CONSOB

COMMISSIONE NAZIONALE
PER LE SOCIETA' E LA BORSA

ANNUAL MEETING WITH THE FINANCIAL MARKET

SPEECH BY THE CHAIRMAN, LAMBERTO CARDIA

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Mister President, Ladies and Gentlemen,

The Commission first of all wishes to express its sincere thanks to the President of the Republic, whose presence greatly honours the annual meeting with the financial community, held since 1997 in Milan.

We are also grateful to the civil, military and religious authorities and to all the participants. Their presence makes us even more conscious of our obligation to perform our tasks in full compliance with the laws and the principles on which our legal system is founded. Consob operates with complete neutrality, without omissions or vacillations, with full respect for and a spirit of cooperation towards all those who in every capacity participate in the market, in the awareness that an inadequate performance of its duties can cause harm above all to the weaker parties and to savers in particular.

Consob warmly thanks the City of Milan and its Mayor, whose readiness to help is among the reasons the Commission now enjoys new, functionally efficient premises in the splendidly restored Palazzo Carmagnola in Via Broletto.

Lastly, the Commission expresses its gratitude to Borsa Italiana for hosting the meeting again in this most suitable venue.

Since November 2003 the Commission has operated one short of its full complement pending the appointment of the fifth Commissioner.

The Italian financial system in the wake of the crises

The grave crises that hit the Italian financial system in the last two years have significantly altered the frame of reference in which Consob performs its tasks, aimed in particular at the protection of savings and the integrity of the market. The Parmalat and Cirio cases, which took on great international as well as domestic importance, represented a turning-point in the history of the Italian securities market. They were accompanied by other critical developments, among which Argentine bonds, the sale by Banca 121 of complex products (My Way – 4 You) and the Bipop Carire and Giacomelli affairs need to be mentioned.

Problems emerged whose roots lie deep in the mechanisms of corporate control and relations between intermediaries and investors. The Italian system has been called upon to address these problems, in order to ensure an adequate protection for savers and preserve the conditions of confidence on which the operation of all securities markets necessarily rests.

Following the emergence of the main crises – November 2002 in the case of Cirio and December 2003 for Parmalat – supervisory activity underwent an extraordinary intensification, which bore fruit in the course of 2004 and in the early months of this year.

The supervisory actions taken vis-à-vis intermediaries, corporate officers and auditing firms are unprecedented in the history of Consob both for the number of persons involved and the amount of sanctions imposed.

The fact that Consob had not yet been empowered to impose administrative sanctions directly and the penal dimensions of many cases, necessitating active cooperation with the law enforcement authorities, affected the speed of public response, making it appear insufficiently rapid.

The smallness of the sanctions that can be imposed and the possibility of commutation for many types of violation are other factors that have contributed to creating a system with inadequate powers of deterrence. In addition, systematic albeit legitimate recourse to appeal by the persons sanctioned, which in any event appears to exceed the limits of a normal conflict between the parties, adds to the

costs and length of the procedures. In recent cases the proportion of decrees imposing sanctions on intermediaries and their governing bodies has been close to 100 per cent.

The transposition into Italian law of the Market Abuse Directive (Directive 2003/6/EC) by the 2004 Community Legislation Implementation Law (Law 62/2005) was a first substantial response to the need to strengthen Consob's supervisory instruments and powers of sanction.

In addition to being empowered to impose administrative sanctions, Consob has been granted a series of investigative powers that can be exercised "vis-à-vis any person who may have a knowledge of the facts" and hence not only vis-à-vis supervised persons. These powers range from requests for information, data, documents and telephone recordings to the seizure of goods subject to confiscation, inspections and searches (in some cases subject to authorization by the public prosecutor) and access to Central Credit Register data.

With the expansion of its functions Consob's staff has necessarily been strengthened, with the addition of more than 150 new members.

Consob has acted promptly to make the new provisions operational within the shortest possible time.

The many important regulatory amendments required to implement the law have been submitted to consultation, and the contributions and comments received are now being analyzed with a view to rapid approval.

Procedural measures have been adopted to govern the manner of exercising the powers of supervision, carefully evaluating the particular efficacy of some of the newly attributed powers of investigation. With regard to the power to impose administrative sanctions directly, the principle of separation between investigative and decision-making functions, established by the law, has been implemented.[1]

The manner and timetable of market consultation when regulations are issued are now being decided. The result will be the formalization of practices

already in use and the creation of a special Consultative Committee, to include representatives of consumers along with those of supervised persons.

An agreement is being drawn up to govern effective forms of cooperation with the Finance Police in terms that are consistent with the new tasks assigned to Consob.

The Commission has already availed itself of the new possibilities the law offers, entering into specific cooperation with the law enforcement authorities for the acquisition of records useful for the more effective performance of supervision.

Moreover, rules and practices for collaboration between the two authorities have been in place for some time now.

Attesting to this is Consob's cooperation with offices of the public prosecutor during preliminary investigations of no less than 132 requests for data, information and documents.

In addition, in compliance with its legal obligations, in 2004 Consob sent 120 reports to the magistracy on suspected violations of penal law.

The full cooperation between the two authorities can be appreciated in the light of the different outcomes– immediate judgements, abbreviated judgements, plea agreements and decisions to institute trials – and the developments of investigations in the Bipop Carire, Banca 121, Parmalat, Giacomelli and Cirio cases. In some of these trials Consob applied to recover damages as an injured party.

The measures adopted in 2004 to supplement the reform of company law have filled some legislative gaps that the corporate crises had revealed. In particular, for companies raising equity capital, rules of transparency and correctness for "related-party transactions" have been introduced that will permit fuller regulation than that, limited merely to transparency, which Consob has been able to apply until now. Bond issues have been regulated with a view to preventing circumvention of the limits through the use of special-purpose vehicles set up abroad. Additional disclosure requirements have been established where

bonds initially sold to professional investors with an exemption from the prospectus requirements are subsequently resold in Italy to small investors.

The more far-reaching reform contained in the draft law on the protection of savings, the result of in-depth, laborious preparatory work and extensive parliamentary fact-finding, has not yet completed its passage through Parliament.

Although a broad consensus has been created on the diagnosis of the main problematic points and is also shared in international fora, the response on the legislative level has lacked the speed that is widely demanded and that has been achieved instead in some other countries faced with equally serious problems.

However, the legislative activity of the past few days gives good rounds for hope and there is reason to expect it will soon result in the approval of a law that will not only fill important lacunae in our legislation but will also reflect the comprehensive, strategic approach which a reform of such importance necessarily requires.

A deliberate, careful evaluation of the interests involved is advisable, to avoid the risks of increasing the costs borne by market participants excessively and diminishing the attractiveness of the financial marketplace. However, the need for greater protection of savers and the high expectations at international as well as domestic level make it urgent to offer a legislative response adequate to the gravity of the problems that have emerged.

The architecture of the supervisory system must become consistent with the growing integration of the traditional segments of financial intermediation and with the new tasks that the supervisory authorities are called upon to perform. A complete allocation of tasks among the different supervisory authorities is necessary according to the objectives of supervision: stability, transparency and correctness, and competition. A clear legislative definition of this allocation should be accompanied by steadfast implementation on the part of the authorities, including by means of effective cooperation mechanisms.

The dialectic within companies needs to be strengthened: between the management and control functions, between the different categories of

stakeholder, and in particular between controlling shareholders and minority shareholders.

In the evolution of relations between banks and firms there is an increasing interweaving of ownership and control structures that can give rise to what sometimes can be very acute conflicts of interest.

In the distribution of financial products and the provision of investment services, conflicts of interest and information asymmetries also appear to be magnified by the predominant role of banks. In all the main crises there was a systematic underestimation of risks and of the interests of investors, accompanied by an increasingly positive contribution to results from services other than traditional banking activity.

The restoration of an adequate, necessary level of confidence among savers in Italy and abroad depends on the ability to respond effectively to these problems, an effort to which all must contribute.

Furthermore, the increasing globalization of markets and financial activities require the needs of international coordination to be borne constantly in mind. They have come strongly to the fore in the past year in response to the global dimensions of the crises. The experience gained by Consob has made a significant contribution in international fora – notably the Organization of Securities Commissions (IOSCO) and the Committee of European Securities Regulators (CESR) – to a better understanding of the problems and to the development of more suitable principles in regulatory and supervisory policies.

Compliance with these principles is monitored by international organizations, first and foremost the International Monetary Fund. High marks can be a competitive plus for a system in attracting investment flows and the business of market participants.

The Fund recently completed a thorough check on the Italian system's compliance with the international standards of regulation and supervision. The regulatory structure and supervisory practices were found to be in line with international standards and in some cases more stringent than those required by

European legislation. It was also observed that there was room to improve the regulation protecting minority shareholders and the effectiveness of supervisory action, now achieved in part with the implementation of the Market Abuse Directive.

However, it is primarily in the context of the European Union that the evolution of the Italian financial market must be set, both as regards the definition of the regulatory framework and for strategies for the growth of markets and market participants.

The euro and the single market for financial services provide the framework for the creation of a European financial area adequate to the economies' needs for growth.

The prominent role of the Italian financial system in the construction of the European market is evidenced by the importance of mergers and acquisitions that are involving significant players in the Italian banking system, in some cases as the acquirer, in others as a potential component of processes led by larger European institutions.

The contribution players can make to the development of the Italian financial marketplace depends more on their efficiency and strategic ability than on the nationality of their owners.

The current difficulties in implementing the institutional reforms of the European Union can complicate and, in any event, retard further progress in the integration of national systems. It will be necessary to persist in seeking solutions, possibly pragmatic ones, that will preserve the integration achieved to date and not jeopardize its development.

The evolution of supervisory activity since the cases of crisis

The main weaknesses in the protection of savers revealed by the cases of crisis concern: the reliability of corporate disclosures and of issuers' internal and external control mechanisms, and the correctness of intermediaries' behaviour in

the provision of investment services and, in particular, the sale of riskier financial instruments.

Prevention and repression in these areas, which engaged a large part of Consob's resources in the past year, is therefore of strategic importance.

The shortcomings of corporate controls revealed in the crises of listed issuers were a decisive factor in compromising the quality and reliability of the information disclosed to the market and thus the ability of monitoring systems to detect the signals of risk promptly.

The involvement of companies' governing bodies in repeated violations of the rules led Consob to carry out vigorous investigations. As early as 2003 the evidence gathered enabled the Commission to lodge legal challenges to the accounts of Parmalat, Cirio and Giacomelli and to provide useful information in the trials held for the suspected criminal offences discovered.

Controls on the correctness of listed companies' accounts continued to be intense in 2004 and the first six months of 2005. The accounts of six companies were challenged, including those of a football club for which subsequent events ended Consob's interest in pursuing the case, although the Commission's negative opinion of the correctness of some accounting items remained unchanged.

Weaknesses were found in the activity of auditing firms, which are required to make a decisive contribution to ensuring the overall reliability of accounting information.

In 2004 Consob took action vis-à-vis two auditing firms that had worked on the accounts of the Cirio and Parmalat groups, in order to evaluate their quality control procedures in accordance with the related auditing standard.[2]

After carrying out on-site and off-site controls Consob ordered one auditing firm to refrain for two years, the maximum period established by law, from using the services of the partner who had performed the audit. The other firm was struck from the register.[3]

These cases have reinforced the Commission's conviction that it must continue to strengthen its supervision on the quality of audit activity, in line with

the proposal for a directive on statutory audits that incorporates and extends the contents of an earlier European recommendation.

The quality of accounting information and its comparability at European level will undoubtedly improve with the introduction of the new accounting standards. In April 2005 Consob issued guidelines for the transition towards their adoption and to facilitate the evaluation of economic and financial data by the market during the transition period.

The entry into force of the new accounting standards involves a radical change in the drawing up of the accounts of listed companies, by introducing the reporting of information that reflects the market value of company assets, including derivative instruments. This is especially important for non-financial firms, whose recourse to such instruments is increasing, as is also documented by a Consob study that the Commission presented in a hearing before the Finance Committee of the Chamber of Deputies in January 2005.

The need to strengthen the supervisory instruments for the detection of signs of crisis of listed issuers led Consob to increase the frequency with which companies whose business continuity is at risk are required to disclose their situation to the market. The number of companies subject to monthly disclosure requirements has risen appreciably in the last year and a half, from 16 at the end of 2003 to 21 at the end of June 2005.

These companies include two listed football clubs, for which the difficulties are highlighted by the presence of balance sheet and operational disequilibria that are typical of the sector but whose representation in the accounts is attenuated by rules establishing different accounting treatment with respect to other listed companies. However, this situation could be further modified by pending legislation connected with Community measures. The lesson of this anomalous affair is that the rules for listed sports clubs need to be in line with the standards generally applied.[4]

Special needs with regard to the provision of complete and comprehensible information to savers arose on the occasion of the transaction that led to the listing of the new Parmalat. The listing of the company represents an important step towards the return to a situation of organizational and operational "normality" for the group. Consob's examination necessitated a close and careful study of the information to be provided to the market – in view of an extremely complex balance sheet and operational situation and with a bankruptcy procedure pending – regarding a group involved in numerous judgments in Italy and abroad.

For a positive outcome to the affair it is crucial that the new shareholders, who will include a significant part of the Italian banking system, take due account of the need to maintain or recruit top management of widely recognized professional standing and ready to move ahead steadfastly in implementing the restructuring programme that has already been launched with so much effort and announced to the market.

Equally important was Consob's supervisory action regarding the conduct of intermediaries who contributed to the widespread distribution among savers of securities of companies involved in scandals.

The scope of Consob's analysis of the conduct of intermediaries was extended by additional cases that embroiled Italian savers in the sale of what turned out to be high-risk securities, such as the Argentine bonds, or of "complex" products that combined high risk with features entirely inappropriate to non-professional customers, such as the structured products issued by Banca 121.[5]

Partly on the basis of numerous complaints by investors, Consob initiated inspections of the intermediaries that had been most active, in some cases with the cooperation of the Bank of Italy. The groups to which these intermediaries belong account for the bulk (more than 65 per cent) of the Italian banking system's entire activity of securities "administration" through deposits for safekeeping or individually managed portfolios.

Although they originated from individual cases, the investigations made it possible not only to identify specific violations of proper conduct but above all to

evaluate, on a more general plane, the ability of the intermediary's structure to comply with the rules of diligence, fairness and transparency for the protection of savers.

Upon completing these investigations the Commission proposed to the Minister for the Economy that sanctions be imposed on 474 corporate officers of 12 intermediaries belonging to the main Italian banking groups.[6] The sanctions amounted to about €14 million, compared with a total of about €10 million in the previous five years.

Along with the sanction procedures, action was begun with a view to eliminating the procedural shortcomings found. These interventions are far more important even than sanctions in terms of their implications and effectiveness, since they concern the intermediary's overall ability to provide investment services that ensure the necessary degree of protection for savers.

The weaknesses discovered can be heightened by the intensity of financial innovation, which constantly generates products whose combinations of risk and return are hard to perceive; these include the various types of structured bond. Consob has begun an investor education campaign that has helped to reduce the diffusion of the most opaque products, those having the largest components of risk that are not explicitly stated.

Consob will carry on its supervision of intermediaries with increasing commitment, according to a selective criterion based on qualitative and quantitative indicators to identify the priority areas for investigation and the intermediaries where the risk of infraction is greatest.

The case of the Argentine bonds, for which several judicial proceedings are under way, required Consob to intervene on the occasion of the exchange offer promoted in Italy by the Argentine Republic[7] within the framework of its overall debt restructuring programme. Consob conducted the examination in constant contact with the competent foreign authorities[8] and Italy's governmental authorities. Numerous amendments to the offer document were requested, with a view to clarifying the terms of a highly sophisticated contractual proposal and

permitting holders of the bonds to arrive at a well-considered decision on a difficult matter. In this respect it should be remembered that expressing an opinion on the merits of an investment does not fall within the Commission's tasks, whose substance and limits are fixed by law.

Consob's supervision in changes of control of listed companies

Consob engaged in intense supervisory activity in connection with transactions involving the control structures of listed companies. The spread of news or expectations regarding changes in the control of important companies, notably from end-2004 onwards, created a climate of pronounced uncertainty in the market together with pressures on the volume of trading and on prices.

Specifically, this refers to the launch of tender offers for Banca Antonveneta and Banca Nazionale del Lavoro and developments in the ownership structures of other companies, including RCS Mediagroup. Common to all these cases was the presence of one or more shareholders' agreements that were either concluded or due to expire in 2004.

In the Antonveneta affair a hot competition developed between different tender offers that progressively posed complex interpretative and supervisory problems, with appeals filed in the civil and administrative courts and resolute action taken by the judicial authorities.[9]

Consob has devoted considerable activity to this matter since the beginning of 2005. As soon as the first anomalies were detected on the market, numerous requests were made for disclosure of information to the public, with a view to restoring or maintaining equality of information.

On 10 May, on the basis of a complex examination that brought to light what was considered convincing evidence, Consob formally determined that a secret shareholders' agreement had been signed between Banca Popolare di Lodi and other natural and legal persons for the concerted purchase of shares of Antonveneta and the exercise, possibly on a joint basis, of a dominant influence. Consob consequently ordered the parties to the secret agreement to make a

mandatory tender offer for a value which, determined according to law, was found to be equal to €24.47 in cash.

Consob challenged the resolution of the shareholders' meeting of 30 April that had appointed the new board of directors and board of auditors and consequently petitioned the Court of Padua to annul it after suspending its effectiveness on a precautionary basis, on the grounds that the persons found to have entered into the agreement had not been able to cast what proved to be the decisive votes.

Further investigations are still under way, in part on the basis of complaints filed by interested parties, concerning possible instances of market abuse in the transactions in Antonveneta shares in the last few months and with regard to possible violations of the rules on tender offers.

Checking these elements required the use of different instruments: inspections, requests for data and information, hearings of numerous persons (sometimes repeated), analysis of market documentation and transactions, and recourse to international cooperation. The checks also concerned the manner and timing of the loans received by persons who carried out in Antonveneta securities, their purchases and sales and the manner of voting in the shareholders' meeting that renewed the bank's board of directors. The purchases made by the offerors were checked for compliance with the "best price" rule.

Consob availed itself of all the powers at its disposal under the legislation then in force. The changes introduced with the transposition of the Market Abuse Directive, thanks to the cooperation they envisage with the judiciary and the Finance Police, are permitting and will continue to permit Consob to conduct a more thorough and effective investigation of matters that emerged in the past or are emerging now.

In the case of Banca Nazionale del Lavoro the market's interest was spurred by the presence of different alliances, gathered into separate shareholders' agreements, contending for control of the company.[10] When a tender offer was announced by a party to one of the shareholders' agreements, the parties to the

other agreements expressed the intention not to tender. Rumours spread on the market concerning the possible launch of a competing offer or the occurrence of conditions triggering a mandatory tender offer.

In this case too in its supervisory action Consob focused on analyzing the pattern of trading and the regularity of the conduct of the persons involved, availing itself of every possible supervisory instrument, including hearings.

The two cases involving banks are emblematic of the complex supervisory action performed by Consob in transactions that involve different sets of sector-specific legislation and different supervisory authorities. When the "target" company is a bank, prior authorization must be granted by the banking supervisory authority for the crossing of certain equity holding thresholds and the acquisition of control. Moreover, the offerors themselves may be subject to supervisory evaluation of the effects of the intended takeover on their balance sheet stability.

To safeguard the proper functioning of the market and equal treatment of the parties, it is necessary that the authorities act promptly and adopt measures that are as synchronized as possible, in accordance with their respective spheres of competence and the different objectives of their action, taking account of the needs of disclosure and the market's expectations.

Coordination of the measures according to the timetables now envisaged by the different sector-specific provisions for authorization or clearance would make it possible to shorten the periods of market uncertainty in the case of transactions involving change of control and the consequent anomalies in the movements in prices and volumes. Within its powers, the Commission has endeavoured to reduce its response time to a minimum.

Uncertainty is also affected by the great frequency with which complaints, objections and appeals are lodged, which reflects the intensity of the contest between opposing alliances.

Problematic aspects for the integrity of the market and the completeness of information have emerged in recent months in connection with developments in the control structures of other companies, particularly RCS Mediagroup.[11]

In this case, again, Consob intervened repeatedly to reduce the information asymmetries and to check the correctness of behaviour. The Commission determined that the rules on shareholders' agreements were applicable to a new agreement designed to keep shareholdings within the circle of the parties to a pre-existing agreement in the event of a tender offer. The fact that the accord in question is subject to the rules on shareholders' agreements means that the parties have the right to withdraw without notice in the event of a tender offer.

In all markets, changes in the control of listed companies, especially if hostile or contested, are complex and multifaceted processes whose completion usually requires considerable time. The opposition of divergent interests makes the function of assuring the integrity of the working of the markets and information symmetry especially delicate.

In this context Consob exercises its powers in a manner that is neutral and equidistant vis-à-vis the interests at stake, and with the objective of ensuring compliance with the rules protecting investors and the efficiency and transparency of the market in corporate control.

These objectives are resolutely pursued, as is shown by the amount of interventions Consob has carried out to date, which in the Antonveneta case alone number well over one hundred.

For changes of control the legislative framework, in establishing safeguards, sets the bounds of behaviour for the actors involved through predetermined and homogeneous disclosure requirements and rules of conduct.

The "rules of the game" are intended to reconcile different, sometimes conflicting needs: to ensure adequate and timely disclosure to the market on the one hand, to avoid discouraging those who undertake transactions, hostile or otherwise, on the other, thereby favouring the contestability of listed companies.

In the difficult balance between these needs, some areas of information opacity in the market are expressly envisaged, such as the thresholds of major shareholdings and the time limits for announcing their acquisition to the market. In the Italian system the areas of opacity are more limited than in other leading markets[12] and the disclosure requirements concerning shareholders' agreements are extensive.

Moreover, in the context of this system Consob can intervene, as it has repeatedly done, with ad hoc requests for more transparency on ownership structures when it deems such disclosure especially urgent for the better working of the market; however, under current rules the release of such information to the public depends on the consent of the person to whom the request is addressed.

When takeover bids are made, the market's uncertainty may be heightened by the scant transparency of the intentions of the persons involved, who are not subject to regulatory requirements in this regard, as is the case, for example, in the United States and France. This is an area in which changes to the rules can be considered. However, the repercussions a rule on the transparency of intentions may have on Italy's already torpid market for corporate control will have to be evaluated and the possibility of obtaining useful results from supervision of compliance ascertained.

The pending cases have raised specific, complex problems deriving from the competition between concurrent tender offers, problems that never arose together in the past. They combine diverse elements: the voluntary or mandatory nature of the transaction, the mechanisms for determining the consideration, the type of consideration (cash and/or securities), the timetable for executing the transactions. Of special importance are the effects of the rule for setting the price of mandatory tender offers that requires the offer price to take account of the market price during a given period preceding the offer. In the concrete cases in which it has been applied this method has produced inconsistent results, with possible distortionary effects on the competition for control. The problem will be surmounted with the transposition of the Directive on Takeover Bids (Directive

2004/25/EC), which establishes that the offer price is the highest price paid by the offeror both before and during the offer.

Consob's supervisory action to apply the rules on tender offers encounters additional difficulties in determining whether the conditions exist under which it is mandatory to launch an offer.

Consob has intervened repeatedly with interpretative communications, to evaluate specific situations in which changes in the composition or equilibria of shareholders' agreements did not cause variations in the equity interest covered by the agreement that were material for triggering the obligation to make a tender offer. The obligation was found where the changes in the structure of the agreement, in conjunction with purchases by its participants, had a substantial influence on the control of the company. By contrast, in August 2004 Consob ruled that there would be no obligation to make a tender offer as a consequence of the hypothesized changes in the RCS Mediagroup shareholders' agreement; the necessary preconditions were not fulfilled owing, in particular, to the timing of the purchases made by the new parties to the agreement.

Moreover, the Consolidated Law on Finance provides for some exemptions from the offer obligation when the mere occurrence of the preconditions would lead to application of the rules inconsistent with the objective of protecting the minority shareholders in the context of a change in the control of a listed company. In examining individual situations Consob does not have a discretion to grant exemptions case by case, as is provided for in the British and French systems, but applies criteria established in advance in a Regulation regarding the types of transaction defined by the Consolidated Law on Finance.[13]

Changes in the control of listed companies were also the subject of Consob's attention in the case of a recent agreement between Electricité de France Service National S.A. (EDF) and AEM S.p.A. (formerly Azienda Elettrica Milanese) for the joint acquisition of control of Edison. Responding to numerous queries, Consob provided the necessary guidance for the evaluation of the financial effects of the various options and for how the transaction could be set

up. Partly as a consequence of the Commission's pronouncements, the problems connected with the companies' ownership structures were fully resolved in the political and institutional fora. The completion of the transaction will enhance the prospects for growth and technological development of the Italian companies operating in the energy sector.

The ownership of listed companies

Some basic trends in the ownership and control structures of listed companies became more pronounced in 2004.

The reduction in the concentration of ownership was revealed by an increase in the proportion of capital widely held on the market and a greater dispersion of ownership among major shareholders. There was a further simplification of the organizational structure of some important listed groups, with a reduction in the use of the pyramidal group as an instrument of control. The greater diffusion of ownership is accompanied by growing recourse to coalitions as a means of controlling listed companies.[14]

The presence of coalitions raises significant problems for the transparency of information and the efficiency of the market for corporate control. The internal organizational mechanisms and decision-making processes of coalitions are structurally opaque. It is not always easy to have adequate information on their birth and evolution, especially when they are not formalized in written agreements.

When there are coalitions, it is more difficult for the market to express an evaluation of the contestability of companies, which comes to depend on a complex web of relationships between shareholders inside and outside the coalition. For example, where the members of a shareholders' agreement in a company for which a tender offer is being made participate jointly in shareholders' agreements in other listed companies, the decisions concerning the exercise of the right of withdrawal provided for by the Consolidated Law on

Finance can be influenced by more general equilibria, not necessarily in line with the interests of the shareholders of the companies involved.

In the network of relations that characterize the ownership and control structures of listed companies, the relationship between banks and firms is taking on considerable importance.

The greater involvement of non-financial companies in the ownership structure of banks is matched by an augmented role played by banks in industrial groups,[15] often as the result of rescue operations of special importance for the nation's economy or of the financing of industrial expansion plans.

The frequent recourse to credit to finance the acquisition of equity interests in banks increases the interweaving of banks and firms.

The quality of corporate governance systems becomes more important in this context.

Italian companies have ample latitude and attendant responsibilities in configuring the organizational structures they deem most suitable, latitude that has been considerably increased by the reform of company law.

It is important that the market monitor conduct, demanding that behaviour be more transparent and consistent with the principles proclaimed and making self-regulatory codes a truly effective instrument and not merely window-dressing.

The transparency of decisions, which is a prerequisite for the market to evaluate the quality of the systems adopted, is improving.[16]

Nevertheless, there remain areas of opacity, particularly on some key aspects of the allocation of powers and responsibilities; there are still difficulties in enhancing the role of independent directors, despite an increase in their number, and ambiguities and discrepancies in the evaluation of their fulfillment of the requirements for independence.

Moreover, in a context of concentrated ownership structures, independent directors are burdened by the fact that they are selected by the same persons who

appoint the executive directors. Improvements could come from election mechanisms that enhance the role of minority shareholders, from more rigorous requirements not only for the neutrality of independent directors but also for their professional experience and for the time they must be ready to devote to the position, and from a more appropriate system of remunerating their function.

More attention should be devoted to the mechanisms of determining the remuneration of executive directors, particularly the granting of stock options and the conditions for exercising them. This is an area with major implications for the creation of appropriate incentive systems and the prevention of abuses to the detriment of the company.

The recent European recommendations on independent directors and the remuneration of executive directors provide useful indications. These issues are also treated by the bill on the protection of saving.

The financial services industry and the structure of the markets

The industry providing trading services is characterized by new competitive conditions.

The competition of alternative trading systems stimulates innovation in the production of services and can be a factor reducing costs. On the other hand, the fragmentation of trading has an adverse impact on the formation of prices and their signaling value.

With the potential eclipse of regulated markets' central role, there is a growing risk of an ebbing of intermediaries' interest in preserving these markets' integrity. The progressive reduction in the profitability of trading for customer account by comparison with the profits from proprietary trading can give an advantage to intermediaries that internalize trades, in a structural conflict of interest, and call into question the very survival of many independent operators.

Intermediaries are called upon to assume greater responsibility: in performing services, by offering customers prices in line with those formed in the

reference markets; in safeguarding the integrity of the markets, by adopting conduct in line with "best practices".

The transparency of information on contracts concluded through intermediaries, provided for by the Directive on Markets in Financial Instruments (MiFID, Directive 2004/39/EC), will enable the authorities to perform more effective supervision on the quality of services rendered to savers in the different trading systems.

The asset management industry in Italy is going through a delicate phase. The Italian market is still not highly concentrated and there is a lack of intermediaries comparable in size to the major European fund managers.

The data on the cost structure of Italian asset management companies show large economies of scale, which probably have not yet been exhausted. Although the market's concentration is still relatively low, there is room for positional rents.[17]

Consob took action to ensure greater transparency on the amount of management fee retrocessions to distribution networks, which are not clearly perceived by savers.

Asset management in Italy is today considerably less widespread than in the other main European countries and still has appreciable room for growth.[18]

The increasing openness of the asset management market, fostered by the European Union's strategy of liberalization and harmonization, offers new opportunities regarding the choice of where to locate, the pursuit of economies of scale and scope, and the structuring of distribution channels. Italian intermediaries must be ready to adapt their objectives, strategies, organizations and procedures in order to be competitive in the supply of services that create value for investors.

The competitiveness of Italy's financial marketplace depends crucially on the possibility of a further increase in the weight and role of regulated markets.[19]

Major structural changes are taking shape within the context of a broader process of concentration that is both horizontal, between producers of the same types of service, and vertical, between providers of complementary services.

The recent acquisition by Borsa Italiana and Euronext of the company that organizes and operates the wholesale market for government securities (MTS S.p.A) reflects the propensity of the Italian market to adopt strategies of combination in order to face the pressures of competition. The listing of the market operating companies can aid these strategies. As it has already said in the past, Consob hopes the legal framework will be created that will permit the operating company's ownership structure to be opened to the market.

The growth of the bond market and the problems that have emerged have shed light on structural aspects and trends that require careful evaluation. The features of bonds are extremely variegated and their structure has become more complex; the role of non-professional investors has grown appreciably; the great majority of trades take place off the regulated markets.

It is necessary to establish an effective regime of transparency that will reduce the bond markets' opacity without lessening their efficiency.

Consob has been looking closely at alternative trading systems, which appear to handle an important share of bond trades. The magnitude of the phenomenon justifies the activation of effective forms of supervision.[20]

Notwithstanding Consob's repeated recommendations, it was decided not to provide for transparency rules for bond trading in the MiFID and in the CESR's opinion on the implementing measures.

The international context and the integration of European financial markets

The crises that have hit the international markets in the past years have not arrested the globalization process.[21]

Ever-increasing integration and the growth on the international markets of operators and instruments, such as hedge funds and derivative products,

characterized by high components of risk require the strengthening of coordination and cooperation between authorities both in the phase of regulation and in the exercise of supervision.

Informational transparency can prove ineffective when savers are offered instruments or products issued or authorized in countries with lower levels of regulation.

The "outsourcing" of functions connected with the provision of investment services and with accounting[22] to entities based in non-cooperative countries with low standards of regulation can also undermine the efficacy of supervision.

Acting on a recommendation of the Task Force on financial fraud set up after the Parmalat case and co-chaired by Consob and the US Securities and Exchange Commission, IOSCO has adopted a resolution obligating all its member authorities to sign a Multilateral Cooperation Agreement by 2010. Consob was one of the first signatories of the Agreement, which permitted the exchange of decisive information in the Parmalat case.

The strengthening of international cooperation is also at the centre of the initiatives of the Financial Stability Forum, in which Consob is an active participant.

In the European Union, the free circulation of financial instruments and intermediaries, which can be curbed only in exceptional cases, makes the need for intense cooperation and close coordination of supervisory rules and activity especially urgent.

For Italy, the completion of the programme envisaged by the Financial Services Action Plan will involve a further significant revision of the Consolidated Law on Finance.

It will be necessary to introduce amendments in order to transpose MiFID and the related implementing measures. The transposition of the Takeover Bids Directive will entail important changes concerning the determination of the offer price and recourse to defensive measures in the case of hostile takeover bids. With regard to the Prospectus Directive (Directive 2003/71/EC), to the best of its

abilities Consob is making up for the fact that the transposition, envisaged for 1 July 2005 is still pending by adopting regulatory changes that will allow the principle of the European passport for offering and listing prospectuses to be implemented.

The adaptation of national systems to the new European framework requires a notable effort on the part of both the supervisory authorities and market participants.

Regulation at European level is sometime the fruit of compromises that can prefer models other than those that are prevalent on the Italian market and do not necessarily ensure the same level of protection as national rules.

Through CESR the securities market supervisory authorities play an important role in drafting the measures implementing the principles laid down by the directives and in developing guidelines and standards to foster convergence of implementation at national level.

This approach has proved effective in the implementation of the Market Abuse Directive and the Prospectus Directive.[23] Problems appear to be arising for the implementation of MiFID, in that the views put forward in some European fora diverge significantly from the opinion expressed by CESR, reducing the role attributed to it in the European legislative process.

The need to strengthen the coordination of supervisory interventions is also apparent. The absence of a legal set-up entrusting CESR with specific tasks can produce a tendency to assign individual national authorities the role of lead authority. The upshot could be less protection for savers not resident in the country of the lead regulator.

In addition, where violations derive from what are basically unitary phenomena but concern different European markets, the necessity of curbing the multiplication of sanction procedures cannot ignore the existence of different national regimes or limit in any way the role that the individual legal systems assign to the judicial authorities. For example, in the case of Citigroup's anomalous transactions on the European wholesale markets for government securities and government securities derivatives, the differences between national

legal systems has led to different legal descriptions of its behaviour and different outcomes of the national procedures. The judicial authorities in Italy are also examining the matter.

The contrasts between different supervisory approaches, which can differ in the balance they strike between the objectives of investor protection and the development of the national financial marketplace, clearly emerge within CESR's permanent working group on fund managers, presided over by the Chairman of Consob.

Hopefully, CESR will become the forum in which solutions that are as unitary as possible can be agreed in the case of divergent positions between national authorities.

Mister President, Ladies and Gentlemen,

The effects of the corporate crises on the performance of the securities market and on the financial system were limited.

The Italian stock market turned in a solid performance for 2004 as a whole, gaining 17.5 per cent and outperforming the other main markets. In the first six months of 2005 the rise in prices slowed, but the market still gained 5.1 per cent.[24]

The growth difficulties of the Italian economy did not have a major impact on share prices. This was a consequence of the limited representativeness of the securities market with respect to the real economy, above all as regards the industrial sector, where the problems of competitiveness are greatest.[25]

The overall size of the Italian stock market in relation to the real economy and total financial assets remains smaller than in the other main industrial countries;[26] despite some movements in the official list and a general improvement in its quality, the number of listed companies is small, as is the flow of new listings, especially of companies in innovative sectors; the financial sector and services continue to account for the lion's share of capitalization.[27]

The Italian economy's weak health requires a united effort based on consensus for a sustained, durable economic recovery, which cannot be achieved without the development of an efficient capital market. The real economy and the capital market are the two rails of a single "track of excellence"

Italy possesses a considerable stock of savings. This is a strength that must be exploited, especially after the well-known corporate crises, by nurturing the recovery of savers' confidence and expectations of being able to operate in a secure context.

In addition, the Italian financial industry, which can count on solid professional experience, must be able to transform the challenges posed by the opening up of markets and European integration into growth opportunities. Strategies that focus on higher value-added, more innovation-rich services are

necessary. This will make it possible to be producers of competitive products and services, not just distributors and consumers.

If the defence of market niches and the maximization of positional rents prevailed, this would mean higher investment costs and more limited supply for Italian savers, and also a lesser ability to deliver support for the productive sector's qualitative advance and growth.

In performing its functions each component of the system can contribute to the consistency of the path, recognizing that the interdependence between economic and financial phenomena propagates the adverse effects of individual mistakes to the whole system.

The Commission draws Parliament's attention to the need for swift action to enact the reform of the legislative framework for the protection of savings, by establishing, in the first place, a clear-cut distribution of tasks based on objectives but also ensuring the consistency of the overall design and filling the main lacunae of the present system. It is also necessary to transpose the Community directives promptly, in order to ensure that the Italian system is constantly aligned with European standards and enable the market to adapt gradually to the new context of competition.

The supervisory and control authorities must show flexibility and strategic ability to ensure that their action is effective and timely, protecting savers and the integrity of the market through a combination of suitable measures of prevention and effective instruments of repression.

To contribute to the recovery of the economy and the development of an efficient capital market, Consob, in conformity with the roles and limits established by Parliament, intends to develop its efforts in three directions:

- by exercising its own tasks with clarity and determination, but in a friendly spirit towards all those who operate in the market;
- by continuing its close cooperation with national and foreign authorities to best ensure the protection of savings beyond as well as within the borders of the domestic market;

– by developing its own ability to "listen to the market" by strengthening its tools for the analysis of signals and phenomena, with a view to detecting possible factors of crisis and improving the ex-ante defence of the financial environment.

Today's meeting is the occasion for Consob to submit the guidelines of its action and the results of its activity to the judgement of all those who participate in the market.

It is also the occasion for Consob to reaffirm its intention of continuing to work, as a consciously independent authority, in the interest of the community and all of its components – above all savers – by performing its functions in accordance with a commitment already given "*nec spe nec metu*".

The independence of the supervisory authorities is the essential prerequisite for the protection of the constitutionally relevant interests that are entrusted to them. Thought therefore should be given to the advisability of granting their role explicit recognition in the Constitution, thereby underscoring their institutional status and at the same time their accountability to the Community and to Parliament. As is recognized in IOSCO's international principles, independence also depends on a legal system that provides adequate protection for supervisory authorities and their staff acting in the bona fide discharge of their institutional tasks, without prejudice to review of the decisions in the light of constitutional principles.

For a strengthening of the institutional dialogue with Parliament, Consob is grateful to the presidents of the two Chambers for guidance given to the parliamentary commissions with the intention of fostering more fruitful discussion with the independent authorities.

Consob offers sincere thanks to the State Legal Office and to all of the offices of the judiciary with which cooperation was increasingly intense, while also expressing the hope that turning to the courts will be a last resort and not the sole resort.

The Commission expresses its deep gratitude to the managers and all the staff, who work in Consob with uncommon professionalism, dedication and commitment and, especially in the last few years, with an exceptional spirit of sacrifice.

NOTES

[1] (page 3). The investigative functions of evaluating the facts and the defences submitted by the interested parties are assigned exclusively to the operational units, while the decision-making functions are reserved to the Commission, supported by an ad hoc organizational unit.

[2] (page 8). Auditing Standard 220 issued by the Italian auditing profession and recommended by Consob. The checks were performed on quality control concerning the assignment of duties and acceptance and maintenance of customers, the direction, supervision and re-examination of work, and the monitoring of the effective operation of the procedures.

[3] (page 8). Consob ordered the deletion of the auditing firm from the register for the systematic nature of the irregularities it had committed, found in particular in its work on the Cirio and Parmalat groups.

[4] (page 9). With reference to the forthcoming mandatory application of the IAS/IFRS, the European Commission and the Italian government recently reached an agreement in principle legitimizing the deferred amortization of the diminution in value of the rights to football players' professional services, provided the number of financial years over which the write-down could be amortized was reduced from ten, as is currently provided for by Article 18/bis of Law 91/1981, to five. Legislation is pending to amend Article 18/bis of Law 91/1991 accordingly.

[5] (page 10). The transactions involving these products were of two basic types: so-called "financial plans", which contemplated an earmarked loan from the bank to the customer for the purchase of financial instruments, and so-called "composite products", which for customers consisted in the purchase of government securities and the sale of put options.

Consob's analyses found that these transactions were characterized by a high degree of complexity and opacity that made it difficult for customers to comprehend their effective risk and return features. Moreover, the characteristics of the transactions would have made them suitable for highly sophisticated customers with a high propensity for risk. Instead, the intermediary's marketing policies were particularly "aggressive".

[6] (page 11). The suspected violations included: inappropriate procedures, lack of knowledge about the securities, failure to inform customers, unsuitability of the proposed transactions, and conflict of interest.

[7] (page 11). This offer was part of a vaster "Global Invitation" comprising similar offers made simultaneously in other countries (Argentina, the United States, Germany, Luxembourg, Denmark, the Netherlands and Spain).

[8] (page 11). There was especially close collaboration with the Securities and Exchange Commission (SEC) of the United States and the Commission de Seurveillance du Secteur Financier (CSSF) of Luxembourg.

[9] (page 12). The keen interest of investors received an additional stimulus from the non-renewal of the shareholders' agreement covering just over 30 per cent of the company's capital and by the emergence of two groups contending for control of the company. Between early November 2004 and the end of April 2005 Antonveneta's share price rose by more than 50 per cent in heavy trading, equal in volume to 150 per cent of the company's capital, with a strong concentration of purchases related to a single intermediary. On 30 March 2005 ABN Amro launched a tender offer for the security at a price of €25. On 29 April Banca Popolare di Lodi, which meanwhile had increased its equity interest from just over 2 per cent at the beginning of January to 29.9 per cent, launched a competing cash and exchange tender offer at a declared value of €26. On 10 June 2005 ABN Amro revised its offer, raising it to €26.5 in cash,. On 16 June 2005 BPL in turn adjusted the value of its cash and exchange offer upwards to €27.5.

[10] (page 13). Following a substantial capital increase by BNL in November 2004, which was subscribed by the parties to the different agreements, the market's interest in the company grew significantly. In addition, in March 2005 Banco de Bilbao, which belonged to one of the agreements, announced an exchange tender offer for 100 per cent of BNL's shares, which Consob authorized on 3 April.

[11] (page 15). Starting in April 2005 there was a rapid increase in the volume of trading in RCS shares, whose price rose by about 35 per cent within a single month. The strains developed after an individual shareholder who was not a party to the blocking and consultation shareholders' agreement covering around 58 per cent of the company's share capital, concluded in August 2004 and valid until 30 June 2007, increased his holding first to above 2 per cent and then to just above 18 per cent.

[12] (page 16). The minimum threshold of 2 per cent for bringing major holdings to the light is the lowest in Europe. The time limit of five trading days for notification is shorter than those currently in force in the other main countries and will be reduced to four when new European legislation (Directive 2004/109EC) is transposed. The entry into force of the amendments to the Regulation on Issuers

required by Italy's 2004 Community Legislation Implementation Law will strengthen transparency with regard to transactions carried out by persons holding at least 10 per cent of the share capital.

[13] (page 17). In February 2005, replying to a query regarding the rescue of the companies Generale Industrie Metallurgiche S.p.A. (GIM) and Società Metallurgica Italiana S.p.A (SMI), both belonging to the same group, Consob determined that the exemption was applicable, since the significant threshold had been exceeded in the context of a crisis of the two listed companies and of a debt restructuring plan. In this case the Commission also requested that the market be informed monthly of the progress made in implementing the plan.

[14] (page 18). The ratio of the free float to market capitalization has remained steadily above 50 per cent since 2002. Between 2001 and 2004 the portion held by the largest shareholder fell by around 10 percentage points, from 42.2 to 32.5 per cent, while the portion held by major shareholders other than the largest shareholder rose from 9.8 to 12.9 per cent. At the end of 2004 more than 50 companies, accounting for a quarter of total market capitalization, were controlled by a shareholders' agreement. In 16 cases the agreement concerned an unlisted company that controlled the listed company, consequently sterilizing the provisions of the Consolidated Law on Finance regarding the lapsing of agreements in case of a tender offer.

[15] (page 19). The ownership structure of listed banks has undergone a far-reaching transformation in the last fifteen years, with a particularly sharp reduction in ownership concentration and an increase in the importance of coalitions. The relative importance of the different types of major shareholder has also changed; the departure of the State, which at the beginning of the 1990s held nearly 40 per cent of the capital of listed banks, has been accompanied by an increase in the role of foreign residents and non-financial companies as major shareholders. At the end of 2004 two thirds of listed banks, accounting for more than 90 per cent of the sector's market capitalization, were not under the majority or working control of a single shareholder. The portion of capital held by non-financial companies has risen sharply, from 5.5 per cent in 2000 to 10.6 per cent in 2004.

Moreover, at the end of 2004 banks were parties to shareholders' agreements concerning 13 listed non-financial companies that accounted for 30 per cent of the market's capitalization.

[16] (page 19). Borsa Italiana's self-regulatory code of corporate governance, now being revised, has contributed to increasing the transparency of the decisions adopted by listed companies in that area. Assonime, the Association of Italian

limited liability companies, has prepared guidelines for drawing up reports on corporate governance and publishes a yearly Analysis of the State of Implementation of the Self-Regulatory Code. The asset management industry's trade association has continued to speak out in the shareholders' meetings of the main listed companies, but so far its moral suasion does not appear to have prompted asset management companies to throw the weight of their shareholdings behind this campaign.

This is confirmed by the limited extent of asset management companies' participation in the shareholders' meetings of the main listed companies in 2004 and the first six months of 2005, which was nonetheless slightly greater than in the previous years. Asset management companies accounted for 0.7 per cent of the voting rights represented at the shareholders' meetings of companies included in the Standard & Poor/Mib index in the first five months of 2005, compared with 0.4 per cent in 2004. The participation rate was especially low in the shareholders' meetings of banks, where the lower degree of ownership concentration and the liveliness of the market for corporate control create scope for greater activism.

[17] (page 21). The assets under management by each of the leading operators in the French, Swiss and German asset management markets are equal to the sum of those managed by the top 4-5 Italian groups.

Studies conducted by Consob show an increase in the costs of Italian investment funds, which rose from 1.01 per cent of net assets in 2001 to 1.18 per cent in 2003, set against a reduction in assets under management and fee levels that do not reflect the cost savings connected with the scale of operations.

[18] (page 21). There are some signs that Italian households are turning away from Italian investment funds, while their recourse to other asset management products remains stable. Between 1999 and 2004 the share of households' total financial wealth invested in mutual funds fell from 11.3 to 9.7 per cent, while the portion invested in individually managed portfolios and insurance products remained stable at around 20 per cent. This was partly a consequence of distribution policies that gave priority to selling forms of investment such as insurance products having a large financial component and characterized by less transparency.

[19] (page 21). The steps taken by Borsa Italiana to adopt stock market indices whose composition and calculation are determined by methods in line with those used in the main international markets and to rationalize the structure of the segments of the official list may help to make the Italian share market more representative and boost its international competitiveness.

[20] (page 22). According to data on 331 alternative trading systems, turnover in euro-dominated securities was more than €85 billion in 2004. Trading in bonds, above all bank bonds, was about €46 billion (53 per cent of the total turnover on the alternative trading systems) and involved 21,091 securities. More specifically, there was turnover of €32.5 billion in bank bonds, €9.6 billion in non-bank corporate bonds and €3.5 billion in bonds issued by international organizations.

[21] (page 22). The indicators of financial integration show a steady upward trend. For the main industrial countries the ratio of external assets and liabilities to GDP almost tripled in the last twenty years, rising from around 80 to 220 per cent.

[22] (page 23). This will be permitted in Italy too after MiFID is implemented.

[23] (page 24). It is also important that all interested parties contribute to the legislative process through consultations organized at European and national level, in which greater participation by investors and consumers' associations is desirable.

[24] (page 26). In 2004 the Mibtel index rose by 17.5 per cent, almost twice as much as the indices of the other main stock exchanges. In the first six months it gained about 5 per cent, compared with only slightly larger increases in the main European markets and negative results in the United States. The S&P/MIB index rose by about 15 per cent in 2004 and 4.7 per cent in the first six months of 2005.

[25] (page 26). Listed groups' share of the Italian economy in terms of employment is modest and tending to fall. The contraction in the past ten years was especially sharp for industry excluding construction, whose share fell by almost one half. By contrast, there was an increase in the representativeness of listed groups belong to the service sector, most notably for those in financial services.

[26] (page 26). In the last ten years about 200 companies were listed – they accounted for more than half of total stock market capitalization at the end of 2004 – and a similar number were delisted. The newly listed companies largely embody economic realities that previously were not present on the market: the majority are firms not belonging to groups that already included a listed company. However, privatized companies operating in the service sector account for the preponderant share of the newly listed companies' market capitalization.

The ratio of the Italian stock market's capitalization to GDP was equal to about 40 per cent at the end of 2004. This was low by comparison with the average ratio for the markets of the euro area, 60 per cent, and above all with the ratios of the Anglo-Saxon markets, stably above 100 per cent.

[27] (page 26). At the end of April 2005 listed Italian companies numbered 269, down by about 20 per cent from the high of 2000. Nine new companies were listed in 2004. The financial and service sectors each accounted for nearly 40 of total market capitalization at the end of 2004.