalled that the scope of the Takeover Directive, which can be found in the combination of Articles 1 (1) and 2 (1) (a) and (e), is limited to takeover bids: voluntary, mandatory, *"instrumental or subsequent to the acquisition of control"* (defined by the national law of the offeree company); - concerning "securities" (i.e. transferable securities conferring voting rights) issued by a company having its registered office in one of the Member States and admitted, in whole or in part, to trading on a regulated market in one or more of the Member States.

bodies of the offeree company and the bidder shall inform the workers' representatives or, in the absence of representatives, the workers themselves.

It is mandatory for all Member States to provide for the bidder to prepare an offer document - to be made public in good time - containing the information necessary for the holders of the offeree company's securities to make an informed decision on the offer. The takeover bid document must be approved by the Authority, which evaluates the correspondence thereof to what is required by law, and then be published. As a result, the documentation is transmitted to the interested parties (administrative bodies of the target company and workers' representatives, or in their absence, to the workers themselves).

The Directive also lays down the minimum elements, common to the Member States, of which the bid document must be composed *(Article 6 (3)*, regardless of the type of bid[9].

With reference to the defensive measures, the Directive establishes a passivity rule (also called *board passivity rule* or *board neutrality rule*) for those measures subsequent to the launch of the Bid *(Article 9)* and a neutralization rule (or *breakthrough rule*) for preventive defences *(Article 11)*.

Finally, reference is made *to Articles 15* and *16* on the Right[10] of Squeeze-out and the Right of sell-out,[11] which provide, in the first case, for the right of the dominant shareholder to obtain, "compulsorily", the ownership of all the remaining

9 *"The offer document referred to in paragraph 2 shall state at least: a) the terms of the bid; b) the identity of the offeror and, where the offeror is a company, the type, name and registered office of that company; c) the securities or, where appropriate, the class or classes of securities for which the bid is made; d) the consideration offered for each security or class of securities and, in the case of a mandatory bid, the method employed in determining it, with particulars of the way in which that consideration is to be paid; e) the compensation offered for the rights which might be removed as a result of the breakthrough rule laid down in Article 11(4), with particulars of the way in which that compensation is to be paid and the method employed in determining it; f) the maximum and minimum percentages or quantities of securities which the offeror undertakes to acquire; g) details of any existing holdings of the offeror, and of persons acting in concert with him/her, in the offeree company; h) all the conditions to which the bid is subject; i) the offeror's intentions with regard to the future business of the offeree company and, in so far as it is affected by the bid, the offeror company and with regard to the safeguarding of the jobs of their employees and management, including any material change in the conditions of employment. (...); j) the time allowed for acceptance of the bid; k) where the consideration offered by the offeror includes securities of any kind, information concerning those securities; l) information concerning the financing for the bid; m) the identity of persons acting in concert with the offeror or with the offeree company and, in the case of companies, their types, names, registered offices and relationships with the offeror and, where possible, with the offeree company; n) the national law which will govern contracts concluded between the offeror and the holders of the offeree company's securities as a result of the bid and the competent courts."*

10 *Article 15 (2) "Member States shall ensure that an offeror is able to require all the holders of the remaining securities to sell him/her those securities at a fair price. Member States shall introduce that right in one of the following situations: a) where the offeror holds securities representing not less than 90 % of the capital carrying voting rights and 90 % of the voting rights in the offeree company, or b) where, following acceptance of the bid, he/she has acquired or has firmly contracted to acquire securities representing not less than 90 % of the offeree company's capital carrying voting rights and 90 % of the voting rights comprised in the bid. In the case referred to in (a), Member States may set a higher threshold that may not, however, be higher than 95 % of the capital carrying voting rights and 95 % of the voting rights." , para. 4 "If the offeror wishes to exercise the right of squeeze-out he/she shall do so within three months of the end of the time allowed for acceptance of the bid referred to in Article 7."; para. 5* "Member States shall *ensure that a fair price is guaranteed. That price shall take the same form as the consideration offered in the bid or shall be in cash."*

11 *Article 16 (2) "Member States shall ensure that a holder of remaining securities is able to require the offeror to buy his/her securities from him/her at a fair price under the same circumstances as provided for in Article 15(2)."*

securities attributing voting rights when some thresholds are met, which is opposed to the relative duty to sell by the shareholders remaining as rarefied float following a full bid[12]; in the second case, the optional right of shareholders not participating in the bid to sell their securities, freeing themselves of now illiquid financial instruments[13].

The Takeover Directive, as underlined by all commentators, represents a compromise solution, also due to its difficult approval[14] *process*, which led to the development of a regulatory scheme based on faculties and options on the most controversial points. The recognition in favour of each Member State of the possibility of choosing whether or not to implement certain provisions affecting the contestability of control,[15] or leaving the possibility of providing basic definitions at national level,[16] has certainly favoured convergence on a common text, although at the expense of a stronger harmonisation of the rules. As a result, the regulatory framework of the Member States is only theoretically uniform, presenting not insignificant differences[17].

The implementation of such framework, in the fifteen years since the issuance of the Directive, - as is often the case - has eventually shown some of its limitations. Increasingly structurally complex bids and the growing activism of sharehold-

12 The institution of the right of squeeze-out is in the wake of a system of rules that assigns corporate importance to the existence of an efficient market, capable of adequately valuing the company's securities and offering an exit to minority shareholders who do not want to adhere to the full bid originally launched. It is the compression of the liquidity of the security, which acts as an event, that leads to the extinction of the social relationship, in a similar sense – but "specular" in terms of the effects - to the systems of the right to sell-out and the right of withdrawal.

13 For an in-depth analysis of the historical-regulatory evolution of the two institutions *before* and *after* the transposition into Italian law of the Directive, as well as for an investigation on the economic reasons that justify the recognition of the right to sell-out and squeeze-out and their main characteristics, see L. MARCHEGIANI, 2011, pp. 225-256.

14 The idea of introducing common rules on takeover bids is the result of more than twenty years of debates and presentation of various European projects, which began in the 1970s. In those years, in fact, the European Commission, noting the growing importance of the phenomenon of corporate acquisitions, as well as the profound difference between the existing regulations on the matter in the Member States (as evidenced by the report on the state of national legislation in this field entrusted in 1974 to Robert Pennington), expressed the absolute need for a rapprochement action. To this end, a first study group was set up in 1985 with the task of drawing up a draft directive. Proposals for directives followed which were opposed by the different Member States for several reasons (for a thorough reconstruction of the preparatory work, see RAZZANTE, 2010). Following the many objections raised by the Member States, in 1993 the Commission launched a procedure for consulting the Member States with a view to ascertaining their guidelines on the need to harmonize "internal" legislation. At the end of the consultation, it appeared that most of the Member States had declared themselves in favour of adopting a directive, which, however, merely laid down the general principles of the regulation. In spite of this, it took 11 years, several more proposals for directives, endless amendments and amendments thereof, before reaching, on 21 April 2004, the unanimous approval of the Member States of the draft directive which was later issued.

15 Think, for example, of the articles on defensive measures and multiple voting. By way of example, with regard to defensive measures, it is recalled that under *Article 12*, Member States may reserve the right not to require companies based in their territory to apply the board passivity rule and the breakthrough rule, also specifying that in the event of an opt-out of the Member State, companies should be given the reversible option to adhere to these defensive rules.

16 This refers to the determination of the general control threshold and the scope of the exemptions from the bidding obligation. It is recalled that, in order to integrate the requirement of a bid obligation, the Member States have been left free to determine what "controlling" shareholding means, as well as in the definition of the criteria for determining the "fair" price in a mandatory bid.

17 As shown by the data of *the CMS Guide to Mandatory Bids and Squeeze-outs* published in April 2017, or even the data used in the analysis conducted by WANG, Y., LAHR, H. in the work cited *sub. note* 4.

ers[18] create situations in which the rules of the Directive are not without margins of ambiguity or gaps, and might lead to solutions that are inconsistent with the objectives of the legislator.

2 The Italian regulatory framework after transposition of the Takeover Directive

Directive 2004/25/EC was transposed into Italian law[19] by Legislative Decree no. 229 of 19 November 2007, which was incorporated into the regulatory framework fully outlined by the Consolidated Law on Finance, subsequently subject to further legislative measures such as Legislative Decree no. 185 of 29 November 2008, converted into Law no. 2 of 28 January 2009 (hereinafter referred to as the "Anti-Crisis Decree"),[20] Legislative Decree no. 5 of 10 February 2009, converted into Law no. 33 of 9 April 2009 (hereinafter referred to as the "Incentives Decree"), [21] as well as Legislative Decree no. 1469 of 25 September 2009 (hereinafter referred to as the "Corrective Decree")[22].

In general, the cornerstones of the regulation remain unchanged: the rules of fair and equal treatment, of business standard, neutralization (which, indeed,

18 Stimulated by the same European legislator most recently in 2017 with *the Shareholder Rights Directive II*.

19 Over time, the Italian regulatory system on takeover bids has undergone multiple transformations that can be subsumed in four phases. Since the 1970s, given the lack of a regulation and the scarce use of this tool, the first phase was characterized by the regulatory definition of the operation introduced into our legal system by art. 18 of Legislative Decree no. 95 of 8 April 1974, converted with amendments into Law no. 216 of 7 June 1974; although the extreme flawedness of this definition led part of the doctrine to affirm that "the provision refers to the public purchase tender, but does not dictate a regulation" (see, CASTELLANO, 1975). A second phase is characterized by the proliferation of legislative proposals designed to outline a complete regulation on takeover bids, which led to the enactment of Law no. 149 of 1992, which first introduced an almost complete regulation of the Takeover bids phenomenon and on the limitations on defensive techniques applicable against it. The third phase coincides with the repeal of Law no. 149 of 1992 and the entry into force of the Consolidated Law on Finance, which, while inheriting some fundamental features from the previous regulatory framework, such as the obligation to launch the bid in the event of a transfer of control of the target company and a detailed regulation of the formal process of the bid to guarantee the offerees and the efficiency of the market, introduced significant innovations regarding the mandatory public tender and the total and partial prior public tender, also entrusting Consob with the adoption of secondary regulations. The fourth and final phase coincides with the period from the post-enactment of the Directive on takeover bids to date.

20 Article 13 of the Anti-Crisis Decree amended the framework of defensive measures to be taken pending a public purchase tender, allowing Italian companies to choose in their statute whether or not to be contestable. Such Decree also intervened on the procedure for applying defensive measures, excluding the necessary competence of the extraordinary shareholders' meeting of the offeree company in application of the reciprocity clause, being a generic shareholders' resolution sufficient, provided that it was issued at least eighteen months before the bidder has given notice of the intention to promote the bid.

21 In order to strengthen "the instruments of defence against speculative manoeuvres", it made amendments to the Consolidated Law on Finance, in terms of consolidation and proprietary transparency takeover bids, and to the Civil Code, regarding the regulation of the purchase of treasury shares.

22 For an overview of the main corrections to the post-transposition system of the Directive on takeover bids, see Consob, Regulatory framework on takeover bids, in Annex no. 3., Transposition of directive 2004/25/EC of the European parliament and of the council and review of the rules on takeover and exchange bids, Consultation of Issuers of 06 October 2010.

emerges strengthened) and passivity, as well as the fundamental principle of information transparency continue to be housed in our system[23].

It has also been confirmed, in art. *101-ter* Consolidated Law on Finance, that "*Consob shall supervise takeover bids or exchange tender offerings in compliance with the provisions of this chapter*", thus consolidating its role and related powers in this matter.

Among the important innovations introduced in the Italian regulatory system as a result of the transposition of the European Directive, the most significant ones for the purposes we are dealing with here are briefly highlighted below.

Primarily, with regard to the procedural rules governing the takeover bids, compared to the past, a time split was envisaged between the "communication" to the public and the "promotion" of the bid (with the submission of the document intended for publication to the competent Authority). The provision of a forfeiture period – no later than twenty days from the notice referred to in Article 102, paragraph 1 of the Consolidated Law on Finance - was also introduced for the filing of the takeover bid document with Consob, under penalty of its inadmissibility and the prohibition for the bidder to make a further offer on the same financial products of the issuer in the twelve months thereafter. Please also note the introduction of the mandatory rule of irrevocability of the bid[24].

Other important changes can be traced to the regulation of mandatory bids. For the mandatory promotion of public tenders, the materiality thresholds were maintained at 30%[25] of the securities with voting rights, albeit with an extension of the notion of shareholding referred to in Article 105, paragraph 2, of the Consolidated Law on Finance, which includes also derivative financial instruments.

The concept of purchasing in concert has been expanded through the general definition of *"parties acting in concert"*, accompanied by a general clause that identifies those acting in concert among *"the parties who cooperate with each other in order to obtain control of the offeree company"* [26] and of a regulatory delegation to

23 Razzante R., 2010.

24 This rule, envisaged in art. 103 Consolidated Law on Finance paragraph 1, expressly provides, for the first time, that "the offer shall be irrevocable" and that "any clause stating the contrary shall be null and void", without prejudice to the equal opportunity rule for all owners of the financial products subject to the offer. This rule marks an important step for the regulation of the sector, preventing unscrupulous speculative exercises of the regulation under analysis. The regulation of the conditions - suspensive or resolutive - that the Bidder can impose is also linked to this need. They are, in fact, to be considered admissible only if they do not undermine the key principles, including that of irrevocability of the takeover bid regulation.

25 In companies other than SMEs, the mandatory bid is promoted also by anyone who, subsequent to acquisitions, comes to hold a stake greater than the threshold of 25%, in the absence of another shareholder with a higher stake. The possibility of derogating from the 30% threshold for SMEs has also been introduced, specifying that, in any case, the statutory threshold cannot be less than 25% or more than 40%.

26 With this new wording, the legislator no longer limited himself to enumerating a series of intersubjective relationships - almost identical to those contemplated in the old text of art. 109 Consolidate Law on Finance - from which to presume the concert, but through the provision of the aforementioned general clause, he seemingly referred to any type of cooperation, even if not formalized – so much so that a doubt was raised by authoritative interpreters (see LIBONATI, 2009, p.314) about the fact that this concept did not differ greatly from that of the concerted practice of antitrust law, restoring centrality to the coordination time depending on an acquisition, or stabilization of corporate governance. Another important novelty, introduced by Legislative Decree no. 229/2007, concerns the admissibil-

Consob to identify hypotheses of relative presumptions of concert (in addition to those absolute substantially confirmed) and cases in which the cooperation does not constitute an action in concert.

A new criterion for determining the minimum[27] price for the promotion of a mandatory takeover bid has been adopted, which no longer takes account of market trends in the security being offered.

Still on the subject of mandatory bids, the consequences of non-compliance with the obligation to promote a takeover bid are exacerbated, providing, as an alternative to the sale of securities exceeding the percentage indicated in Article 106 of the Consolidated Law on Finance, the power of Consob to impose in any case the making of a bid at the price established by it.

Equally important are the sell-out right in favour of minority shareholders[28] who can thus "free themselves", even when the Bid is concluded, from a company that has undergone a radical change of control; the squeeze-out right in favour of the Bidder[29;] as well as the prohibition to formulate discriminatory offers[30.]

Among the main regulatory interventions to be recalled, there are the 2011 measures aimed at correcting the effects of *pressure to tender* (i.e. the regulation of the reopening of the terms of the bids and evaluation of the independent directors of the offeree on the bid with the introduction of art. 39-*bis* IR), to be included in the more general redefinition and clarification of the regulatory framework of the content of the bid document as well as of the Communications pursuant to art. 102 and 103 Consolidated Law on Finance; the assessment of derivatives for the calculation of

ity of the cumulation of relevant operations: it was established, in fact, that, for the purposes of the joint and several obligation to offer (or purchase), the typical circumstances identified by art. 101-*bis* assumed importance *"also jointly, limited to the subjects holding shareholdings"*, and this in order to limit the scope of application of the so-called large concert, in such a way as to exclude from the list of concert members, those subjects linked by constraints or non-shareholding relationships to the capital of the offeree, when the aggregation of the shares beyond the thresholds is the consequence of a joint application of the individual typical hypotheses contemplated by the legislator (see on this regard G. GUIZZI- A. TUCCI, 2011, p.256 et seq.). On the previous approach – by no means radically different from that proposed with the new legislation of 2007 - see *ex multis*, FERRO-LUZZI, 2002).

27 Pursuant to Article 106 of the Consolidated Law on Finance, the minimum price is now not *"at a price no less than the highest price paid by the bidder, and by persons acting in concert with the bidder, in the twelve months prior to issue of the notice pursuant to article 102 paragraph 1, to acquire securities of the same class"*. The criterion of the price no less than the weighted average value of the last twelve months or of the shortest period available remains, if no purchases against payment of the same class was made in the period indicated or, in the absence of purchases at a higher price, if the threshold relative to voting rights is exceeded by effect of the additional voting rights pursuant to article 127-quinquies. Consob retains the right to impose a higher price if this is necessary for the protection of investors, in the event of a collusion between the bidder and the "selling shareholders" of the Offeree.

28 This right, envisaged in art. 108 Consolidated Law on Finance entitled "Right to squeeze-out", provides that the bidder becomes holder of at least 95% per cent of the capital represented by securities in an Italian listed company or 90% if float sufficient to ensure regular trading performance is not restored within ninety days, the bidder shall be committed to squeeze-out of the remaining securities should any other party so request.

29 Pursuant to Article 111 of the Consolidated Law on Finance, the Bidder coming into possession following a global takeover bid of a holding of at least ninety-five per cent of the capital represented by securities shall have the right to squeeze-out on remaining securities within three months of expiry of the time limit for bid acceptance, if the intention to exercise said right was declared in the takeover bid document.

30 The law does not determine what the essential content of the bid should be, leaving this task to the regulatory discretion of the Authority. However, it is sufficiently clear the intention of the same to require the Bidder to explain in the bid document all the useful indications to investors to express a well-founded opinion on the bid itself.

the threshold of the mandatory takeover bid; the introduction of positive and negative presumptions of concerted action[31]; exemptions in the case of merger/demerger or rescue operations; or the 2013 interventions aimed at strengthening the transparency regime (revision Articles 38, 39, 47-*bis* and - *sexies*, IR).

Finally, mention should be made of the rules governing takeover bids for AIM listed securities[32].

AIM Italia is *a Multilateral Trading Facility* (MTF) not directly subject to the supervision of the Supervisory Authority. This does not preclude, however, the applicability of the general rules on public tenders, given that pursuant to art. 1, paragraph 1, letter v) Consolidated Law on Finance the application of the takeover bid legislation does not presuppose that the securities subject to bid are listed on a regulated market, but that the bid concerns financial products and is addressed to at least 150 subjects for a total consideration of at least 8,000,000 euros.

The question concerning the applicability to securities traded in the AIM of the provisions governing mandatory bids, partial prior bids, as well as the sell-out and squeeze-out rights, given that these provisions apply only to *"companies with registered office in Italy and admitted to trading on regulated markets in Italy" (*Article 101-*ter* Consolidated Law on Finance) is more complex.

The empirical evidence attests to the realization of "mandatory" bids, or more properly of "statutory" bids subsequent to the exceeding of the relevant threshold, also on securities traded in the AIM; and this in application of the provisions of the (issuers) Rules of Borsa Italiana (hereinafter[33] AIM Regulation), which makes admission to AIM subject, among other things, to the inclusion in the Articles of Association of the provisions on takeover bids (Article *6-bis* AIM Regulation). More precisely, in *"Sheet Six"* it provides that *"From the moment the shares issued by the Company are admitted to trading on AIM Italia, the provisions (hereinafter, "the aforementioned regulations") relating to listed companies referred to in Legislative Decree no. 58 of 24 February 1998 (hereinafter, "Consolidated Law on Finance") and*

31 These regulatory interventions followed the new legislation of 2009 (with the so-called "corrective" decree - Legislative Decree no. 146/2009), which, while maintaining the general system of 2007, defined in clearer terms the general clause introduced in terms of concerted action, to be identified not just in the "*cooperation for the control of the offeree"*, but only as a cooperation that is based on an "*agreement, expressed or tacit, verbal or written, even if invalid or ineffective"* and is aimed at affecting the contestability of the offeree. The Corrective Decree also introduced a regime of absolute presumption of concerted action for subjects linked by the relationships already considered at the time by art. 109 Consolidated Law on Finance, while introducing a regulatory power of Consob to identify cases *"for which it is presumed that the subjects involved are persons acting in concert"* and cases *"in which cooperation between several subjects does not constitute a concerted action"*.

32 AIM Italia is a market designed for small companies, with considerable ease in listing procedures, limited obligations and financial capital available for investment. At the admission stage, the publication of an information prospectus pursuant to the Prospectus Directive and subsequently the publication of quarterly management reports are not required. AIM Italia is based on a key figure, the Nominated Adviser (Nomad), who is responsible towards Borsa Italiana to assess the appropriateness of the company for admission purposes and subsequently to assist, guide and accompany it throughout the period of stay on the AIM market.

33 Despite being homonymous with Consob's Issuers' Regulation, the doctrine tends to consider the AIM Regulation a mere act of private law, aimed at regulating the relations between the Market Manager (Borsa Italiana) and the Issuers participating in it, and therefore without binding on third parties or endowed with a proper regulatory role. For further details on this point, see Ventoruzzo, 2005; Costi-Enriques, 2004.

Consob regulations implementing the takeover bids and exchange tender offerings (limited to Articles 106 and 109 of the Consolidated Law on Finance) become applicable by voluntary recall and insofar as compatible. (...) *Exceeding the shareholding threshold provided for in Article 106, paragraph 1 of the Consolidated Law on Finance, not accompanied by the communication to the Board of Directors and the submission of a full public tender within the terms provided for in the aforementioned rules, entails the suspension of the right to vote on the excess shareholding, which can be ascertained at any time by the Board of Directors. The rules referred to shall be those in force at the time when the shareholder's obligations are triggered."*[34].

Thus, by briefly recalling some of the applicable principles and rules and their historical-normative evolution, this work focuses on an empirical analysis of takeover and exchange bids, mandatory and voluntary, including those defined as "mandatory" according to the AIM Regulation[35].

3 Evidence gathered

3.1 Characteristics of the bids

During the period 2007-2019, 231 tender offers[36] were promoted in Italy[37,38] (tab. 1.1). Among them, 74.9% of bids (173 transactions) are represented by cash offers (to which can be added 14 transactions - equal to 6.1% - represented by sell-outs[39], usually *cash*[40]) while transactions with consideration in securities (ex-

34 In the same Sheet it is also provided that "The period of adhesion of takeover and exchange bids is agreed with the board of arbitrators called 'Panel'. The Panel also dictates the appropriate or necessary provisions for the correct conduct of the bid. The Panel exercises these administrative powers after hearing Borsa Italiana. (...) The Panel also exercises the powers of administration of the takeover and exchange bid referred to in the clause on takeover bids, after consulting Borsa Italiana." For the discussion of issues related to the implementation, *in subject matter*, of a legislative regulation by contract, see Fornasari, 2019.

35 That is, aimed at a number of investors greater than 150 and whose object is financial products the total consideration of which exceeds € 8,000,000, subject to the supervision of Consob with regard to the conduct of the bid and to the Panel provided for by the AIM Regulation with regard to the arising of the obligation.

36 The expressions "tender offer" and "takeover bid" are often referred to as synonymous. As far as this research is concerned, hereinafter "tender offers" refers to bids launched for a generic financial instrument, whilst "takeover bids" indicates that specific category of tender offers targeting voting shares and involving corporate control changes (i.e. taking over a corporation).

37 The research covers all the bids promoted in Italy from 1 January 2007, with a time horizon therefore slightly longer than the period of validity of the new regulations of European origin (transposed by Legislative Decree no. 229 of 19 November 2007). It should be noted, however, that many of the bids promoted in early 2017 already presented, on a voluntary basis, some of the main regulatory innovations of the Takeover Directive (for example with reference to the criteria for determining the price of mandatory bids), widely known to the market.

38 Consistently with the methodology followed by Consob in its Annual Report, each bid is attributed to the year in which the acceptance period began.

39 In 2007, sell-outs figure also includes the "Residual Tender Offers", as the two institutions are substantially overlapping.

40 Pursuant to Article 108, paragraph 5 of the Consolidated Law on Finance, the consideration for the right to sell-out arising as a result of an exchange bid or mixed bid may consist of the same securities paid in the bid, without prejudice to the investor's ability to request the monetary equivalent (literally, Article 108 of the Consolidated Law on Finance: "5. In the case referred to in paragraph 1, as well as in the cases referred to in paragraph 2 in which the shareholding indicated therein is achieved exclusively as a result of a full public tender, the consideration shall take the same form as that of the bid, but the holder of the securities may always require that he be paid in full a cash consideration, determined on the basis of general criteria defined by Consob with regulation"). These obligations

change offers) or partially in securities (mixed offers) account for 19.1% (44 transactions), with a strong prevalence of the former (13.9%, equal to 32 transactions out of 44)[41].

Tab. 1.1 – Type of bid (number)

	sell-out		tender offer (cash)		mixed offer		exchange offer		*total*
	number	%	number	%	number	%	number	%	
2007	3	10.7	24	85.7			1	3.6	28
2008	2	9.1	18	81.8	2	9.1			22
2009		0.0	19	73.1	3	11.5	4	15.4	26
2010	2	16.7	5	41.7			5	41.7	12
2011	2	7.4	14	51.9	1	3.7	10	37.0	27
2012			7	63.6	1	9.1	3	27.3	11
2013			6	66.7	1	11.1	2	22.2	9
2014			10	100.0					10
2015			7	77.8			2	22.2	9
2016			25	96.2	1	3.8			26
2017	1	5.9	12	70.6	1	5.9	3	17.6	17
2018	2	10.5	14	73.7	2	10.5	1	5.3	19
2019	2	13.3	12	80.0			1		15
total	*14*	*6.1*	*173*	*74.9*	*12*	*5.2*	*32*	*13.9*	*231*

In terms of value[42] (tab. 1.2), however, exchange bids represent about 32% of the total value; the average size of an exchange offer is indeed more than double that of a cash one (494 million euros versus 189 million euros). Such an evidence, however, is mostly attributable to the effect of extraordinary deals, as a jumbo bid (exchange offer for Luxottica, 2018) and two transactions of an atypical nature (exchange offer of the Argentina Republic on its own bonds, 2010; voluntary partial offer for exchange and settlement on MPS shares, 2017).

The list of the first ten transactions by value (tab. 1.3), in fact, highlights that 7 out of 10 foresee consideration in cash.

following a bid, however, do not fall into the category in question, which includes, on the other hand, only the sell-outs represented by autonomous administrative procedures, i.e. originated from an exceeding of the relevant threshold following purchases on the market or by third parties.

41 If not differently specified, the expressions "offers" and "bids" are used interchangeably with reference to all the operations, whatever the kind of consideration.

42 In the offers on shares, the value is calculated also taking into account the shares possibly acquired by the bidder in the reopening of the terms, as well as execution of the right to squeeze-out/sell-out.

Tab. 1.2 – Type of bid (values in million euros)

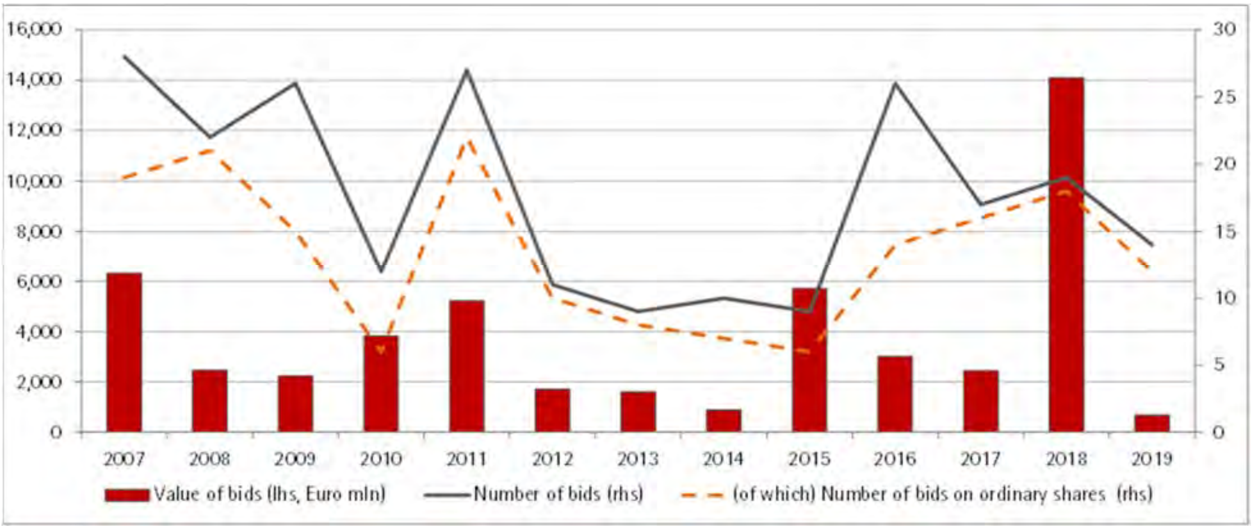
	sell-out		tender offer (cash)		mixed offer		exchange offer		*total*
	number	%	number	%	number	%	number	%	
2007	91	*1.4*	6,184	*97.8*			45	*0.7*	*6,320*
2008	19	*0.8*	2,009	*81.7*	430	*17.5*			*2,458*
2009			1,250	*55.9*	46	*2.0*	939	*42.0*	*2,235*
2010	128	*3.3*	389	*10.1*		*0.0*	3,319	*86.5*	*3,837*
2011	17	*0.3*	4,664	*89.3*	23	*0.4*	518	*9.9*	*5,222*
2012			1,315	*77.1*	30	*1.8*	359	*21.1*	*1,705*
2013			1,407	*87.9*	110	*6.9*	84	*5.3*	*1,600*
2014			880	*100.0*					*880*
2015			5,685	*99.5*			31	*0.5*	*5,716*
2016			2,754	*91.2*	265	*8.8*			*3,019*
2017	3	*0.1*	850	*34.7*	43	*1.7*	1,552	*63.4*	*2,448*
2018	142	*1.0*	4,625	*33.4*	141	*1.0*	8,928	*64.5*	*13,836*
2019	200	*29.6*	454	*67.1*			22	*3.3*	*677*
total	*601*	*1.2*	*32,465*	*65.0*	*1,088*	*2.2*	*15,800*	*31.6*	*49,953*

Tab. 1.3 – Top ten bids by size (values in million euros)

#	year	bidder	issuer	type of bid	nature of bid	type of instrument	value
1	2018	EssilorLuxottica	Luxottica	exchange offer	mandatory	ordinary share	8,928,387,200
2	2015	Marco Polo Industrial Holding	Pirelli & C.	takeover bid	mandatory	ordinary share	4,568,160,705
3	2007	Swisscom Italia	Fastweb	takeover bid	voluntary	ordinary share	3,002,451,227
4	2010	Argentine Republic	Argentine Republic	exchange offer	voluntary	bond	2,914,110,429
5	2018	Rlg Italia Holding	Yoox Net A-Porter Group	takeover bid	voluntary	ordinary share	2,631,484,838
6	2011	Sofil sas	Parmalat	takeover bid	voluntary	ordinary share	2,456,347,642
7	2016	Heidelberg Cement France Sas	Italcementi	takeover bid	mandatory	ordinary share	1,887,848,054
8	2018	2i Towers	Ei Towers	takeover bid	voluntary	ordinary share	1,610,955,489
9	2017	Monte dei Paschi di Siena	Monte dei Paschi di Siena	exchange offer	voluntary	ordinary share	1,536,000,000
10	2011	Lvmh Moët Hennessy - Louis Vuitton sa	Bulgari	takeover bid	mandatory	ordinary share	1,419,322,032

The graph below (Fig. 1.1) shows the evolution over time of the bids during the period under examination. It seems possible to highlight three distinct phases.

Fig. 1.1 - Evolution of the number and value of bids in the period 2017-2018



A first phase (2007-2011) characterized by a relatively intense activity (23 bids on average per year), presumably explained by the generalized decrease in the prices of financial assets during the Great Financial Crisis (2007-2008)[43] and the sovereign debt crisis (2011)[44]. It was followed by a second period (2012-2014) characterized by a lower frequency (10 bids on average per year). Then, in the four-year 2015-2018, we recorded again a high frequency of operations (21 bids on average per year), this time without that any link to previous negative market performance as in the first phase[45]. As will be better analysed below (§4.3), data collected suggest a key role played by bids aimed at delisting, which were numerous in those years even in the absence of that significant reduction in prices that could theoretically justify them.

In the last year under examination, however, there has been a clear reversal of the trend, with reference to both the number and, in particular, value of the offers (equal to 684 million, minimum value in the twelve years). This slowdown could be attributable to the strong recovery of market prices (+27% the annual change in the FTSE Italia All Shares index), according to the aforementioned inverse correlation

43 It must be reminded that, from the high of 2 May 2007 to the low of 9 March 2009, the FTSE Italia All Shares Index lost 70.3%.

44 As widely known, given the strong correlation between prices of Italian government bonds and banks' stock prices, as well as the considerable weight of the latter on the domestic price market, the sovereign debt crisis turned into a huge contraction of stock markets. From the beginning of February to the end of September 2011 (8 months), the FTSE Italia All Shares index lost about 30% of its value.

45 In fact, in the period 1 January 2015–31 December 2018, the FTSE Italia All Shares Index remained substantially unchanged (-0.6%).

between bids and stock market performance, in this case in the sense of a lower convenience of bids[46] in the uptrend.

With regard to the **nature of the bids**, Tab. 1.4 and Tab. 1.5 show a prevalence, by number and value, of voluntary bids (equal to 64.1% of the total number and 54.3% of the total value) compared to mandatory bids[47] (including sell-outs, equal to 35.9% and 45.7%, respectively). It must be noted, however, that within the category of voluntary bids are considered also offers on instruments other than shares (whereas, on the other hand, mandatory bids are limited to shares).

Tab. 1.4 – Nature of bid (number)

	mandatory(1)		voluntary		total	mandatory(1) (NO sell-outs)		voluntary (ordinary shares only)		*total*
	number	%	number	%		number	%	number	%	
2007	14	*50.0*	14	*50.0*	**28**	11	*68.8*	5	*31.3*	***16***
2008	6	*27.3*	16	*72.7*	**22**	4	*21.1*	15	*78.9*	***19***
2009	4	*15.4*	22	*84.6*	**26**	4	*26.7*	11	*73.3*	***15***
2010	3	*25.0*	9	*75.0*	**12**	1	*25.0*	3	*75.0*	***4***
2011	8	*29.6*	19	*70.4*	**27**	6	*30.0*	14	*70.0*	***20***
2012	2	*18.2*	9	*81.8*	**11**	2	*20.0*	8	*80.0*	***10***
2013	4	*44.4*	5	*55.6*	**9**	4	*50.0*	4	*50.0*	***8***
2014	4	*40.0*	6	*60.0*	**10**	4	*57.1*	3	*42.9*	***7***
2015	4	*44.4*	5	*55.6*	**9**	4	*66.7*	2	*33.3*	***6***
2016	10	*38.5*	16	*61.5*	**26**	10	*71.4*	4	*28.6*	***14***
2017	7	*41.2*	10	*58.8*	**17**	6	*40.0*	9	*60.0*	***15***
2018	11	*57.9*	8	*42.1*	**19**	9	*56.3*	7	*43.8*	***16***
2019	6	*40.0*	9	*60.0*	**15**	4	*40.0*	6	*60.0*	***10***
total	***83***	*35.9*	***148***	*64.1*	***231***	69	*43.1*	91	*56.9*	***160***

Note: (1) also includes sell-outs

46 Such a relation, initially studied with reference to bids aimed at acquiring control, normally promoted following strong reductions in the target stock price, seems to hold also to bids aimed at delisting, where the controlling shareholders typically exploit low market prices in order to minimize the disbursement of going private. Numerous international studies find the existence of a significant inverse correlation between delisting and stock price trends, supporting the hypothesis that delisting is more frequent when listing prices decrease (see, among others Macey, O'Hara, Pompilio, 2008; You, 2008). This orientation, followed by a large part of the international doctrine, has its roots in Helwege and Liang*'s hot and cold market* theory, which emphasizes that the distribution of IPOs tends to be concentrated in periods where the market shows a positive trend, i.e. in the *hot market* phases, while vice versa there is an increase in delisting, in periods of downward market, *cold market* (see Helwege and Liang, 2004).

47 These also include bids on shares, traded on the AIM market, subsequent to exceeding the relevant threshold, which are classified - due to the prevalence of the substance over the form - as "mandatory" although formally voluntary. For further information on the subject, see §2.

Tab. 1.5 – Nature of bid (values in million euros)

	mandatory[1]		voluntary		total	mandatory[1] (ord. shares only)		voluntary (ord. shares only)		*total*
	number	%	number	%		number	%	number	%	
2007	391.1	*6.2*	5,929.3	*93.8*	6,320.4	299.8	*5.6*	5,025.2	*94.4*	*5,325.0*
2008	222.0	*9.0*	2,235.9	*91.0*	2,457.9	203.3	*8.3*	2,235.8	*91.7*	*2,439.2*
2009	145.5	*6.5*	2,089.5	*93.5*	2,235.0	145.5	*17.4*	690.5	*82.6*	*836.1*
2010	139.2	*3.6*	3,697.6	*96.4*	3,836.8	11.0	*3.1*	346.4	*96.9*	*357.3*
2011	1,809.7	*34.7*	3,412.6	*65.3*	5,222.3	1,792.4	*37.6*	2,977.9	*62.4*	*4,770.3*
2012	882.4	*51.8*	822.3	*48.2*	1,704.7	882.4	*62.9*	519.7	*37.1*	*1,402.1*
2013	412.9	*25.8*	1,187.5	*74.2*	1,600.4	412.9	*26.8*	1,129.3	*73.2*	*1,542.2*
2014	599.9	*68.2*	279.8	*31.8*	879.7	599.9	*75.8*	191.9	*24.2*	*791.8*
2015	5,467.0	*95.6*	249.5	*4.4*	5,716.4	5,467.0	*98.8*	67.2	*1.2*	*5,534.2*
2016	2,661.4	*88.1*	358.1	*11.9*	3,019.4	2,661.4	*90.6*	274.9	*9.4*	*2,936.3*
2017	480.8	*19.6*	1,966.7	*80.4*	2,447.5	478.2	*19.6*	1,966.6	*80.4*	*2,444.9*
2018	9,352.6	*67.6*	4,483.3	*32.4*	13,836.0	9,210.4	*67.6*	4,411.2	*32.4*	*13,621.6*
2019	263.9	*39.0*	413.0	*61.0*	676.9	63.5	*14.2*	383.7	*85.8*	*447.1*
total	*22,828.6*	*45.7*	*27,124.9*	*54.3*	*49,953.5*	*22,227.7*	52.4	*20,220.3*	47.6	*42,448.0*

[1]also includes sell-outs

The 83 mandatory bids are divided into 69 offers pursuant to art. 106 Consolidated Law on Finance and 14 sell-outs pursuant to art. 108 Consolidated Law on Finance[48].

Looking exclusively at bids on **ordinary shares** - for which a comparison is possible and consistent – the difference in terms of numbers is levelled with 56.9% of voluntary bids against 43.1% of mandatory ones (excluding sell-outs). The latter, however, are larger in size (52.4% of the total value), what already hints the relevance of mandatory bids on Italian market for corporate control compared to voluntary bids, mainly aimed at delisting and only rarely at hostile or friendly takeovers.

It is interesting to note that the prior partial bid referred to in Article 107 of the Consolidated Law on Finance, introduced in order to facilitate the acquisition of control[49], saw in practice only one case of effective application in 2007.

48 This figure takes into account only sell-outs launched as autonomous market operations, i.e. not coming as a conclusive procedure of previous offers (see note 40).

49 The reasons for the introduction of the partial prior Takeover bid lie in "[t]he fear that, if the full takeover bid had been the only instrument to acquire legal control of a listed company, there would have been negative effects on the contestability of the control since the cost of operations aimed at replacing it would have increased. In the search for a difficult balance of competing interests, such as, on the one hand, 'that of increasing the flow of resources to the production system' and, on the other hand, 'that of attributing protection to shareholders', the provision in the Consolidated Law on Finance of art. 107 aims to facilitate the exchange of control, lightening the financial burden of the transaction for the bidder, without however diminishing the guarantees for minority shareholders. The latter, in fact, could be damaged by their lack of coordination or by any circumventive behaviour between those ceding and those acquiring control" (see CONSOB, Communication No. DEM/8076186 of 8 August 2008).

Within the class of mandatory bids, on the other hand, there were 6 indirect takeovers pursuant to art. 45 of the Issuers' Regulation[50], equal to 7.2% of the category. The relative total value, equal to 833 million euro, accounts for 3.6% of the mandatory bids.

None of these indirect (mandatory) takeovers is triggered by the acquisition of a stake above the mandatory threshold in a listed company in turn controlling another listed firm (the so called "Opa a cascata").

Also among the mandatory bids, there are rare cases of so-called "consolidation" bid pursuant to Article 46 of the Issuers' Regulation[51]. One bid of this kind was recorded in 2007. A second consolidation bid obligation - which arose after a voluntary bid by an issuer on its own shares, with a consequent increase in the stake of the main shareholder – was followed up by the reopening of the terms of the first bid.

With regard to the deal triggering the obligation to launch the bid, data show that the "typical" mandatory bid originates from the purchase, by one or more

50 Reference is made to Article 45 IR, in implementation of Article 106, paragraph 3, letter a) of the Consolidated Law on Finance, according to which the offer obligation results from the purchase, even concerted, of a shareholding that allows to hold more than 30% of the shares with voting rights on the topics indicated in Article 105 of the Consolidated Law on Finance of a listed company or the control of an unlisted company, when the buyer thus comes to hold, indirectly or as a result of the sum of direct and indirect shareholdings, more than 30% of the securities of a listed company. The regulation clarifies that "indirect shareholding" should be understood as the holding of securities in a company whose assets consist predominantly of shareholdings in listed companies or in companies that, in turn, hold predominantly shareholdings in listed companies. The notion of prevalence occurs under at least one of the following conditions: the shareholding in question represents more than 1/3 of the assets in the balance sheet of the parent company; the shareholding constitutes the highest asset recorded in the financial statements, or the main component of the purchase price of the company itself. Consob has repeatedly stated that the reason for the obligation lies in the "possibility - which the legislator intended to assure minority shareholders - to liquidate their shareholding at a reasonable price, and therefore to leave the company in the presence of a shareholder (or a group of shareholders acting in concert) who, by exceeding a significant shareholding threshold established by law, takes a pre-eminent position in the company itself ex novo. [...]. However, the emergence of a pre-eminent shareholder or the change in his identity is an event that, if it occurs in the company at the top of a shareholding chain, it naturally produces its effects on all the companies that are controlled by it. And this explains the obligation of a 'cascading' public tender on the underlying companies, under the terms and conditions indicated by the aforementioned art. 45 of the regulation". Protection of the shareholders of the subsidiary must therefore be recognised only in the presence of a change in the controlling shareholder of the parent company "but not in the presence of a simple consolidation of the position of that shareholder in the sole company placed at the first level of the chain".

51 There is consolidation, pursuant to art. 46 of the Issuers' Regulation, when a shareholder, who holds more than 30% but less than 50% of the ordinary capital, purchases more than 3% of that capital in twelve months. The rule, issued pursuant to Article 106, paragraph 3, letter b) of Legislative Decree no. 58/98, provides for the obligation to offer only in relation to purchases of shares of the listed company in which the purchaser already participates to the extent indicated. Compared to the case referred to in art. 45 IR, the inspiring reasons of the legislation in question can instead be well understood when taking into account the different purposes protected, respectively, by the bidding obligation resulting from exceeding the 30% shareholding in the ordinary capital of a listed company and by the bidding obligation resulting from the simple consolidation of the shareholding already held in that company. In the first case (Article 45 IR), the reason for the obligation lies essentially in the possibility - which the legislator intended to assure minority shareholders - to liquidate their shareholding at a reasonable price, and therefore to leave the company in the presence of a shareholder (or a group of shareholders acting in concert) who, by exceeding a significant shareholding threshold established by law, assumes a pre-eminent position in the company itself ex novo. In the second case (Article 46 IR), a pre-eminent shareholder already exists and does not change identity. What justifies the obligation to offer is only the fact that it diminishes the minority shareholders' powers (who in any case remain as such), as a result of the strengthening of the position of the majority shareholder.

external investors, of a controlling or at least relevant stake in the target's capital as a result of a private negotiation with its majority shareholder(s) (the so-called "sale of control")[52].

The promoter of a mandatory bid, prior to the sale of control, held on average 3.4% of the issuer's capital. This value is the result of 48 (out of 69) cases of null shareholding, 13 cases of shareholding lower than 10%, 7 cases of shareholding of between 10.1% and 30%, and one case of shareholding of more than 30%[53]. The numerous cases in which the bidder had no shares before triggering the obligation confirm the non-hostile nature of the majority of transactions.

On average, a shareholding of 57% of the share capital is purchased (in private negotiation) from one or more selling shareholders of the target company. In no case the shareholding acquired was less than the relevant threshold (in two cases the shareholding was less than 30% but with a takeover bid threshold of 25%), in 49 cases (out of 69) was higher than 50% of the share capital.

* * *

If we expand the analysis on **the type of financial instrument** subject to offer (Tables 1.6 and 1.7), it should be noted that transactions in shares undoubtedly represent the predominant portion (75.3%; 86.2% in terms of value), but certainly not the totality, of the 231 bids recorded.

Among the other types, bonds and units of investment funds are of particular interest.

During the analysis period, there were 16 **bids on bonds**. In 12 cases the issuer belonged to the financial sector, and in particular 7 of them were banks; in 12 cases it was a buyback (coincidence of bidder and issuer) and in 9 cases the bid took the form of mixed/exchange offer, with a consideration usually represented by bonds with a longer maturity and/or a higher standing. It can therefore be concluded that in the vast majority of cases these transactions represented *capital & liability management* exercises of banks or financial intermediaries aimed at restructuring and strengthening their regulatory capital and/or improving the liquidity profile. It is not surprising, therefore, to note for this class an evident temporal concentration: 12 out of 15 bids on bonds are carried out in the four-year period 2009-2012, that is, in a period (following the Great Financial Crisis including the 2011 sovereign debt crisis) characterised by particularly sharp depreciations in bonds and securities of financial firms pushing them to looking for capital strengthening measures. After 2012, bids concerning bonds have almost disappeared as a consequence of the introduction of

52 It should be recalled, in fact, that the provisions of art. 106 Consolidated Law on Finance provide for the obligation of a bid on all the shares of the company in case of crossing the relevant threshold (25% for non-SME issuers, 30% for others), saying nothing about the method of said exceeding. A mandatory bid can of course and in principle also be promoted following the exceeding of the relevant threshold by mean of the purchase on the market of a marginal shareholding, i.e. without any private transaction with the majority shareholder of the firm.

53 This is a particular case in which the bidder held, prior to the emergence of the bid obligation, a shareholding of just over 30%, without however having the majority of the voting rights in the ordinary shareholders' meeting.

two relevant changes into the Issuers' Regulation[54], which were aimed at aligning banks' liability management operations with the prevailing international practice[55]. These changes have radically reduced the frequency of cash and exchange offers on bonds.

A strong element of temporal concentration can also be found with reference to the **bids on units of (closed-end) funds** (real estate investment funds in all but one case): of the 22 total bids, 6 were promoted in 2007 and 10 in 2016. Another characteristic of this sub-group is the exceptional frequency of competing bids: 11 out of 22 (compared to only 21 out of 231 bids in the whole universe), with two cases of triple competing bids. These operations have often recorded bid prices well below the NAV of the funds and envisaged very challenging minimum acceptance conditions. As a consequence, no surprise for their particularly low acceptance rate (32.9% see § 3.7) and high frequency of ineffective bids (8 out of 22, compared to 18 cases on all the 231 bids).

54 Reference is made to the amendments introduced by Consob resolutions no. 17731, April 5, 2011 and no. 18214, April 9, 2012. Notably, with the former, the Authority implemented the delegation concerning the cases of exemptions from the takeover and exchange offer regulation. To this purpose, Articles 35-bis and 35-ter on the Issuers' Regulation were introduced, relating to the offers made on financial instruments other than securities (Article 101-bis, par. 3-bis of the Consolidated Law on Finance). With the insertion of art. 35-ter in the Issuers' Regulations - which governs the fulfilments for public exchange offers aimed at acquiring debt securities - it was established that for public exchange offers regarding bonds and other debt securities, the offeror may request Consob that the offer be subject to the regulations for public offers for sale and acceptance, unless this does not conflict with the aims of investor protection, efficiency and transparency of the corporate control market and the capital market. This intervention has enabled Consob to make the discipline of public offers to sell or subscribe also applicable to public exchange offers having as their object debt securities. In addition, resolution no. 18214 of 2012 excluded - pursuant to art. 35-bis, paragraph 4 of the Issuers' Regulation - the applicability of the OPA regulations to buyback transactions on bonds, i.e. offers promoted by the issuer having as their object "... financial products other than securities, non-voting shares, UCITS units and financial products convertible into, or which grant the right to subscribe to or purchase, securities". In this way, the domestic discipline has been brought into line with the implementation rules of the first Prospectus Directive as well as with international best practice. The exemption in question was then extended to cases of buyback operations also promoted by companies or entities that control the issuer, are controlled by it or are subject to joint control with it; as well as to offers promoted by an intermediary on behalf of the issuer and of the parties referred to in the previous point on condition that the intermediary is obliged to transfer the purchased financial instruments to the same parties; as well as to offers promoted by a party that fully guarantees the financial instruments that are the object of the offer.

55 The amendments of IR released in 2011, cited in note 54, are also part of this perspective. They clarified that the debt restructuring transactions subject to the approval of the holders of the relative instruments, the so-called consent solicitation, must not be subject to the tender and exchange offer discipline. This is due to the particular way in which these transactions are carried out, i.e. the approval of a resolution by the recipients of the proposal that is binding also with regard to any absent or dissenting parties, thus reconsidering the previous orientation of Consob in this regard.

Tab. 1.6 – Type of instrument subject to the offer (number)

	other		non-voting shares		ordinary share		bond		Fund unit		*total*
	number	%	number	%	number	%	number	%	number	%	
2007			2	*7.1*	19	*67.9*	1	*3.6*	6	*0.1*	***28***
2008	1	*4.5*			21	*95.5*					***22***
2009	5	*19.2*			15	*57.7*	6	*23.1*		*0.9*	***26***
2010	2	*16.7*			6	*50.0*	2	*16.7*	2	*1.4*	***12***
2011	2	*7.4*			22	*81.5*	3	*11.1*		*0.4*	***27***
2012					10	*90.9*	1	*9.1*		*0.8*	***11***
2013					8	*88.9*			1		***9***
2014					7	*70.0*			3		***10***
2015	1	*11.1*	1	*11.1*	6	*66.7*	1	*11.1*		*1.2*	***9***
2016	1	*3.8*			14	*53.8*	1	*3.8*	10	*0.1*	***26***
2017			1	*5.9*	16	*94.1*					***17***
2018	1	*5.3*			18	*94.7*					***19***
2019			2	*13.3*	12	*80.0*	1	*6.7*		*0.4*	***15***
total	***13***	*5.6*	***6***	*2.6*	***174***	*75.3*	***16***	*6.9*	***22***	*9.5*	***231***

Tab. 1.7 – Type of instrument subject to the offer (values in million euros)

	other		non-voting shares		ordinary share		bond		Fund unit		*total*
	number	%	number	%	number	%	number	%	number	%	
2007			12	*0.2*	5,416	*85.7*	4	*0.1*	888		***6,320***
2008	0.03	*-*			2,458						***2,458***
2009	360	*16.1*			836	*37.4*	1,039	*46.5*			***2,235***
2010	257	*6.7*			486	*12.7*	3,063	*79.8*	32		***3,837***
2011	68	*1.3*			4,788	*91.7*	367	*7.0*			***5,222***
2012					1,402	*82.2*	303	*17.8*			***1,705***
2013					1,542	*96.4*			58		***1,600***
2014					792	*90.0*			88		***880***
2015	27	*0.5*	151	*2.6*	5,534	*96.8*	4	*0.1*			***5,716***
2016	0.1				2,936	*97.2*			83		***3,019***
2017			0.02		2,447						***2,448***
2018	72	*0.5*			13,764	*99.5*					***13,836***
2019			23	*3.5*	648	*95.7*	6	*0.9*			***677***
total	***783***	*1.6*	***187***	*0.4*	***43,049***	*86.2*	***4,786***	*9.6*	***1,149***	*2.3*	***49,953***

* * *

Not all the bids concerned listed financial instruments: in 19.5% of cases the instruments/products concerned were not listed on domestic regulated markets.

Notably, in 8.7% of cases the instruments offered were neither listed on a regulated market nor admitted to trading on a different trading venue[56].

A phenomenon worth highlighting is the growing importance of bids promoted on AIM (targeting shares in 8 cases; in one case bond). The Italian junior market, which was established in 2012, has undergone a maturation process in recent years, testified by the number of takeover bids (including those with a scheduled delisting, see below). The first two bids[57] were recorded in 2017, and the trend shows a clearly increasing dynamic (2 bids in 2018, 4 in 2019). In particular, it should be noted that in 2019 the offers on shares traded on AIM represented 33% of the total bids on shares (40% if considering only the mandatory takeover bids).

Tab. 1.8 – Type of trading venues (number)

	AIM	%	EuroTLX	%	EXPANDI	%	Hi-Mtf	%	MIV	%	MOT	%	MTA	%	unlisted	%	foreign regulated market	%	*total*
2007					1	3.6				–			25	89.3	1	3.6	1	3.6	***28***
2008					1	4.5				–			21	95.5					***22***
2009									3	11.5			11	42.3	8	30.8	4	15.4	***26***
2010									3	25.0			7	58.3	1	8.3	1	8.3	***12***
2011							7	25.9	1	3.7			15	55.6	4	14.8			***27***
2012													9	81.8	2	18.2			***11***
2013													8	88.9	1	11.1			***9***
2014									3	30.0			7	70.0					***10***
2015									2	22.2	2	22.2	5	55.6					***9***
2016			1	3.8					10	38.5			15	57.7					***26***
2017	2	11.8							2	11.8			13						***17***
2018	2	10.5											14	73.7	3	15.8			***19***
2019	5	33.3											10	66.7					***15***
total	***9***	*3.9*	***1***	*0.4*	***2***	*0.9*	***7***	*3.0*	***24***	*10.4*	***2***	*0.9*	***160***	*69.3*	***20***	*8.7*	6	*2.6*	***231***

* * *

In 91% of cases the bids were promoted on the entirety of capital (full offer): as a consequence, only 20 were partial bids, of which 13 on ordinary shares, 4 on fund units and 3 on bonds. Among these bids, 7 cases are buyback plans, while the remaining ones descend from a general investment purpose. In one case, the partial bid presents the features of a voluntary prior takeover bid pursuant to art. 107 Consolidated Law on Finance, thus being aimed at the acquisition of control.

56 Reference is made to 20 bids, almost all addressing financial issuers, and banks (18/20). The instrument being offered is in 8 cases an ordinary share, in 3 a preferred share, in 4 a bond, in 3 a unit-linked/index-linked product. These transactions are therefore mainly attributable to capital management projects of banking/insurance groups.

57 Reference is made exclusively to bids that, having a maximum value exceeding 8 million euros, fall within the scope of Consob's supervision. For further information on this point, please refer to § 2 of this paper

3.2 Issuer's and Bidder's characteristics

There is no perfect numerical coincidence between the bids ptomoted and the issuers involved: against 231 total bids, the target companies were 187. This difference is based on two circumstances:

1) bids promoted simultaneously on several instruments of the same company;

2) multiple bids promoted, over time, on an instrument of the same issuer. With particular reference to offers on shares, the issuers addressed by more than one bid were 20 out of 137 (15%).

Tab. 2.1 – Issuer's sector

	financial-other		financial-insurances		financial-banks		real estate		non-financial		state		*total*
	number	%	number	%	number	%	number	%	number	%	number	%	
all instruments	20	*10.7*	7	*3.7*	31	*16.6*	18	*9.6*	109	*58.3*	2	*1.1*	***187***
ordinary share	14	*9.6*	3	*2.1*	23	*15.8*	4	*2.7*	102	*69.9*			***146***
bonds	3	*20.0*	1	*6.7*	8	*53.3*			1	*6.7*	2	*13.3*	***15***
fund units	1	*6.7*					14	*93.3*					***15***

With reference to all bids, 58.3% (no. 109) of issuers belong to the non-financial sector, 31% (58) to the financial sector[58], 9.6% (no. 18) to the real estate sector and the remaining 1% (no. 2) is represented by government-controlled operators. Within the financial sector, the banking segment counts for about half of the total.

By analysing the sectors to which the issuer belongs in relation to the type of financial instrument covered by the offer, some peculiarities can be noted. The issuer belongs to the banking sector in 53.3% of offers on bonds, while the phenomenon of offers on corporate bonds is essentially irrelevant; 93% of offers on fund units concern closed-end real estate funds.

Moving on to analyse the characteristics of the bidders[59], no surprise that even here we don't find a two-way bid/bidder correspondence.

58 Understood in the aggregate sense, i.e. including the insurance, banking and financial sector in the strict sense.

59 As far as this research is concerned, the term "substantial bidder" indicates the economic operator (both natural and legal persons) in the actual interest of which the offer is promoted. The concept of "substantial bidder", whose nationality and type are indicated, is not defined at the regulatory level, but has a considerable relevance for the economic analysis of the phenomenon. This distinction is, in fact, aimed at going beyond the simple reference to the legal entity (normally a newco incorporated under Italian law; a company for which the aforementioned fields of investigation would be insignificant) formally indicated as the bidder in the tender offer document. Our aim is indeed to identify the subject economically involved in the transaction. For such a reason, the notion of "substantial bidder" does not necessarily coincide with the ultimate controlling shareholder of the "formal" bidder: more often, it coincides, rather, with the group oh which the bidder is part, willing to identify the economic "engine" of the promoted bid. By way of example, with reference to the takeover bid promoted on the shares of Yoox Net A-Porter Group, the "formal" bidder is newco Rlg Italia Holding. The "substantial" bidder was identified in Richemont, the group it belongs, rather than in the Rupert Companies, the parent entity of the

On the one hand, in fact, there are 29 bidders who have promoted multiple bids, both simultaneously (on one or more instruments) and at different times over time. On the other hand, in 27 cases the bid was promoted by two or more bidders together in concert. It follows that there were 238 bidders engaged exclusively or partially in the promotion of the 231 bids.

By analysing the nationality of the bidders[60] (Table 2.2), about two thirds (62.7%) of the bids were promoted by Italian entities, 14% by European bidders and the remaining part by non-European entities.

The comparison between the number and value detailed by type of instrument shows some interesting evidence.

The weight of "Italian" bids is equal to only 47.7% of the total against 62.7% of the number, pointing out, on average, larger sizes for "foreign" bids, in particular those on shares by European (22.4% of the value vs. 9.5% of the frequency) and non-European bidders other than the USA (17.4% vs. 5.9%).

This evidence is confirmed by the list of the top 10 offers on shares in terms of value collected (Tab. 2.3), where 6 out of 10 (and in particular 4 of the largest 5) come from "Non-EU country (No USA)" and "EU country (No UK)".

The indication appears even clearer if we consider that the largest bid (exchange bid on Luxottica) was promoted by a bidder (EssilorLuxottica) defined as "domestic" only because of a governance structure in which the Italian component of the property should prevail, at least in the first years.

The dominance of foreign bidders in larger bids seems to highlight how difficult is for the Italian capital market fostering the capital formation necessary for large buy-outs (category of deals to which all these transactions – with their different structures - can be attributed). It should be noted, in this sense, that one of the 4 domestic bids, as mentioned, has a strong transnational connotation, and two others were carried out by government-related entities or companies at least partially State-owned.

By analysing "horizontally" the distribution of bids for types of instrument illustrated in Table 2.2, it can be found a limited presence of Italian bidders in offers on fund units: 81%[61] of them come from abroad, with particular relevance of US bidders.

In terms of value, the figure of the bids on bonds promoted by "Non-EU country (No USA)" is particularly relevant: they represent 61% of the total of the category compared to 13% in terms of quantity. It should be noted, however, that

Richemont group and therefore, as specified in the bid document, the indirect parent company of Rlg Italia Holding.

60 In the case of bids promoted by multiple bidders belonging to different classes (e.g. Italian/Non-EU country), the attribute was assigned according to a "pro quota" criterion (0.5 Italian; 0.5 Non-EU country). In the same way, reference was made to the field "type of bidder".

61 Data not present in Table 2.2 but can be inferred from a "horizontal" reading of the data represented therein.

this figure is influenced by a transaction in government securities carried out by a foreign State.

Tab. 2.2 – Nationality of the Bidder

	Italian	EU country (no UK)	UK	USA	non-EU country (no USA)
% on total number of takeover bids	62.7%	14.2%	4.4%	10.6%	8.1%
by type of instrument (no. of bids)					
other	4.9%	0.6%			
non-voting share	1.7%				0.8%
ordinary share	49.8%	9.5%	4.0%	4.7%	5.9%
bond	4.2%	0.8%	0.4%	0.4%	0.8%
Fund unit	2.1%	3.2%	0.0%	5.5%	0.4%
total	*62.7%*	*14.2%*	*4.4%*	*10.6%*	*8.1%*
by type of instrument (value)					
other	1.5%	0.1%			
non-voting share	0.1%				0.3%
ordinary share	41.4%	22.4%	2.7%	2.4%	17.4%
bond	3.7%				5.9%
Fund unit	1.0%	0.1%		1.1%	
total	*47.7%*	*22.6%*	*2.7%*	*3.4%*	*23.6%*

Tab. 2.3 – Nationality and type of Bidders in the top ten bids on shares
(values in millions of euros)

year	Bidder	issuer	type of bid	nature of bid	value	Bidder's nationality	"substantial" Bidder type
2018	EssilorLuxottica	Luxottica	exchange offer	mandatory	8,928,387,200	Italian	group (industrial/banking/insurance)
2015	ChemChina	Pirelli & C.	takeover bid	mandatory	4,568,160,705	non-EU country (no USA)	group (industrial/banking/insurance)
2007	Swisscom	Fastweb	takeover bid	voluntary	3,002,451,227	non-EU country (no USA)	group (industrial/banking/insurance)
2018	Richemont - (Compagnie Financière Richemont)	Yoox Net A-Porter Group	takeover bid	voluntary	2,631,484,838	EU country (no UK)	group (industrial/banking/insurance)
2011	Lactalis	Parmalat	takeover bid	voluntary	2,456,347,642	EU country (No UK)	group (industrial/banking/insurance)
2016	Heidelberg Cement AG	Italcementi	takeover bid	mandatory	1,887,848,054	EU country (no UK)	Group (industrial/banking/insurance)
2018	F2i	Ei Towers	takeover bid	voluntary	1,610,955,489	Italian	fund
2017	MEF	Monte dei Paschi di Siena	exchange offer	voluntary	1,536,000,000	Italian	country
2011	Lvmh Moët Hennessy – Louis Vuitton sa	Bulgari	takeover bid	mandatory	1,419,322,032	EU country (no UK)	group (industrial/banking/insurance)
2013	Salini Costruttori	Impregilo	takeover bid	voluntary	1,001,998,160	Italian	group (industrial/banking/insurance)

With reference to the type of bidder, four categories were identified: industrial/banking/insurance groups, funds, entrepreneurs, financial companies[62]. As shown in Table 2.4, the majority of transactions (53.4%) and above all the largest contribution in terms of value (77%) are attributable to industrial/banking/insurance groups. Notably, it should be noted the importance of this type of bidder with reference to bids on shares, where 56.7% of total number (81.5% of the value) were promoted by an industrial/banking/insurance group[63]. This evidence (in particular the larger than average size of these bids) is consistent with data presented in § 3.5 regarding the prevalence of the business combination purpose and therefore the essentially "industrial" nature of takeovers.

On the other hand, there was a more marginal role of purely financial operators (funds), which accounted for 17% of offers (about 10%, in number and value, of offers on shares), without significant trends during the period.

Entrepreneurs and financial companies (among whose categories the distinction is often thin) promoted, respectively, 10.5% and 17.4% of the bids. These are mainly bids of limited size (as indicated by the percentage of insignificant values), typically consisting of "delisting" bids, i.e. promoted by the controlling shareholder in order to revoke the securities from the regulated market.

By crossing the data of nationality and type of bidder, only with regard to the bids on shares (Tab. 2.5), it is confirmed that these bids are mainly promoted by industrial groups (in the broad sense, i.e. belonging to the sector – banking, insurance, non-financial – of the target issuer) with Italian, European or non-European nationality (other than the USA and the UK). This applies, in particular, to larger transactions.

62 Without prejudice to the requirement of the prevalence of the substance over the form already described with reference to nationality (see note 59), and the related warning on the discretion of taxonomic choices made in this paper, the analysis of the type of bidder provides for the following classifications.

"Fund" essentially refers to alternative (close-end) funds generally attributable to the categories of private equity and/or hedge funds.

The class of **"Entrepreneurs"** should not be understood in the legal sense of the term, but it refers to natural persons holding - usually through a chain of foreign companies - significant/controlling shareholdings. These entrepreneurs are therefore usually the protagonists of offers aimed at delisting the subsidiary. This category does not indicate and therefore does not include the ultimate beneficial owner of the bidder. A reference to said ultimate beneficial owner, in fact, would have led to the attribution of almost all bidders to this category of "entrepreneurs", since a natural person is almost always identifiable at the top of very long corporate chains.

The category of "**Financial firms"** includes companies providing financial services other than banking and insurance products (banks and insurance being included in the category "groups"). Simplifying, they are represented by financial holding companies. On the other hand, financial companies – usually domiciled abroad – on top of bidder's shareholding chain is structured do not belong to this category.

The category "**State"** includes both central and peripheral administrations, as well as sovereign wealth funds.

The class of "**Industrial/banking/insurance groups"** is treated as an undifferentiated *unicuum*, considering too dispersive providing further distinctions.

63 Data not present in Table 2.4 but can be inferred from a "horizontal" reading of the data represented therein.

Tab. 2.4 – Type of Bidder

	fund	group (industrial/banking/insurance)	entrepreneur	financial firms	state
by type of instrument (no. of bids)					
other		2.7%	-	2.7%	
non-voting share		0.9%	0.9%	0.9%	
ordinary share	9.6%	42.5%	9.6%	12.8%	0.5%
bond	0.5%	5.0%		0.9%	0.9%
Fund unit	7.3%	2.3%			
total	*17.4%*	*53.4%*	*10.5%*	*17.4%*	*1.4%*
by type of instrument (value)					
other	-	1.3%		0.3%	
non-voting share	-	0.4%			
ordinary share	8.6%	70.4%	2.8%	1.5%	3.1%
bond		3.7%		0.1%	6.0%
Fund unit	0.5%	1.4%			
total	*9.1%*	*77.0%*	*2.8%*	*1.9%*	*9.1%*

Note: 12 (out of a total of 231) bids with multiple bidders belonging to different categories were excluded. The total value of the excluded bids is 758 million, approximately 1.5% of the total.

Tab. 2.5 – Type and nationality of the Bidder
(bids on shares)

Bidder nationality	fund	group (industrial/banking/insurance)	entrepreneur	financial company	state
no. of bids					
Italian	4.3%	36.6%	12.4%	13.0%	0.6%
non-EU country (not USA)		6.2%		2.5%	
EU country (not UK)	1.9%	8.7%		1.9%	
UK	3.1%	2.5%			
USA	1.9%	3.7%	0.6%		
total	*11.2%*	*57.8%*	*13.0%*	*17.4%*	*0.6%*
value of bids					
Italian	5.5%	34.3%	3.2%	1.4%	3.7%
non-EU country (not USA)		20.4%		0.2%	
EU country (not UK)	0.3%	25.3%		0.1%	
UK	2.2%	0.7%			
USA	0.9%	1.7%	-		
total	*8.9%*	*82.4%*	*3.3%*	*1.8%*	*3.7%*

Note: 13 (out of a total of 174) bids with multiple bidders belonging to different categories were excluded. The total value of the excluded bids is 1,001 million, approximately 2.3% of the total.

By analysing only the takeovers bids, i.e. the offers on shares concerning the hostile or friendly acquisition of corporate control[64], about half of them (46%) was promoted by foreign investors (Table 2.6).

Tab. 2.6 – Nationality of the Bidder in takeovers

	Italian	Extra-EU country (no USA)	EU country (not UK)	UK	USA	other (multiple)	*total*
2007	6	1	1	1		0	*9*
2008	1		1		1	1	*4*
2009	6					1	*7*
2010	1						*1*
2011	4		2	1	1		*8*
2012	1	1	2				*4*
2013	2	1	1				*4*
2014	1			1	4		*6*
2015	1	2	1				*4*
2016	4	3	3		1	2	*13*
2017	3		1	2		1	*7*
2018	7			2	1	-	*10*
2019	2		1		2	0	*5*
total	*39*	*8*	*13*	*7*	*10*	*5*	*82*

It may be interesting to study their evolution over time and check if they increase in the wake of sharp contractions in stock market prices.

Fig. 2.1 shows the incidence of takeovers alongside market performances.

During the two-year period 2007-2008, characterised by significant market downturns caused by the subprime crisis (September 2007) and subsequently the bankruptcy of Lehman Brothers (September 2008), this is in line with the average value (red dotted line, equal to 46%). The relevance of foreign takeovers, then, assumes null values in the following two years despite the sharp depression in which the market remained. In 2011, during the sovereign debt crisis, the incidence records a value close to the average, rising again in 2012 (75%, despite the related limited number of offers).

The peaks reached in 2014 and 2015 (83% and 75% respectively) occurred in a phase of positive market trends, while the significant fall in prices in 2018 is associated again with a low incidence (30%).

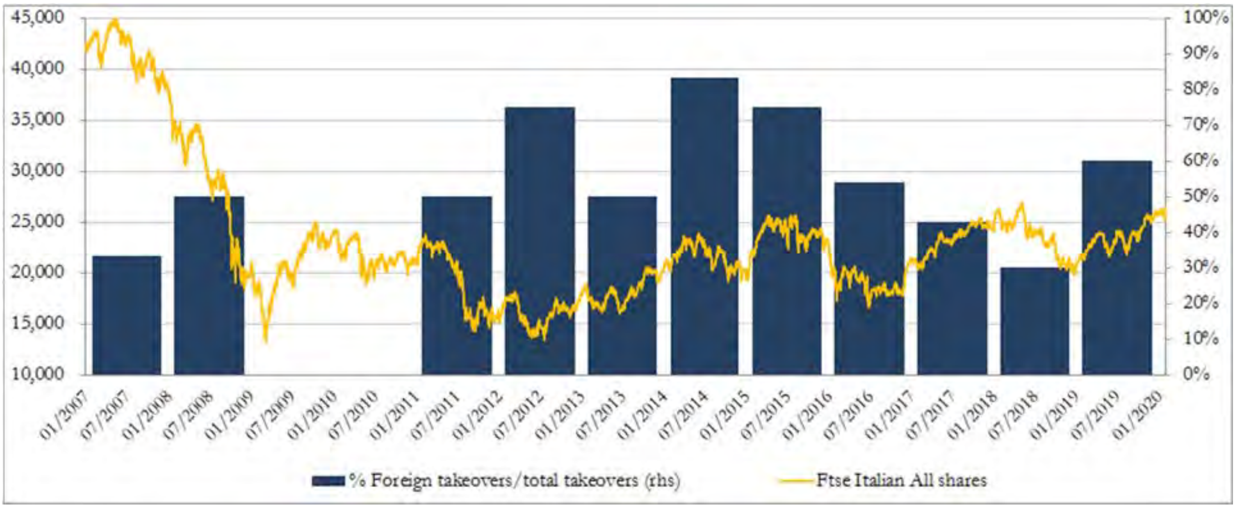
From this first, maybe simplistic analysis, a stable link between price contraction and increase in foreign takeovers on Italian companies might be excluded. If we look at the two periods of deepest and most lasting price decline (2007-2008 and

64 See note no. 37

2011-2012), this relationship is certainly to be ruled out in the first case, whereas it could be partially present in the second. A possible explanation could lie in the different nature of the two crises. The first, in fact, had a global dimension and therefore symmetrical impacts on both sides: in a situation of generalized market illiquidity and consequent financing difficulties, as well as of wide recession, it becomes difficult for a foreign operator –in turn struggling with the effects of the crisis - undertaking a transnational M&A, despite the potential bargain price of the target company.

More convenient, on the other hand, could be a transnational takeover in case of an "asymmetrical" crisis, i.e. a negative event impacting a single o few countries, such as that of sovereign debt in 2011. In that case a solid and liquid international investor could identify significant M&A targets in those countries selectively affected by exceptional contractions in share prices.

Fig. 2.2 – Incidence of foreign takeovers and stock market performance



3.3 Advisors and consultants

The level of concentration of legal advice provided to the bidder appears to be quite high (Table 3.1): with reference to the number of offers, the first 5 (out of a total of 52) advisors were engaged in almost half (44.3%) of the transactions. Four of the first five consultants are Italian.

By dividing the time series into two sub-periods, no significant trend clearly emerges with regard to the degree of concentration (and number of entities involved). However, a change can be observed in the composition of the largest 5 operators, reflecting significant market dynamism and competitive pressure at least in the long term. This is, for example, demonstrated by the fact that the low firm at the top of the 2007-2012 ranking is no longer present in the top five of the following period, just like the leader of the 2013-2019 period was only the fifth (on equal merit) in the previous 7 years.

With reference to the financial advisor of the bidder, there was a lower concentration of the market over the entire period, with the top five consultants (4 Italian and 1 foreign investment banks) accounting for 35.3% of deals. Over time there was a slight reduction in the degree of concentration, from 37.1% to 33.3% in the two sub-periods. There were no particular changes in the group of the five largest consultants.

When required, pursuant to art. 39 of the IR, to assess the structure of bid and the adequacy of the consideration, the Board of Directors of the issuer tends (in 65% of the 231 total bids[65]) to use the financial advice of an "independent expert". This area of advice shows a clear upward trend in the level of concentration. In the first sub-period, in fact, a number of advisors equal to 37 were hired, where the main 5 served 43.5% of the offers. Over the next 7 years, the dramatic decrease in the number of advisors (25) was accompanied by a consistent increase in the degree of concentration, with the top 5 operators engaged in more than half of the transactions (50.8%). From the point of view of the qualitative analysis of consultants, it must be outlined that two of the first five advisors are primary-standing audit firms; in total, more than a third of the mandates are a prerogative of legal auditors or accountancy firms.

The advisory mandates entrusted by the independent directors of the issuer pursuant to art. 39-bis[66] were 67, of which 10 in the first sub-period and 57 in the second sub-period. The data are not available in 145 cases[67], while in 19 cases the assessment of the offer and the opinion on the adequacy of the consideration were expressed directly by the independent directors without the help of any expert[68]. Given the scarcity of data, it is not worth searching for significant trends. The data collected, however, show a lower concentration of the provision of such services, with only 28.4% of mandates attributable to the top 5 consultants.

Finally, with regard to the role of Collection Manager (intermediary responsible for coordinating the collection of acceptances), there is a very high level of market concentration. The first five consultants accounted for 60.4% of transactions. The analysis also shows a significant increase in this concentration: in the 2007-2012 sub-period 33 operators were registered, where the largest 5 served 49.6% of the

65 In 46 cases, in fact, we recorded the unavailability of data due to i) coincidence between the issuer and the offeror (mainly equity buyback transactions), ii) absence of the issuer's communication (e.g. in the sell-out transactions), iii) offer promoted prior to the entry into force of the new version of art. 39 IR (5/4/2011). No appointment of an expert was recorded in 35 cases, usually leveraging on the assessments released by the (advisor of the) independent directors pursuant to art. 39-bis IR.

66 The article, entitled "*Opinion of the independent directors*", in paragraph 2 provides that "Before approving the issuer's announcement, independent directors who are not related parties of the bidder, where present, draw up a reasoned opinion containing the assessments on the bid and on the adequacy of the consideration, being able to rely, at the expense of the issuer, on the help of an independent expert identified by them".

67 The greater unavailability of data with respect to the advisor of the Board of Directors is due to the fact that, even before the introduction of the new regulations, art. 39 IR already required the issuer to release a comment and it usually (in 67 out of 97 cases) benefitted from a piece of advice. On the contrary, the provision of art. 39-bis concerning the evaluation (possibly with the help of an independent expert) by the independent directors was completely unknown before the regulatory amendment of 2011.

68 Two offers recorded the simultaneous absence of experts from the Board of Directors in its entirety and the independent directors.

offers; in the following 7 years the number of consultants more than halved (14 advisors), and consequently the market share attributable to the largest five (72.4%) increased considerably.

Tab. 3.1 – Advisor concentration

	legal advisor Bidder (1)	financial advisor Bidder (2)	financial advisor Issuer BoD (3)	financial advisor Independent directors (4)	collection manager (5)
2007-2019					
no. of advisors	52	60	52	42	40
market share top 5 advisors	*44.3%*	*35.3%*	*42.5%*	*28.4%*	*60.4%*
2007-2012					
no. of advisors	33	38	37		33
market share top 5 advisors	*46.3%*	*37.1%*	*43.5%*		*49.6%*
2013-2019					
no. of advisors	32	35	25		14
market share top 5 advisors	*46.4%*	*33.3%*	*50.8%*		*72.4%*

The role of the Global Information Agents (hereinafter "GIA"), intermediaries supporting the bidder - typically in offers on shares - in communicating the contents and purposes of the offer, deserves a deeper comment.

The market is, in summary, equally divided between two operators. During the period considered, in almost half of the bids (46%) there was a GIA among the bidder's consultants. Particularly interesting is the strong growth trend recorded over the years (Fig. 3.1). This trend appears much clearer if the phenomenon is analysed on a sample of offers on stocks, that is, on those in which the aim of maximizing the acceptance rate[69] - also through the work of GIA – is certainly identifiable. With reference to the latter, in fact, the presence of GIA, starting from values around 30% (2007-2009) reaches the totality of cases in 3 of the last 4 years (Tab. 3.2).

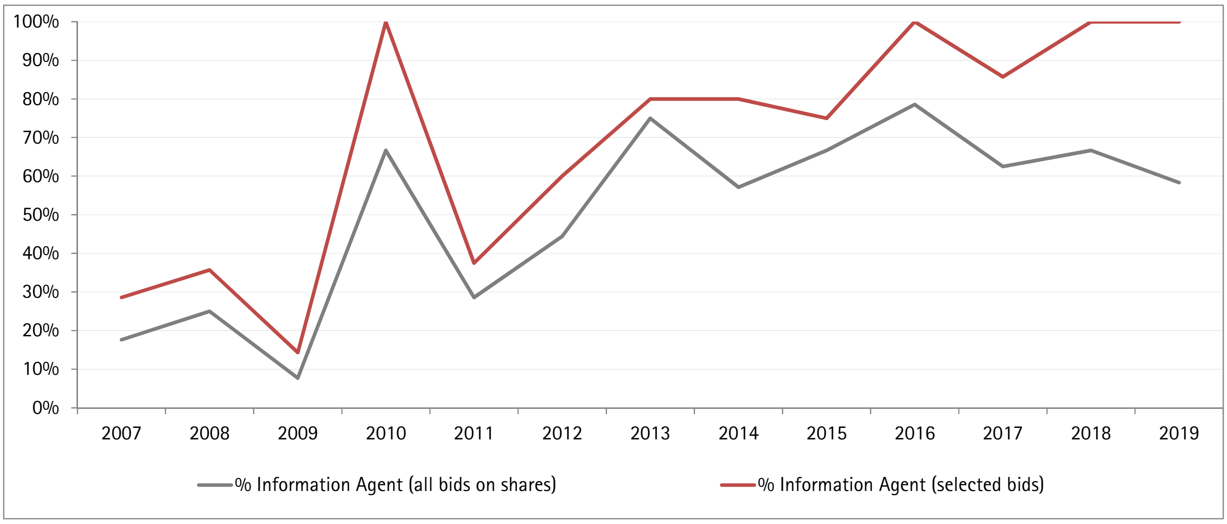
69 Not all bids share this goal. In a mandatory bid, which is not also aimed at delisting the share, for example, the bidder should in theory prefer the minimum acceptance in order to limit the financial commitment. It is therefore almost certain that, in such a bid, a GIA will not be entered into. Similarly, there is no point in asking for acceptance and engaging a GIA in sell-outs. In addition, i) partial bids, in which the opposite problem of acceptance in excess of the bid quantity usually arises, and ii) bids with a negligible value, on which the (fixed) cost of consultancy would have a greater impact, are excluded from the sample of share bids considered. The bids selected in the second statistic, therefore, include only full bids, on listed shares (MTA, MIV, AIM), with a maximum value exceeding 10 million, voluntary (excluding buybacks) or mandatory but with scheduled delisting. Stand-alone sell-outs transactions are excluded.

Tab. 3.2 – Bids with Information Agent

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	*total*
no. of bids on shares	17	20	13	6	14	9	8	7	6	14	16	15	12	*157*
of which, with information agent	*3*	*5*	*1*	*4*	*4*	*4*	*6*	*4*	*4*	*11*	*10*	10	*7*	*73*
% Information agent (bids on shares)	18%	25%	8%	67%	29%	44%	75%	57%	67%	79%	63%	67%	58%	*46%*
no. of selected bids [1]	7	14	7	4	8	5	5	5	4	7	7	8	5	*86*
of which, with Information agent	*2*	*5*	*1*	*4*	*3*	*3*	*4*	*4*	*3*	*7*	*6*	*8*	*5*	55
% information agent (selected bids)	29%	36%	14%	100%	38%	60%	80%	80%	75%	100%	86%	100%	100%	*64%*

[1] Full bids, on listed shares (MTA, MIV, AIM), with a maximum value exceeding 10 million, voluntary (excluding buybacks) or mandatory with scheduled delisting (no sell-out right)

Fig. 3.1 - Growth of bids with the Information agent



The task of the GIA is, in few words, to organize a call center in order to reach the investors addressed by the offer. This direct communication is carried out through inbound (freephone number) and/or outbound (more rare, given the difficulty to find identity and contacts of the investors) interactions. The responses of the operators engaged in the call center are based on a report of a few pages (ca. 15) arranged by the GIA summarizing the "essential" information contained in the tender offer document.

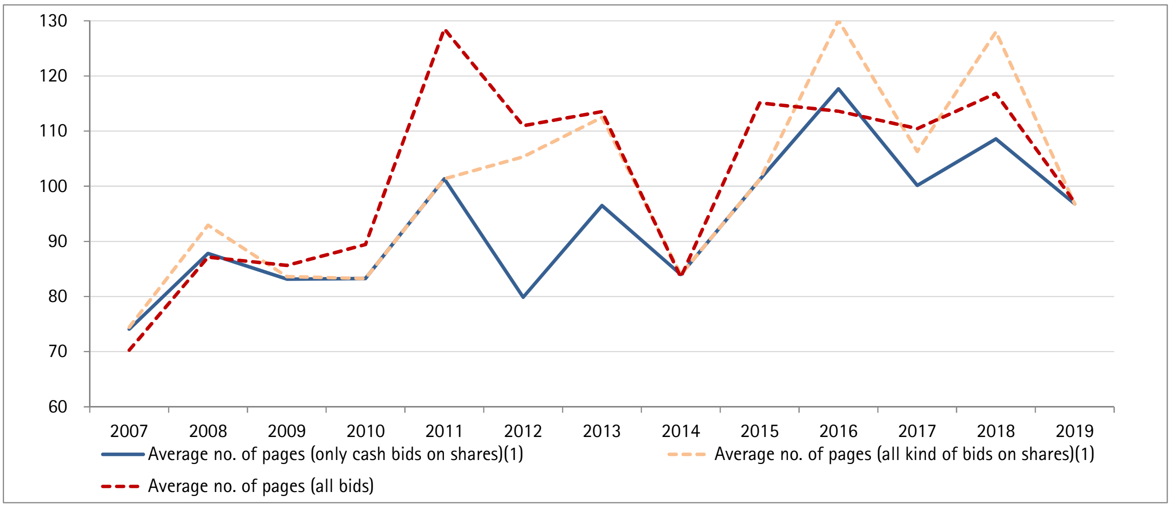
The issue of the increasing use of services of the GIAs poses two elements of interest and criticality at policy levels.

Firstly, it must be noted that the activity of the GIAs, and the contents of their interactions with investors, are not addressed by any specific regulation neither subject to the direct Consob's supervision, unlike the offer document issued by the bidder.

Secondly, the need for telephone interaction based on a summary of the bid document seems to denounce the inadequacy of the disclosure safeguards put in place by current regulation, and in particular by the document itself. In this sense, one cannot but assume a link between the increasingly frequency of GIA's engagement and the growing complexity (measured by the length) of the approved documents. Fig. 3.2 shows a clearly constant growth in the length of the bid documents. By focusing on offers with cash consideration on listed shares (or shares traded on AIM), which represent the majority of the bids - the average length rose from 70 pages in 2007 to 98 in 2019 (peaking at 118 in 2016).

If we consider 2011 as the breaking point - the year in which the level two regulation governing the content of the bid document entered into force – growth is even more evident: the average number of pages is 82.1 in 2007-2010; 98.5 in the period 2011-2019. Including mixed bids and exchange bids in the analysis, the trend remains similar (83.6 on average in the first sub-period versus 107.3 in the second) but at an higher level given the greater information spectrum covered by the documents (more detailed description of the bidder and above all information on the instrument offered in exchange).

Fig. 3.2 – Length of documents



Methodological note: (1) bids - excluding sell-outs - on shares traded on MTA, MIV, AIM

* * *

The financial advice provided to the Board of Directors of the issuer and/or its independent members in the end is summarised in a fairness opinion about the consideration of the bid.

This opinion tends to be largely positive: with regard to all bids, judgements of non-suitability represent only 15.5% of cases; with reference only to bids on shares, 10.5% (5% in the last 7 years).

However, a percentage three times larger (28%) is found with reference to a subset of bids whose logic appears to be opposite to the traditional one, in the sense of a clear disregard of the bidder for high levels of acceptance. These are the (25) mandatory bids without security delisting programme.

Conversely, the opinion remains broadly positive (82% of cases) also with reference to the 24 bids characterised by negative premiums (so-called "discount bids") for which, in theory, more doubtful judgements could be expected about the adequacy of the price offered.

In only one case emerged a dissenting opinion between the independent directors' and Board's assessment.

3.4 Delisting

More than half of the bids on shares promoted during the period under scrutiny envisages the delisting of the target company among the bidder's future programmes (109 bids out of 174, or 60.6%). These "scheduled delisting bids" are divided equally between mandatory and voluntary bids (Tab.4.1).

The former includes, in addition to all the sell-outs (14), also 41 mandatory takeover bids (equal to 61.2% of the total of the category) in which delisting takes on an ancillary function compared to a primary takeover purpose.

The 54 voluntary bids (equal to 80.6% of the total category) are mainly represented by offers made by the controlling shareholder, with the specific aim of achieving the securities' delisting.

The relevance of delisting as a direct or ancillary objective of bids emerges even more clearly if we take into account a smaller sample excluding those offers to which delisting by definition cannot be applied (i.e. partial bids and bids on securities not listed on the MTA, on MIV or on AIM). With regard to this sample, bids with scheduled delisting (148 transactions) represent 73.6% of the total.

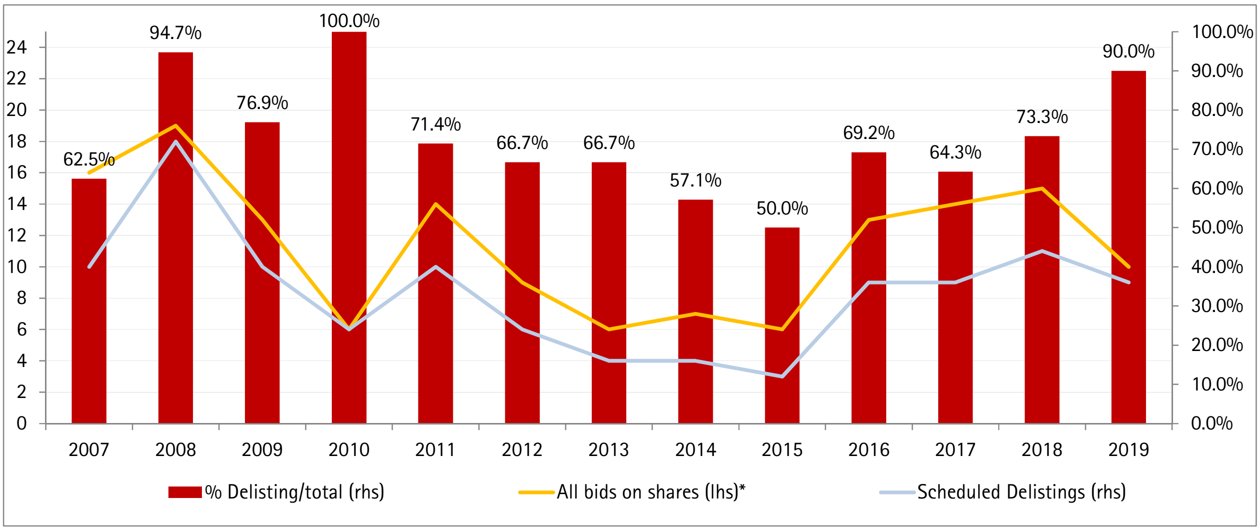
Tab. 4.1 – Bids with scheduled delisting

	bids on shares [A]	bids on shares (*) [B]	bids with scheduled delisting				% [C/A]	% [C/B]
			mandatory	sell-outs	*voluntary*	*total [C]*		
2007	19	16	*4*	*3*	*3*	*10*	*52.6%*	*62.5%*
2008	21	19	*2*	*2*	*14*	*18*	*85.7%*	*94.7%*
2009	15	13	*3*		*7*	*10*	*66.7%*	*76.9%*
2010	6	6	*1*	*2*	*3*	*6*	*100.0%*	*100.0%*
2011	22	14	*3*	*2*	*5*	*10*	*45.5%*	*71.4%*
2012	10	9	*1*		*5*	*6*	*60.0%*	*66.7%*
2013	8	6	*3*		*1*	*4*	*50.0%*	*66.7%*
2014	7	7	*2*		*2*	*4*	*57.1%*	*57.1%*
2015	6	6	*2*		*1*	*3*	*50.0%*	*50.0%*
2016	14	13	*8*		*1*	*9*	*64.3%*	*69.2%*
2017	16	14	*4*	*1*	*4*	*9*	*56.3%*	*64.3%*
2018	18	15	*5*	*2*	*4*	*11*	*61.1%*	*73.3%*
2019	12	10	*3*	*2*	*4*	*9*	*75.0%*	*90.0%*
total	*174*	*148*	*41*	*14*	*54*	*109*	*62.6%*	*73.6%*

* excluding partial bids and bids on shares not listed on MTA, MIV, AIM

Fig. 4.1 shows the evolution over time of the incidence of bids with scheduled delisting. A growth trend in the last 4 years seems evident, with the incidence going from 50% in 2015 to 90% in 2019.

Fig. 4.1 – Bids with scheduled delisting



* Excluding partial bids and bids on shares not listed on MTA, MIV, AIM

The incidence of delisting in 2019 (90%) is not exceptional in itself, having already reached similar or higher peaks in the past (2008; 2010). What is striking about this recent trend is the absence of a clear (negative) correlation with the performance of the secondary market.

Fig. 4.2, comparing the incidence of delisting and the performance of the Italian stock exchange (FTSE Italian All Shares Index), clarifies the point.

From 2007 to 2010 there was a strong increase in the weight of delisting (from 62.5% to 100%). This phenomenon seems to be explained by the dramatic collapse in stock prices due to the *subprime* crisis and the bankruptcy of Lehman. In fact, between the beginning of 2007 and March 2009, the market index suffered a record decline of about 70%. The recovery in 2009 was certainly not sufficient to close the gap: prices remained at around half the level reached in the 2007 heighs for the whole of 2010. In a phase of such rapid price decline and maintenance at historically low levels, the convenience of promoting a particularly significant number of "going private deals" easily stands out.

As mentioned, a similar increase in the incidence of *delisting* can be found in the last 4 years (from 50% to 90%), when market, however, followed a long-term positive trend (+27% from 1/1/2015 to 31/12/2019[70]). The explanation for this recent trend therefore seems to lie in a deeper "disaffection" towards the status of listed company, in a structural change of capital markets to be traced back to the broad and ongoing debate on the prevalence of private markets over public markets[71].

This trend seems to be confirmed by the first data relating to 2020: in the first half of the year 6 offers on shares were promoted, 5 of which (83.3%) with scheduled delisting.

70 Even the 2015-2019 period was characterised by huge downward movements, but they were always followed by strong recoveries.

71 Briefly reviewing the various studies conducted by the international literature on the phenomenon of going private, the main motivations driving towards the execution of these operations can be summarized in the following hypotheses: (i) refocusing the interests, objectives and behaviours adopted by the main actors of the organization, facilitating the creation of value- so-called incentive realignment (Renneboog and Simons, 2005); (ii) mitigation of the phenomenon of free riding (Renneboogand al., 2007; Geranio and Zanotti, 2010); (iii) significant reductions in transaction costs (Renneboog et al.,2007 op. cit.; DeAngelo et al., 1984); (iv) not negligible element in the decision to leave the Stock Exchange, are attributable to the commissions to be paid to the market organizer and the indirect costs relating both to the production of the information and to the regulatory compliance required by the legislation (DeAngelo et al., 1984 op. cit.); (v) going private can also be considered an anti-takeover tool (Lowenstein, 1985); (vi) another motivation concerns the undervaluation of the security, especially following the outbreak of the economic/financial crisis of 2007 (this phenomenon, more frequently concerns companies with low capitalization and small size, which do not have a high attractiveness for the market – see Bharat and Dittmar, 2010); (vii) promotion of a restructuring and rehabilitation of the company without having to fear the limitations that the status of listed company entails; (viii) an increase in tax benefits due to the increase in leverage (precisely, the authors – Renneboog et al.,2007, op. cit.; Mehran and Peristiani, 2010- agree on the impossibility of attributing a decisive importance to the tax issue in the decision of going private, although it remains an important factor). For an overview of the phenomenon of disaffection to the listing of companies on the US market, see Chemmanur, He, Ren X. Shu, 2020.

Fig. 4.2 – Incidence of delisting and market performances

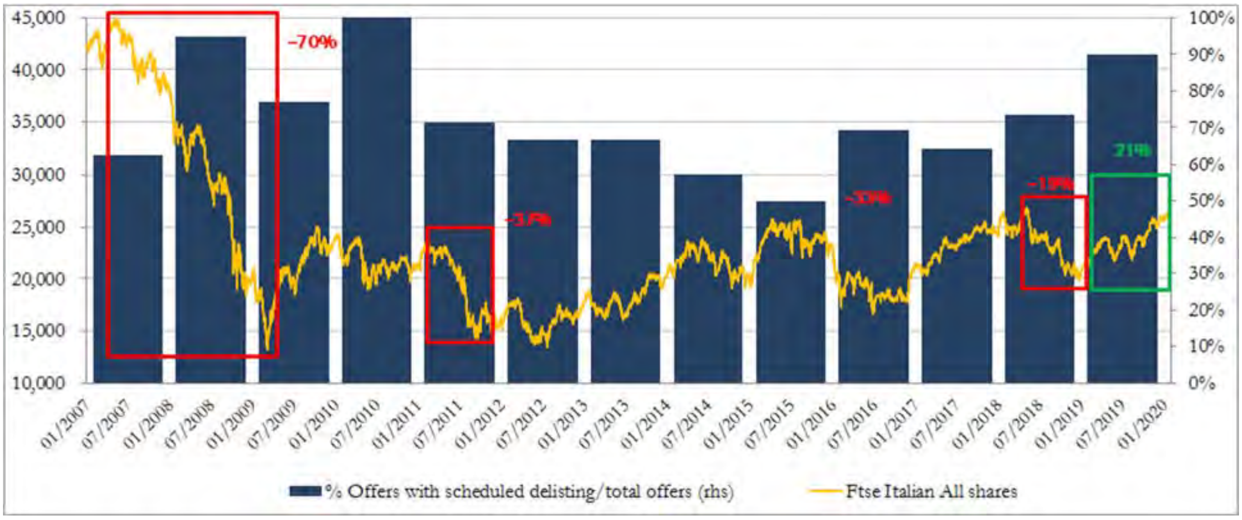


Table 4.2 shows what happens to companies addressed by offers with scheduled delisting. In the vast majority of cases (82, equal to 75% of the total) delisting is carried out through the bid. In 21 of the 27 remaining cases, the company's listing is in any case revoked in the following months. The delisting takes place mainly through a reverse merger into an unlisted company (7 cases), through the promotion of a (second) bid (5 cases) or through sell-outs triggered by the passing of the threshold of 90% of share capital. In all previous cases, the delisting is finalised on average within the year, with the exception of the cases in which it is carried out through a merger with an unlisted company[72].

Failure of delisting plan and is a completely residual event (6 cases, less than 6% of bids with scheduled delisting).

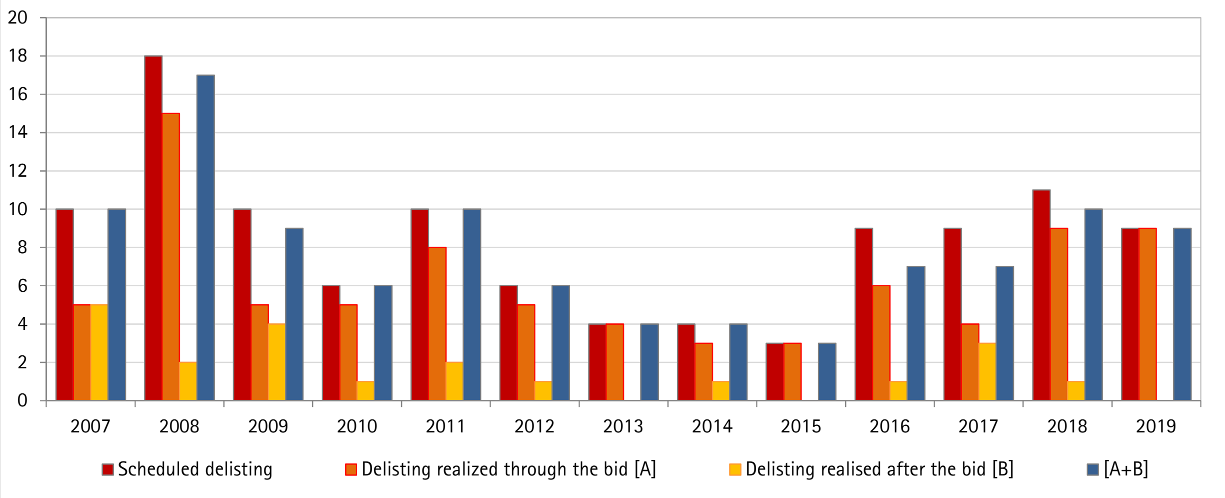
Tab. 4.2 – Scheduled and unrealised delisting

delistings			
scheduled delistings	109		*post bid days (median)*
of which: scheduled delistings – realized through the bid	*82*		
of which: scheduled delistings – realised after the bid	*21*		
for bankruptcy		1	238
for stock exchange revocation		2	291
through bid		5	245
through sell-out		5	252
by listed merger		1	234
by unlisted merger		7	640
of which: scheduled but unrealised delistings	*6*		

72 The data for this group show, however, high variability: in two cases delisting occurs after about 3 and 7 years; in the other 5 after about one year (average).

Fig. 4.3 illustrates this phenomenon. Considering also the delistings made in the months following the first bid, the delisting actually realised tends to coincide with the scheduled ones. In other words, the going private choice is a decision of such a strategic scope to be therefore usually carefully planned and implemented, and consequently hardly bound to fail at least in the medium term. Any "stop" in the (first) bid, often due to the effective reaction by market participants, are by definition only temporary: a "scheduled delisting", in the end, is destined to become a "realised delisting".

Fig. 4.3 – Scheduled vs. realised delistings



The total value of the 93 companies subject to delisting through a bid or following a bid[73] [74]was 85.5 billion euro[75].

Fig. 4.4 shows how this value has grown in recent years. In the period 2007-2013, against 56 delisting, the total capitalisation value of the target companies was approximately 26 billion euro, for an average value of 464 million euro. In the following 6 years, while there were significantly fewer delisting operations (37), the total capitalisation value of the target companies was approximately 59 billion euro, an average value that rose fourfold to 1,608 million euro.

73 The figure can also be derived from those of the bids (Tab. 4.2), adding the delisting realised through takeover bids (82) to the delisting carried out after a takeover bid (21), subtracting from the latter the 10 delistings (ex post) obtained through a bid or right to sell-out. This last operation is necessary to avoid a double counting of issuers.

74 This figure, and its distribution over time, represents only a good approximation of the real delisting of stocks from MTA. As regards the number, in fact, the analysis does not take into account the cancellations of securities not subject to the takeover bid: although the tender offer is the most frequent way to achieve delisting, the same objective can in fact be obtained through other transactions (e.g. merger with an unlisted company). In addition, distressed firms losing the listing requirements imposed by Borsa Italina Spa, undergo the consequent withdrawal.

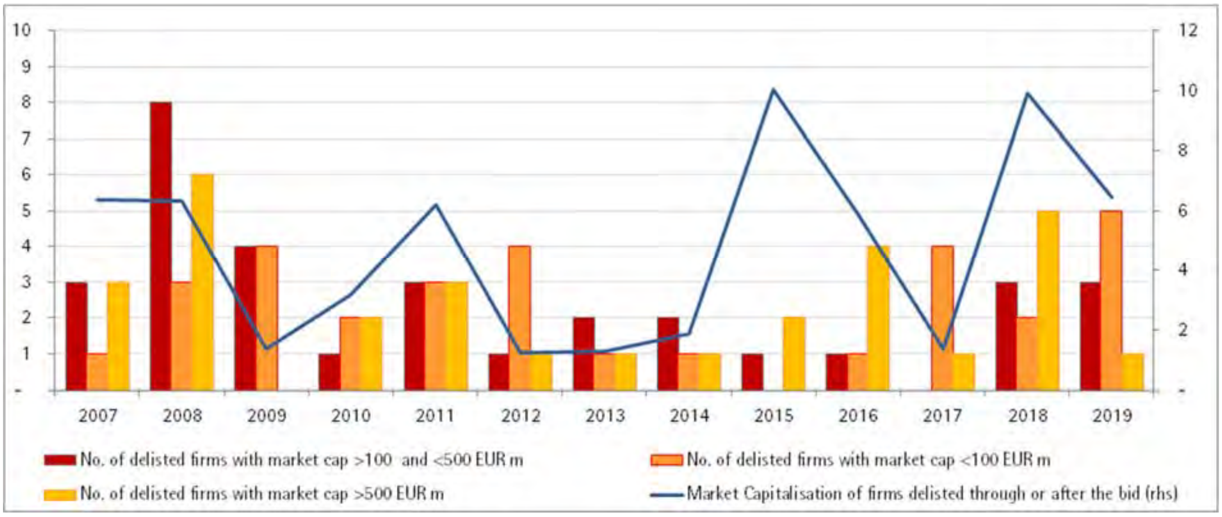
As regards timing, it should be noted that in Fig. 4.4 reference is made to the year of promotion of the bid, not of the revocation of the security.

75 Calculated on the basis of the bid consideration.

It should be noted that the figure is certainly influenced by a delisting of extraordinary size (Luxottica, with a capitalization equal to approx. 24 billion euro) that occurred in 2018. However, even without this transaction, the average delisting value of the last 6 years remains approximately twice (960 million) the previous one.

In summary, the trend seems clear: in recent years delistings, although decreasing in absolute numbers (probably following the contraction of companies listed on the MTA)[76] rise in proportion to the total bids promoted (see Fig. 4.1) and increasingly concern large companies. In 2018 alone, in addition to Luxottica, there were three other offers on companies exceeding €1 billion of market capitalization (Ansaldo STS, Ei Towers, Yoox Net A-Porter Group, and, in early 2019, Parmalat).

Fig. 4.4 – Delistings and firms' size



Moreover, the list of the ten largest delisted companies (Tab. 4.3) seems to confirm this trend, with 7 out of 10 cases occurring in the last 6 years.

76 Companies listed on the MTA in 2007 were 263, compared to 239 in 2019 (-9%). The time series saw a maximum value of 280 issuers in 2009, after which decreased steadily in the following years.

Tab. 4.3 – Ten major delistings

issuer (name)	year	"substantial Bidder"	target capitalization *	"substantial Bidder" nationality	"substantial Bidder" type
Luxottica	2018	EssilorLuxottica	24,573,001,121	Italian	Group (industrial/banking/insurance)
Pirelli & C.	2015	ChemChina	7,136,102,730	non-EU country (Not USA)	Group (industrial/banking/insurance)
Parmalat	2019	Gruppo Lactalis	5,287,176,579	EU country (Not UK)	Group (industrial/banking/insurance)
Bulgari	2011	Lvmh Moët Hennessy - Louis Vuitton sa	4,121,197,308	EU country (Not UK)	Group (industrial/banking/insurance)
Fastweb	2007	Swisscom	3,736,880,465	non-EU country (Not USA)	Group (industrial/banking/insurance)
Italcementi	2016	HeidelbergCement AG	3,702,269,208	EU country (Not UK)	Group (industrial/banking/insurance)
Yoox Net A-Porter Group	2018	Richemont – (Compagnie Financière Richemont)	3,497,370,014	EU country (Not UK)	Group (industrial/banking/insurance)
World Duty Free	2015	Dufry AG	2,608,830,000	EU country (Not UK)	Group (industrial/banking/insurance)
Valentino Fashion Group	2007	Permira	2,593,720,570	UK	Fund
Ansaldo STS	2018	Hitachi Rail Italy Invest-ments	2,540,000,000	non-EU country (Not USA)	Group (industrial/banking/insurance)
Ei Towers	2018	F2i	1,610,955,489	Italian	Fund

* Calculated at the bid consideration

A comparison between delisting through (or following) a bid and admissions to trading allows understanding the dynamics of the stock market . Although a rough evidence, it gives us a picture of the financial flows entering and leaving the market[77].

The number and size of the delisting operations are such as to reduce or even cancel the contribution of recent IPOs (and admissions to trading from AIM) to the development of the (regulated) domestic market.

Despite the significant number of new listings for the Italian standards (48), in the last 6 years the increase in companies listed on MTA net of delisting has been only 17 units. Total market capitalisation, calculated net of price fluctuations, decreased by around 15 billion euro.

For the sake of completeness, it must be recalled that the largest delisting from the Italian stock exchange (Luxottica) resulted in a subsequent listing on another European regulated market.

77 In fact, admissions to trading without IPO (for example deriving from the demerger of a listed company) or revocations not preceded by an offer are not considered (see note 74). Considering these events as well, the balances would certainly be less positive.

Tab. 4.4 – IPO and takeover bid

	increase in MTA capitalisation for new listings	decrease in MTA capitalisation for takeover bid	net change in MTA capitalisa-tion	decrease in MTA companies for takeover bid	increase in MTA companies for new listings	net change in MTA company
2014	6,882	(1,859)	5,023	6	(4)	2
2015	13,723	(10,043)	3,680	9	(3)	6
2016	3,011	(5,902)	(2,891)	3	(6)	(3)
2017	10,434	(1,266)	9,168	9	(4)	5
2018	3,184	(33,808)	(30,624)	12	(9)	3
2019	7,069	(6,072)	997	9	(5)	4
total	*44,302*	*(58,949)*	*(14,646)*	*48*	*(31)*	*17*

One last trend worth noting concerns AIM.

In the last three years, the bids promoted on this MTF dedicated to SMEs have grown: from the first 2 takeover bids in 2017 we moved to 4 in 2019, for a total of 8 (on shares, plus one on convertible bonds). A phenomenon, therefore, of increasing relevance. In 7 out of 8 cases the bid is accompanied by a delisting programme, carried out in 6 cases (Table 4.5). The average capitalization of the target companies was significant, equal to approximately the double the average values of the AIM market of the year.

These data show that even the junior market is affected by the trend of going private recorded on the regulated market.

This trend somehow makes it necessary to reconsider the actual role played by AIM in opening up SMEs capital structures. Original design was to make it a place where small companies could acclimatized in the capital market before pointing at subsequent listing on the regulated market (MTA). In the period 2017-2019, however, it can be seen that, against 12 SMEs promotions from AIM to MTA, another 6, as mentioned, after the first phase of development have opted for a return to the private market. Contribution of AIM to capital market evolution, then, appears more blurred once delistings too are considered.

Tab. 4.5 – Delisting from AIM

	total bids	*of which: with scheduled delisting*	realized delistings (in takeover bid)	total "lost" capitalisation	average capitalization of delisted firms	average capitalisation on AIM market [1]
2017	2	*2*	1	92,808,267	92,808,267	50,081,877
2018	2	*1*	1	101,256,173	101,256,173	58,411,375
2019	4	*4*	4	338,708,430	84,677,108	58,726,071

[1] As of 31 December

3.5 Motivations for bids

3.5.1 A possible taxonomy

As a matter of course, the idea of a tender offer is associated with the concept of acquisition, more or less hostile, of a listed company. This is one of the possible purposes of a bid: certainly the most recognized and analysed among – in particular, Anglo-Saxon – scholars, but not the only and certainly not the most common one in countries, including Italy.

A tender offer is, more generally, an irrevocable bid by which a market operator aims to acquire a considerable amount of financial instruments in efficient manners (speed of execution and cost reduction). There can be multiple types of instrument subject to the offer (not just shares) and multiple purposes underlying this operation.

Below is a possible macro-classification of the motivations for a bid.

Acquisition of control with business combination

The bid is connected to an acquisition of corporate control (*takeover*), and then can be properly referred to as a *takeover* bid. It can be aimed/instrumental to such acquisition (*hostile takeover* carried out through voluntary bids) or it can follows (mandatory bids) the control transfer between parties (*friendly takeover*).

Another characteristic of this group of bids is the existence of a business combination project[78] between issuer and bidder in order to exploit possible synergies. The latter is therefore an "industrial" [79] and not merely a financial operator.

Given the above, the instruments subject of the bid are ordinary shares (in 4 cases preferred shares/warrants).

Acquisition of control without business combination (or "pure")

Although similar to the previous one, "pure" takeovers aim at acquiring control in order to merely improve management performances, without any, immediate, business combination project. The bidder is normally a financial operator (*private equity/hedge fund*[80]) pursuing corporate control of the target company in order to achieve an improvement of corporate governance, a redefinition of strategies, a change in top executives, etc.

78 To be understood in the broadest sense of the expression, thus including both real corporate operations, as well as mere sharing of commercial strategies and policies.

79 With a trend corresponding to the category "industrial/banking/insurance groups" illustrated in footnote 62.

80 See the category "funds" in footnote 62.

These first two classes of bids related to the acquisition of corporate control account, in number, for no more than 40% of the total (Table 5.1).

Delisting

This category (about a quarter of the total) is mainly represented by voluntary bids promoted by the controlling shareholder (on average holder of 74.5% of the capital) with the sole purpose of revoking listed securities[81] (with the delisting of the company) from the MTA/AIM (38 bids).

This category also includes 14 sell-outs too.

It is worth noting that this category of transactions (52 in total) does not correspond to that of the "bids with scheduled delisting" (no. 109 in total) illustrated in the previous paragraph §3.4. The latter, in fact, certainly include bids in this category, but also takeovers (with or without business combination) in which delisting play a secondary role compared to acquisition of corporate control.

Buyback

This category includes bids on financial instruments issued by the bidder (or parent/subsidiary companies). The main group (13 out of 18 cases) is represented by bids promoted by banks or other financial firms on bonds within liability management programmes[82]. Rare are the cases of stock buybacks.

Redefinition of control

This category includes mandatory bids, promoted pursuant to Article 106 of the Consolidated Law on Finance, which do not involve a real transfer of control but only a substantial change in the way such control is actually held. This variation can be both qualitative (change in the list of the controlling shareholders) or quantitative (strengthening of control: for example, when a shareholders' agreements is transformed into an holding company[83]).

They therefore cannot be classified as “acquisitions” of control (with or without business combination).

81 Bids aimed at or in any case connected with the withdrawal from a regulated market or an MTF of instruments other than ordinary shares are therefore not considered.

82 Since 2012, the amendments to the Issuers Regulation have excluded the application of the takeover framework to buybacks on debt instruments. See n. 53.

83 In such transactions, two or more syndicated shareholders (already able to exercise control of the listed company through an aggregate share above the takeover bid threshold) decide to confer their shareholdings in a newly established company, which would consequently become the new controlling shareholder on which the obligation of the mandatory bid would fall.

Financial Investment/other

The latter category includes bids launched for purely financial reasons (or not related to any of the above categories).

This group includes, for example, offers (22) on units of funds and bids on unlisted shares instrumental to deployment of extraordinary transactions, including capital management plans by smaller banks.

Finally, the category includes (6) offers on non-voting shares linked to parallel offers by delisting of ordinary shares of the same issuer.

Tab. 5.1 – Motivations for bids

	type of instrument						
motivation	ordinary share	non-voting shares	bond	Fund unit	other	*total*	*%*
acquisition of control with business combination	55				4	***59***	*25.5%*
acquisition of control without business combination	31					***31***	*13.4%*
delisting	52					***52***	*22.5%*
buyback	5		13			***18***	*7.8%*
redefinition of control	12					***12***	*5.2%*
financial Investment/other	19	6	3	22	9	***59***	*25.5%*
total	***174***	***6***	***16***	***22***	***13***	***231***	

3.5.2 Takeover in Italy

How many bids concerning corporate control have been actually promoted in Italy? And how many of them are unsolicited/hostile?

Firstly, not all the bids concern ordinary shares, which usually are the only instruments relevant in the dynamics related to corporate control.

Of the 231 bids promoted in 2007-2019, 22 relate to fund units, 16 to bonds, 6 to non-voting shares and 13 to other financial instruments.

Of the remaining 174 bids - those on ordinary shares - 25 concern issuers not listed on regulated markets[84], for which acquisition or transfer of corporate control follows rules substantially different from those set out in the Consolidated Law on Finance.

Of the 149 bids on listed securities, about half pursued goal other than corporate control: 52 delisting bids (of which 38 voluntary and 14 sell-outs), 5 buybacks, 12 "redefinition of control" mandatory bids, 5 bids for financial investment/other.

Only 75 bids then, about a third of the total number of bids promoted in Italy, are actually related to corporate control.

84 The regulated markets considered are MTA and MIV.

This empirical evidence necessarily leads to distinguish – at least in the Italian context - the notion of tender offer from takeover bid (see note no. 37).

Even more simplistic would be, moreover, considering the Italian tender offers as tools aimed at acquiring (in an unfriendly, or substantially hostile, manner) corporate control. Approximately two thirds (51 out of 75) of the bids related to corporate control are in fact full bids *following* the control acquisition (as supposed by the exceeding of the mandatory threshold). These transactions (mandatory bids pursuant to art. 106 Consolidated Law on Finance) can be defined *as friendly takeovers*, assuming an agreement for the purchase of a significant shareholding between the bidder (buyer) and the majority shareholder (seller)[85].

Also the remaining 24 bids are not all unsolicited and hostile: the majority of them (14/24), in fact, although not mandatory, are still characterised by some form of agreement between the bidder and the largest shareholder of the target company.

1. Four cases refer to full voluntary bids where the largest shareholder undertakes to tender her shareholding, that is above the takeover bid threshold). This type of bid, defined as "*Friendly takeover*/type 2", essentially replicates the economic effects of a sale of control (which would trigger the mandatory bid), leaving however the bidder the freedom to provide for conditions of effectiveness, precluded in a mandatory offer.

2. Further 4 cases refer to full voluntary bids where the largest shareholder undertakes to tender her shareholding, but it is below the takeover bid threshold. ("*Friendly takeover*/type 3").

3. In 2 cases the full voluntary bid is preceded by the a private deal through which the bidder purchases a relative majority shareholding, although below the takeover bid threshold. ("*Friendly takeover*/type 4")

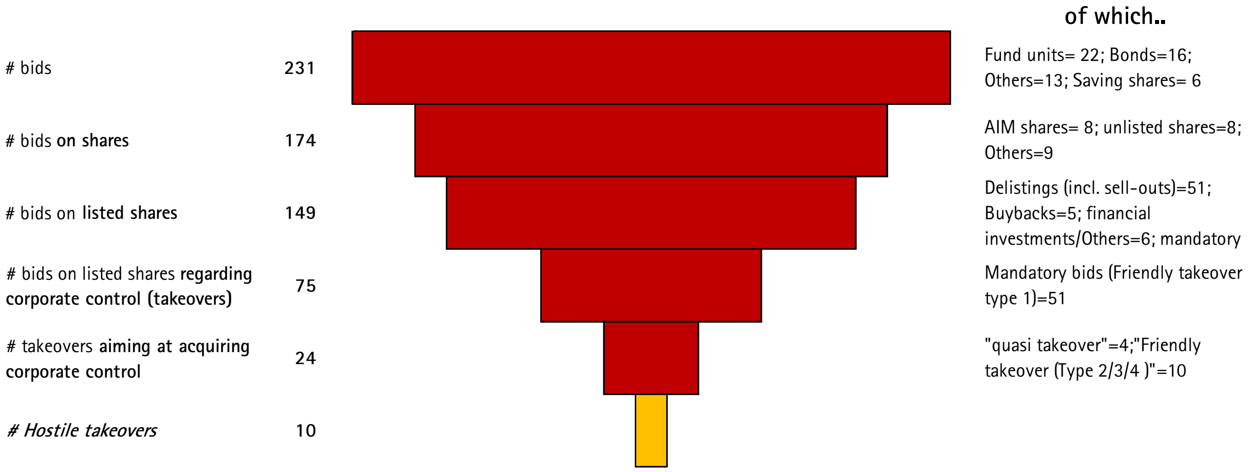
Finally, in 4 cases reference is made to bids promoted by a shareholder already de facto controlling the target company thanks to a shareholding still below the takeover bid threshold. In such transactions, the voluntary bid on the entire capital is certainly aimed at *strengthening* rather than *acquiring* control already held by the bidder, in an attempt to secure it into majority control (for this reason these bids are called "Quasi-takeover").

Only the remaining 10 bids, therefore, can be considered *hostile takeovers*, i.e. unsolicited voluntary bids aimed at acquiring control. They are promoted by an operator outside the ownership structure of the company or, anyway, by a shareholder in possession of a minority stake.

More in details, only 7 issuers are concerned, due to the existence of two competing offers (one with three bidders): on average, therefore, in the period covered by our research has been promoted one hostile takeovers every two years.

85 Note that only 51 of the 63 mandatory bids registered during the period fall into this category, as the 12 mandatory bids reclassified as "control redefinition" were excluded.

Fig. 5.1 – Hostile takeover in Italy



Emphasizing the (limited) frequency of takeovers is obviously only a partial and to some extent biased perspectives. Table 5.2 shows, in fact, that takeovers bids, although representing only 32.5% of the total number, weigh 64.6% in terms of value.

Moreover, one cannot but stress that a hostile takeover, although an objectively rare event, often assumes a socio-economic relevance making of it a deal of higher impact on the market compared to "common" tender offers.

Tab. 5.2 – Takeovers' relevance

		number	%	value (million euros)	%
offers not related to corporate control		**156**	*67.5%*	**17,660**	*35.4%*
offers related to corporate control (takeovers bid)		**75**	*32.5%*	**32,293**	*64.6%*
of which	*friendly takeover*	*51*		*21,546*	
	friendly takeover type 2	*4*		*1,809*	
	friendly takeover type 3	*4*		*3,542*	
	friendly takeover type 4	*2*		*901*	
	quasi takeover	*4*		*1,095*	
	hostile takeover	*10*		*3,401*	

3.6 Bid Premiums

Premiums (discounts, where negative) are normally calculated as a percentage difference between the consideration of the offer (or the monetary equivalent in exchange/mixed bids) and the market price of the target security. Market prices considered are those recorded in the day immediately before the announcement of the transaction[86] (hereinafter "1-day premium") and the weighted average of prices in the last 1, 3, 6, 12 months prior to the announcement (hereinafter "1/3/6-months premium" and "1-year premium").

Table 6.1 shows the average bid premiums by instrument type. Data are obviously not available for bids on unlisted instruments that do not record market prices. It follows that the evidence collected seems to have statistical significance only with reference to listed securities (135 complete sets of data)[87] and fund units (20).

One-day premiums are 12.6% on average for the offers on shares, compared to 14.5% of 1-year premiums. This "maturity structure" of premiums – essentially flat - seems consistent with a trend in securities prices that is not particularly directional (increasing or decreasing) in the 12 months preceding the announcement[88.]

Bids on funds show a different premium structure, with 1-year premiums (36.3%) much higher than 1-day ones (14.6%, substantially in line with equity premiums). This structure indicates bids promoted on securities characterised by strong market growth in the year before the announcement.

Nevertheless, these bids are characterised by a low average acceptance rate (32.9%, see § 3.7) and frequent failure of the offer (47% of ineffective offers[89] compared to 12% for all other instruments). Such an outcome seems consistent with a condition in which the consideration of the bid, although appreciably "premium", remained lower than NAV of the fund - by investors considered as an objective valuation – thus discouraging the acceptance.

The high premiums of the bids on non-voting shares - although the figure may be of limited statistical significance - seem to reflect, on the one hand, the significant undervaluation of the illiquid non-voting shares still on the market, and, on the other hand, the bidder's willingness to offer an attractive incentive in order to certainly reach their final delisting.

86 Reference is made to the date of first communication of the bid (see Annex 2 Issuers' Regulation, point e.4, second introductory part), i.e. at the time when the potential impact on of the target security can be observed. This date normally corresponds to the date of publication of the announcement pursuant to art. 102 Consolidated Law on Finance. In some cases, however, the date of first communication is earlier, and is identified by the publication of a special announcement pursuant to Reg. 596/2014 MAR: this is typically the case of bids whose promotion is subject to condition precedent (for example, antitrust authorizations).

87 The data are not always available, for the same bid, with reference to all time horizons.

88 This observation, in turn, assumes a more or less linear trend of the security over the 12 months.

89 The ineffectiveness of the bid is almost always attributable to the failure to achieve the minimum required acceptance rate.

Tab. 6.1 – Premium structure by instrument type

		premium/discount				
		1 day	1 month	3 months	6 months	1 year
ordinary shares	median	8.7%	12.1%	12.9%	14.3%	16.1%
	mean	12.6%	14.6%	15.0%	14.7%	14.5%
	data available	135	137	136	136	142
bonds	median	9.7%	9.8%	1.8%	0.9%	-0.8%
	mean	8.5%	7.1%	0.2%	-5.2%	-9.4%
	data available	4	4	4	4	4
Fund units	median	19.6%	20.0%	24.8%	25.6%	31.6%
	mean	14.6%	16.8%	19.9%	21.5%	36.3%
	data available	20	19	20	20	20
non-voting shares	median	14.0%	9.7%	11.6%	14.5%	26.8%
	mean	52.3%	29.3%	30.9%	32.7%	38.5%
	data available	5	5	5	5	6
others	median	-4.3%	-3.8%	-2.6%	-3.6%	16.0%
	mean	18.6%	-3.8%	-2.6%	-3.6%	16.0%
	data available	3	2	2	2	2

A more in-depth analysis is needed on the evidence relating to offer premiums on shares, both for their economic significance and the greater reliability of the data.

Tab. 6.2 presents results according to the taxonomy identified in par. § 3.5 based on the motivation of the offers.

The first four blocks, therefore, show the premiums of the takeover bids, distinguishing both between transactions promoted with or without business combination perspectives and between mandatory or voluntary operations.

A first conclusion is that bids aimed at creating *a* business combination have higher premiums than those without *a* business combination project: for voluntary bids, we recorded, on average, a 1-day premium of 27.3% compared to 18.8%; for mandatory ones a premium of 8.5% compared to 0.5%.

These differences are even sharper if the comparison is made on the other time frames (e.g. premiums over 12 months).

Secondly, it must be stressed that voluntary bids reward investors with significantly higher premiums than mandatory ones: on average, 27.3% versus 8.5% (bids with business combination) and even 18.8% versus 0.5% (bids without business combination).

Tab. 6.2/a – Analysis of premiums by motivation of the bid

premium/discount		1 day	1 month	3 months	6 months	1 year
acq. of control with *business combination* VOLUNTARY	median	16.0%	16.4%	18.8%	22.1%	26.9%
	mean	27.3%	25.1%	27.9%	31.6%	31.3%
	of which "discount bid"	*1*	*1*	*1*	*1*	
	data available	17	17	17	17	17
acq. of control without *business combination* VOLUNTARY	median	14.6%	16.2%	18.0%	19.3%	22.1%
	mean	18.8%	21.0%	22.4%	21.2%	16.6%
	of which "discount bid"					*1*
	data available	8	8	8	8	8
acq. of control with *business combination* MANDATORY	median	4.5%	3.6%	5.7%	12.5%	19.7%
	mean	8.5%	9.2%	7.5%	10.6%	15.0%
	of which "discount bid"	*9*	*9*	*10*	*9*	*6*
	data available	33	33	33	33	33
acq. of control without *business combination* MANDATORY	median	1.1%	1.6%	2.4%	5.7%	9.4%
	mean	0.5%	-	-0.1%	0.7%	0.9%
	of which "discount bid"	*9*	*8*	*8*	*9*	*9*
	data available	21	21	21	21	21

This evidence is explained by the presence, among the mandatory bids, of negative premiums (discounts), practically absent among those voluntary: 27% of mandatory bids with business combination is a “discount”, and the same for even 43% of those without business combination.

If we consider only the premiums in the strict sense (i.e results >0), the average values (19.6% for bids with business combination and 16.1% for bids without business combination) would be not only vey similar, but also closer to those of voluntary offers.

(Voluntary) bids aimed at delisting have an average 1-day premium of 14.8%, significantly higher than 1-year premium (8.1%). Consistently, there are only 2 “discount bids” on 1-day premiums, whereas they are 10 if we look at 1-year premiums.

This decreasing maturity structure of premiums reflects the sharp decline in target security prices over the 12 months preceding the bid. This result appears quite logical and consistent with the typical scheme of delisting where the controlling shareholders promote the bid i) in the market downturn phases, ii) in the presence of a deterioration in the company's economic-financial fundamentals, iii) in the face of a progressive loss of liquidity of the security.

Tab. 6.2/b – Analysis of premiums by motivation of the bid

premium/discount		1 day	1 month	3 months	6 months	1 year
delistings (NO sell-outs)	median	14.6%	19.5%	21.9%	17.9%	12.2%
	mean	14.8%	20.4%	18.9%	15.3%	8.1%
	of which "discount bid"	*2*	*1*	*2*	*7*	*10*
	data available	35	35	37	37	38
control redefinition	median	4.5%	5.7%	4.3%	8.0%	6.6%
	mean	-1.0%	1.4%	2.4%	5.1%	12.2%
	of which "discount bid"	*3*	*3*	*3*	*2*	*3*
	data available	10	11	11	11	11
buybacks	median	17.0%	21.4%	24.4%	23.9%	21.5%
	mean	23.0%	25.8%	28.9%	23.3%	21.7%
	of which "discount bid"					
	data available	4	4	4	4	4
financial investment/other	median	28.7%	31.9%	37.8%	30.3%	34.1%
	mean	29.2%	34.4%	39.1%	38.9%	46.3%
	of which "discount bid"					*1*
	data available	6	6	6	6	6
sell-outs	median	11.9%	2.9%	3.0%	3.7%	5.2%
	mean	14.7%	10.8%	9.6%	9.4%	6.8%
	of which "discount bid"					*2*
	data available	6	7	7	8	8

A very similar situation is found with reference to the sell-outs. Promoted by controlling shareholders voluntary exceeding the threshold of 90% of target's capital, despite their mandatory nature they appear, in fact, similar to voluntary bids aimed at delisting.

Share buybacks have an average 1-day premium above the total average (23%), consistently with their purpose to distribute value to shareholders and support stock prices.

Bids under the "redefinition of control" category deserve further study. The average 1-day premium is negative (-1%) and in almost a third of cases the offers are “discount bids”.

Such bids, which are formally mandatory, do not share with those the general rationale of the control premium distribution to minorities.

As illustrated in the definitions, this category concern bids resulting from operations of strengthening or modification, not of acquisition, of corporate control. It follows that, when exceeding the takeover bid threshold, if it is not possible benefiting from one of the regulatory exemptions, the bidder(s) arrange the deal in manners and times apt to achieve the dual objective of redefining the ownership structure according to her needs and to minimise the financial burden. To this end, offering a limited premium serves both the goals of reducing the cost per unit and limiting the acceptance rate[90], overall keeping low the' total amount due.

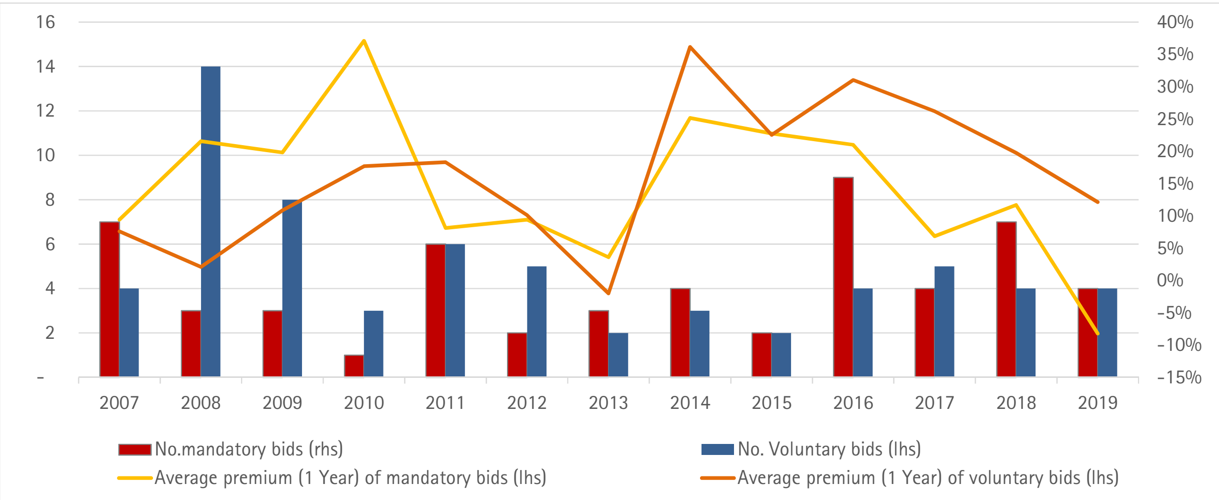
Investigating premiums' evolution over time is not easy due to the limited depth of the data once clustered over twelve years.

Fig. 6.1 presents an attempt in which, in order to guarantee a minimum level of statistical significance, bids (on shares) are divided into two macro-categories: i) mandatory takeovers and ii) voluntary bids aimed at both the acquisition of control or delisting[91].

If some peaks probably due to individual extraordinary cases (e.g. the premium of the mandatory bid in 2010) are excluded, we can outline two clear downward trends in the three-year period 2011-2013 and especially in the five-year period 2014-2019 (particularly evident in the case of mandatory bids).

Premiums for mandatory bids, moreover, turn out to be decreasing, particularly in relative terms, compared to those for voluntary bids: initially (2007-2010), in fact, the former are higher than the latter, whereas the ratio is clearly reversed in the last 6 years, with the premiums for mandatory bids evidently lower (and faster decreasing) than those for voluntary bids.

Fig. 6.1 - Evolution of share bid premiums



Notes: Mandatory Bids for acquisition of control (both with and without business combination); therefore, bids "by mere redefinition" and sell-outs are excluded. Voluntary bids: bids on shares, full bids, bids for acquisition of control (both with and without business combination) or aimed at delisting.

90 The acceptance rate of this category of bids is in fact among the lowest, equal to 45.7% (see Tab 7.2)

91 Sell-outs, bids for control redefinition, buybacks and bid for financial investment were therefore excluded due to excessive heterogeneity. Median values were used to limit the influence of extraordinary data.

If we look at all offers on shares, average premiums show three peaks respectively in 2010, 2012, 2016 (Fig. 6.2). The graph, in comparing the evolution of premiums to the performance of the secondary market, seems to suggest a possible inverse correlation between the two variables, with premiums tending to increase after strong stock market declines.

Fig. 6.2 – Stock offer premiums and market performance

A comparison between *cash* offers[92] and exchange/mixed offers premiums is certainly affected by the different sample sizes.

That said, it seems clear that mixed/exchange bids offer significantly higher premiums than *cash* premiums (33% vs. 10.3%). This evidence can be explained by the need to incentivise acceptance with a dimensionally larger premium in order to compensate shareholder for the inherently volatile nature of considerations in kind.

Tab. 6.3 – Evolution of premiums (median values) of offers on shares

		no.		premium/discount				
				1 day	1 month	3 months	6 months	1 year
ordinary shares*	takeover bids**	108	median	7.6%	11.4%	12.5%	13.6%	15.4%
			mean	10.3%	12.4%	13.1%	13.2%	13.3%
	mixed/exchange bids	13	median	24.4%	27.7%	28.5%	16.8%	25.7%
			mean	33%	32.8%	32.2%	28.9%	26.0%

*listed on MTA.**Sell-outs Excluded

* * *

92 Sell-outs are excluded from comparison as they can only be *cash*.

Regarding the structure of the consideration, offers with cash bids show an increasing – albeit still limited – use of "non-standard" solutions, and specifically considerations including variable components (*earn out*), , or price alternatives. Out of 8 cases recorded (4.6% of the total cash offers), 6 refer to the last 4 years.

In about 10% of the bids (24 cases) the consideration was voluntarily increased by the bidder, with an average increase of 21.2%. In two cases, the increase in the price is the result of Consob's intervention pursuant to Article 106, paragraph 3, letter d), number 1) of the Consolidated Law on Finance.

In mixed/exchange bids, instruments offered as consideration were unlisted shares in 5 cases, listed shares in 19 cases, bonds in 19 cases and *warrants* in one case.

3.7 Acceptance rate

The acceptance rate, calculated as the ratio of the number of instruments tendered to the number of instruments subject to the offer, can be considered as a good measure of the success of the bid[93].

Table 7.1 shows very different acceptance rates depending on the types of financial instruments involved.

Tab. 7.1 – Acceptance rates by type of financial instrument

			acceptance rate				
			ordinary shares	bonds	Fund units	non-voting shares	others
all	median		69.7%	71.4%	19.2%	68.0%	29.2%
	mean		60.2%	62.1%	32.9%	54.1%	31.2%
		data available	*161*	*8*	*17*	*6*	*8*
listed	median		66.6%				
	mean		58.5%				
		data available	*148*				
unlisted	median		87.5%				
	mean		79.5%				
		data available	*13*				

Notes: excluding partial bids (for which acceptance tends to be 100%), Listing markets: MTA, MIV, AIM. The Acceptance rate is calculated as the ratio between the number of instruments being offered and the number of instruments offered.

93 Except, as specified below, for almost all mandatory bids.

Bids on shares provide on average for a 60.2% acceptance, with a clear divergence between the many (148) offers on listed securities (58.5%) and the few (13) bids on unlisted ones (79.5%). The latter are typically promoted by banking or insurance firms on the minorities (the bidder, holds, on average, 76.6% of the capital of the target) for the purpose of capital strengthening. The limited level of dispersion of unlisted shares, their illiquidity, and the possible commercial link between the bidder and the investors should explain such an high acceptance.

Bonds and non-voting shares have more or less aligned acceptance rates of 62.1% and 54.1% respectively.

Acceptance rates of bids on funds (32.9%) are significantly lower, in line with the frequent failure of this type of takeover bid (47% of ineffective offers on funds compared to 12% for all other instruments)[94].

Similarly, acceptances to other financial instruments were low (31.2%).

An in-depth analysis limited to only bids on shares presents interesting insights (Tab. 7.2).

Mandatory bids have, in certain circumstances, significantly lower acceptance rates than comparable voluntary bids. First of all, takeovers classified as "acquisition of control without business combination" show a acceptance rate of 38.7%, quite far from both the other mandatory bids ("acquisition of control with business combination", where it is 64.9%) and the voluntary bids with the same motivation (72.8%). Secondly, the overall acceptance rate for mandatory bids is significantly affected by the presence of delisting schedule. Mandatory bids without a delisting program show, in fact, much lower acceptance rates: 17.6% versus 54.9% for the bids "without business combination" and 45.3% versus 76.2% for the bids "with business combination".

This evidence seems confirm that in mandatory bids the bidder is generally not interested in achieving high levels of acceptance, which would only increase the financial burden of the entire deal. This, of course, unless there are additional purposes, main of which could be the effort to go private as takeover becomes effective.

Similarly, the acceptance rate of bids for the "redefinition of control" - they too mandatory - is clearly below the average (45.4%). Also in this case the outcome of the bid seems explained by the "conservative" interest of the bidder.

The acceptance rate of cash offers is 58.1%, that of mixed/Exchange bids is 65.4%. There were no particular trends in the acceptance rate during the period analysed.

94 See the comments on these bids in the previous paragraph.

Tab. 7.2 – Share bid acceptance rates

		acceptance rate							
		aquisition of control with *business combination* – VOLUNTARY	acquisition of control without *business combination* VOLUNTARY	acquisition of control with *business combination* – MANDATORY	acquisition of control without *business combination* – MANDATORY	delisting (NO sell-outs)	redefinition of the control	financial investment/other	sell-out rights
all	median	62.0%	86.2%	76.8%	33.5%	67.2%	52.1%	72.5%	75.3%
	mean	52.6%	72.8%	64.9%	38.7%	63.7%	45.4%	64.5%	71.5%
	data available	*16*	*8*	*33*	*23*	*38*	*12*	*3*	*14*
scheduled delisting	median	79.5%	94.8%	81.0%	61.1%				
	mean	57.6%	72.1%	76.2%	54.9%				
	data available	*8*	*7*	*21*	*13*				
NO scheduled delisting prog.to	median	48.1%	77.7%	46.8%	0.7%				
	mean	47.5%	77.7%	45.3%	17.6%				
	data available	*8*	*1*	*12*	*10*				
premium* <10%	median	61.3%	66.1%	73.8%	33.5%				
	mean	53.8%	66.1%	60.9%	39.5%				
	data available	*6*	*2*	*23*	*15*				
premium* >10%	median	62.7%	86.2%	86.1%	58.3%				
	mean	51.8%	75.1%	75.1%	48.5%				
	data available	*10*	*6*	*9*	*6*				

Notes: excluding partial offers (for which acceptance tends to be 100%), Listing markets: MTA, MIV, AIM.

3.8 Market performance (before and after the bid)

Market performance of the target (listed) shares in the 12 months prior to the announcement of the offer was positive in 84 cases out of 140 (60%), with an average value of simple return of 10.5% (Table 8.1).

Segmenting the data by type of offer, we highlight differentiated findings. Notably, with reference to the takeovers, it can be noted that those concerning "pure" acquisitions have values below the average (mandatory bids: 7.3%) or even negative (voluntary bids: -6.9%). The data seem consistent with the classical assumption in the literature of takeovers (hostile or not) promoted by economic operators in order to improve the negative performance (managerial and, as reflected in the stock prices, financial) of the target companies.

On the contrary, bids for acquisitions of control with business combination show significantly higher performance (16% for voluntary bids, 26.5% for mandatory bids). In this case, therefore, it could be assumed that the search for industrial combinations leads bidders to seek, among their potential partners, more solid and performing companies.

Delisting offers, on the other hand, target shares performing negative return in the last year preceding the offer (-11.8% on average), a plausible evidence of a structural weakness (both in terms of management quality and illiquidity of shares) of the instrument prior to the delisting.

Tab. 8.1 - Market performance in the 12 months preceding the announcement

	market performance				
	ordinary shares	bonds	Fund units	non-voting shares	*others*
median	8.4%		12.1%	31.7%	
mean	11.5%		19.4%	31.7%	
cases <0	51				
cases.<0	84		5	2	
data available	*135*		*5*	*2*	

	market performance								
	acquisition of control with *business combination* – VOLUNTARY	acquisition of control without *business combination* - VOLUNTARY	acquisition of control with *business combination* – MANDATORY	acquisition of control without *business combination* – MANDATORY	delisting (NO sell-outs)	redefinition of the control	financial Investment/Other	sell-outs	buybacks
median	14.7%	-2.3%	27.9%	13.0%	-5.6%	13.2%	7.6%	0.0%	20.2%
mean	23.5%	-7.6%	23.5%	9.9%	-11.6%	51.1%	-4.1%	0.1%	20.2%
data available	*17*	*7*	*33*	*18*	*34*	*12*	*3*	*9*	*2*

Table 8.2 shows, instead, the market performance (both in absolute terms and relative to the index) of securities in the 12/36 months following the conclusion of the bid.

What is striking is the shortage of valid data available: out of 82 (full) bids on listed shares, 12-month returns are available for only 42 bids; 36-month returns for only 26[95]. Although by definition data from the most recent transactions are lacking, this evidence indirectly confirms the aforementioned trend to delist companies ate the end or immediately after the bid.

95 The bids subject to this analysis, aimed at verifying the change in market performance on the companies subject to the bid, represent a fairly narrow subset of the transactions surveyed. Firstly, only bids on listed ordinary shares are considered, then partial bids as well as those with motivations other than the acquisition of control (with or without business combination) are excluded.

Tab. 8.2 – Performance of securities after the bid

		absolute return – 1 year	relative return – 1 year	absolute return – 3 years	relative return – 3 years
all the bids	median	-11.7%	-9.8%	-18.5%	-16.1%
	mean	-13.5%	-5.9%	-17.5%	-6.9%
	of which: >0	*14*	*16*	*10*	*10*
	data available	42	41	26	26
takeovers - VOLUNTARY	median	13.8%	-4.1%	3.3%	-16.4%
	mean	-4.4%	-8.3%	-5.9%	-3.9%
	of which: >0	*6*	*5*	*5*	*3*
	data available	10	10	8	8
takeovers - MANDATORY	median	-27.5%	-16.1%	-36.0%	-16.1%
	mean	-22.1%	-8.1%	-28.0%	-15.2%
	of which: >0	*3*	*8*	*2*	*3*
	data available	24	24	13	13
takeovers - MANDATORY – *with business combination*	median	-26.5%	-6.7%	-37.1%	-6.3%
	mean	-10.9%	3.6%	-27.3%	-3.9%
	of which: >0	*3*	*6*	*1*	*2*
	data available	13	13	6	6
takeovers - MANDATORY – *without business combination*	median	-39.7%	-28.0%	-24.1%	-27.4%
	mean	-35.3%	-23.4%	-28.6%	-25.1%
	of which: >0	*1*	*2*	*1*	*1*
	data available	11	11	7	7

Note: Bids on shares; partial bids excluded

Said that, looking at the data available it can be noted that market performances after the bid are generally negative. Notably, the relative return is -5.9% in the following 12 months and -6.8% after 3 years. Absolute returns are also negative (-13.5% and -17.5%, respectively), and wider than relative-returns: target companies in the months following the bid on average perform worse than the index, in a context of shrinking stock prices.

By differentiating the results according to the voluntary/mandatory nature of the bids, it should be noted that *ex-post* returns, howsoever they are calculated, are significantly lower in the case of mandatory bids: among other, the absolute return after 12 mont1 year is -22.1% versus -4.4% for voluntary bids; 3-year absolute return equal to -28% versus -5.9%.

By further disaggregating data relating only to mandatory bids (for which there is a significant set of data), it is clear that the presence of a business combination project generates significantly higher performance, with the average 1-year relative return equal to 3.6% compared to -23.4% of the mandatory takeovers "without a business combination", and 3-year relative return equal to -3.9% compared to -25%.

4 Final considerations

This research provides an analytical and objective framework, based on empirical findings, of the tender offers made in Italy in the last twelve years, examined and described under multiple profiles. The intention – including in this final conclusion – has been not to infer from the statistical study policy considerations or proposals to reform the current regulations, which can be preferably deferred, if ever, to subsequent in-depth analysis. The authors therefore confine themselves to making available to scholars, operators, issuers, investors, regulators, legislators and interested parties in general an informative contribution that is, as far as is known, unique in Europe in terms of breadth, detail and wealth of data.

It seems rather useful to close the examination by recalling, in summary, some of the findings that seem more significant, as well as by indicating some open issues in a spirit of proposing lines for future research and reflection, rather than of risking definitive solutions, also due to the cautions with which any descriptive statistical analysis must be read. Although the study includes transactions that are very heterogeneous in terms of regulation and economic aspects, and in particular "divestment" offers relating to different instruments such as shares, bonds, units of mutual funds and others, herein we will focus on bids involving shares, also for reasons of homogeneity of observations and comparisons, which in any case represent the most significant and delicate part of the data.

The data confirm, first of all, the cyclical trend (in "waves") of the transactions, as evidenced by the literature, both in relation to the number and value of the bids, with peak activities recorded in the two-year period 2007-2008, in 2011, and – with increasing trend – approximately in the period 2015-2018. In the observed span of more than ten years, in which mandatory and voluntary bids on shares roughly equal in number and value, the initial inverse correlation between stock market performance and transaction frequency (more numerous bids as a result of significant price reductions) seems gradually to be lost with an increase in bids even in the face of a non-negative market trend.

It should be noted that some legal provisions, broadly addressed by law and economic literature, are not particularly widespread and used in practice: for example, reference is made to the so-called prior partial bid governed by art. 107 Consolidated Law on Finance of which only one case has occurred, and also to indirect or "*a cascata*" bids (art. 45 of the Issuers' Regulations), also infrequent in number, or to the consolidation takeover bid. This does not mean, of course, that these cases do not have an extreme systematic and practical importance in the regulatory framework, in some cases also as to their "anti-circumvention" function, but mentioning them is noteworthy because it helps confirm an aspect that emerges from the numbers with overwhelming visibility: the precondition of the vast majority of mandatory bids lies in the friendly and direct purchase of a controlling shareholding, which triggers the mandatory full bid. The average shareholding acquired that imposes the bid is in fact 57% of ordinary shares, and in 49 out of 69 cases the trigger shareholding was higher than half of the ordinary share capital. Not surprisingly, even voluntary bids, when inherent in the change of corporate control, are by a clear majority non-hostile transactions, to which the controlling shareholder transfers its own stake. In summary, bids aimed at non-agreed acquisitions of control are limited to ten cases, a very small fraction of the 174 bids on shares.

These data reflect the well-known concentration of ownership structures prevalent in Italy, and actually in the vast majority of the legal systems with the sole, partial exclusion of the markets of Anglo-Saxon countries. On the one hand, they suggest that a central concern of the regulation must be aimed at ensuring equal treatment of shareholders (if, of course, the assumption is shared that the takeover bid has the dual purpose of distributing the control premium and ensuring a fair divestment in the event of a change of majority); but, on the other hand, they also pose the question whether the current regulatory framework, not only on takeover bid, does not discourage hostile takeovers. These are certainly not new issues, but the empirical evidence presented in this research permits to deal with them with a greater knowledge on the facts.

It should also be noted among the most recent and interesting phenomena, in parallel with the growth of the AIM market, a certain number of the so-called "statutory" takeover bids in recent years, envisaged as known by the regulation of this market (nine in the last three years covered by the research).

We often wonder about the degree of international openness of our capital markets. Some suggestions in this regard are offered in the preceding pages by the analysis of the bids in relation to the nationality of what has been defined as the "substantial" bidder, i.e. the subject to whom the acquisition is actually attributable, regardless of the (frequent) use of an Italian vehicle for the launch of the bid. If in relation to all the bids – including, therefore, bids on bonds and units of funds together with the bids on shares – the Italian market appears relatively "domestic" with about two-thirds of Italian bidders, moving on to the bids on securities, it can be seen that about half of the transactions, and, in particular, the largest transactions in terms of value, are conducted by foreign bidders.

The data on the degree of concentration in consultancy services provided during public tenders are also interesting, where a certain concentration in the legal advice market stands out: the first five law firms (including four Italian firms) covered about 44.3% of the bids.

Another aspect of certain importance that emerges from the analysis is that, frequently, offers on shares contemplate a delisting: in fact, 109 bids out of 174, i.e. over 60%, provide, at least as a possibility, the option of going private. This applies to both compulsory and voluntary bids: among the latter, however, in about 80% of cases these are transactions conducted by the existing controlling shareholder who intends to obtain the delisting. The objective of exiting from the market is achieved in almost all cases: only in the 6% of the transactions in which it was planned, it did not take place. On the other hand, a certain growth in delisting operations in recent years, relating to large-cap companies, often irrespective of a downward phase in share prices, prompts reflection. In some well-known situations, moreover, the delisting in Italy has been accompanied by listing on another European market with different legal systems. This raises questions about the reasons for a certain "disaffection" from listing and the future of the domestic equity market.

Although it is always difficult to classify offers in taxonomies based on their purposes, in this work, we distinguish between takeover bids aimed at a business combination (typically a merger) and tender offers with other typical purposes (*delisting*, buyback, purely investment transactions) and those aimed at the purchase of "pure" control without formal purposes of industrial integration. It was therefore found that about a quarter of the bids on shares aimed precisely at a business combination, a further fifth at *delisting,* and 13.4% at acquiring control without a business combination.

In relation to the total of the bids examined, the average premium paid is approximately 13% compared to the price of the last day prior to the publication of the Notice pursuant to art. 102 Consolidated Law on Finance or the communication pursuant to Reg. 596/2014 (MAR), with negligible deviations for longer intervals of time before the operation. However, the amount of the premium doubles in the bids aimed at a business combination (about 27% compared to the market), especially in the case of voluntary bids. It follows that the strong industrial logic and the potential synergies and economies of scope and scale underlying these operations are positively reflected in the conditions proposed to the offeree. As is reasonable to expect, in any case premiums are higher in depressed pricing phases and, in particular, in transactions in which the consideration is in whole or in part "stock for stock" rather than only in cash (exchanges offers and mixed bids).

In this regard, a phenomenon that deserves attention is that of so-called "discount" bids. These are bids, typically mandatory, in which the consideration is equal to or higher than that accepted by the previous controlling shareholder whose sale of shares gives rise to the obligation to launch the takeover bid, but lower than the stock exchange prices. It should be immediately noted that, although in other legal systems different choices have been made, in our legal system such conduct is undoubtedly legitimate: the Italian legislator, in fact, has defined the (minimum) fair price as the highest price paid by the bidder in the 12 months preceding the emergence of the takeover bid obligation, and it is certainly possible – and in many circumstances, economically reasonable – for the controlling shareholder to accept a price lower than the listed price, for example in the case of a planned recapitalisation intervention towards which the bidder makes a commitment or where it is not realistically possible to obtain a higher price for a large quantity of shares. Unlike the original version of the 1998 Consolidated Law on Finance, in fact, with the transposition of the Thirteenth Directive the criterion of the mean between this price and the market, which was intended to mitigate, both "downwards" and "upwards", the price proposed to the offerees and the cost of the operation, has been abandoned. Consob's right to impose, in particular cases, a higher price is symptomatic to the fact that each "discount" transaction requires a careful verification of the reasons that support it; and also a particular caution by the supervisor in order to avoid, on the one hand, that better conditions are not unjustifiably reserved to selling controlling shareholders and, on the other hand, that the fact of imposing greater burdens on the buyer does not arbitrarily discourage operations capable of implementing, especially when aimed at a business combination, a more efficient allocation of resources.

Acceptance rates to bids vary rather according to the type of transactions and their subject matter and, given the number of cases, it is not easy to draw reliable generalizable statistical inferences. What certainly - and obviously - emerges is a direct positive correlation between the measure of the premium and the "success" of the operation.

Finally, we reserve room for a notation that raises profound questions about the system, and which can of course only be mentioned in a doubtful way here. This refers to the performance of share prices, and therefore the profitability of the investment, in the period following the conclusion of the bid. The data presented in the last pages of the research show a very negative trend, on average, both over a time horizon of one year and three years, and both in absolute terms and in relation to market indices. The only bids aimed at a business combination stands out for a positive trend (always on average).

It is undeniable that the data - with the necessary caveats linked also to the number of observations and the differences between the single cases - raises some concerns about the ability of the system in favouring operations of change of control that allow the entry of shareholders able to better manage the company, or – even more alarmingly – about the extraction of private benefits from the change of control. Of course, a less brilliant return can be explained with numerous reasons, starting with the fact that the prices after the bid are particularly (and physiologically, given the objectives of the regulation) "high", and that after the transaction the shares are less liquid and the market thinner: in short, and simplifying, shareholders have already had their "best chance" to capitalise on the investment, while the new management needs time to start and implement a new phase of creation of value. In fact, returns after takeover bids appear greater in the case of industrial integrations, which precisely allow greater efficiency and effectiveness to the management of the company. In this perspective, it would be reasonable to expect yields to grow over time: on the other hand, the data show that the results do not improve over a period of three years, suggesting that the offerees should on average adhere to the bids and lead the interpreter to wonder, ultimately, about the selective function of the control market.

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