

Course of

Corporate Governance



Part Three

Business groups governance

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Courses of:

Fundamentals of business (ENG)

Corporate governance (ENG)

Economics of business groups (ITA)

Finance and *governance* of business groups (ITA)

Social responsibility and reputation (ITA) 347

"Tor Vergata" University of Rome

Department of Management and Law



Part Three – Business groups governance

Chapters of Part Three

Part three: Business groups governance

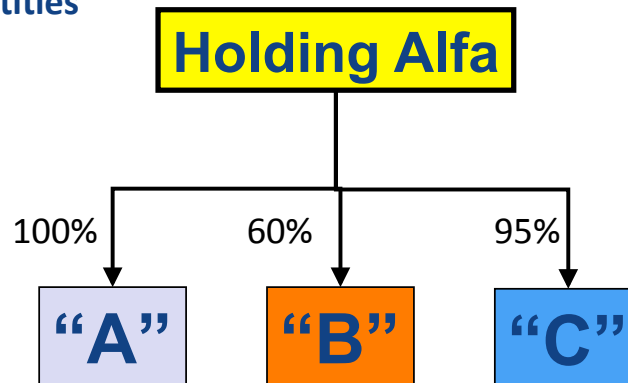
- [Chapter VIII: Business groups](#)
- [Chapter IX: Pyramids and the separation between control and direction of non-financial Italian family companies](#)
- [Chapter X: Related party transactions and separation between control and direction in business groups: The Italian case](#)



Part Three – Business groups governance

From the stand alone firm to the business groups

Four legal entities



Each legal entity of the group has a board of directors

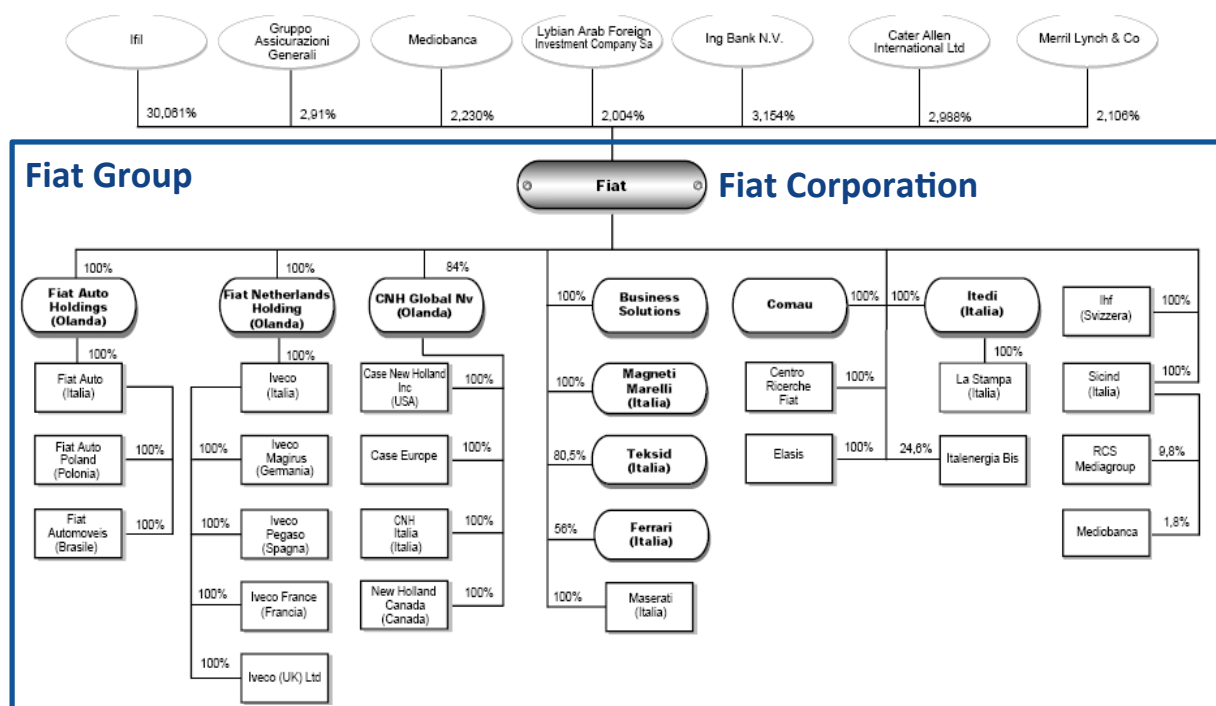
Existing literature is full of evidence that business group firms behave differently from stand-alone firms



Part Three – Business groups governance

F I A T

2008

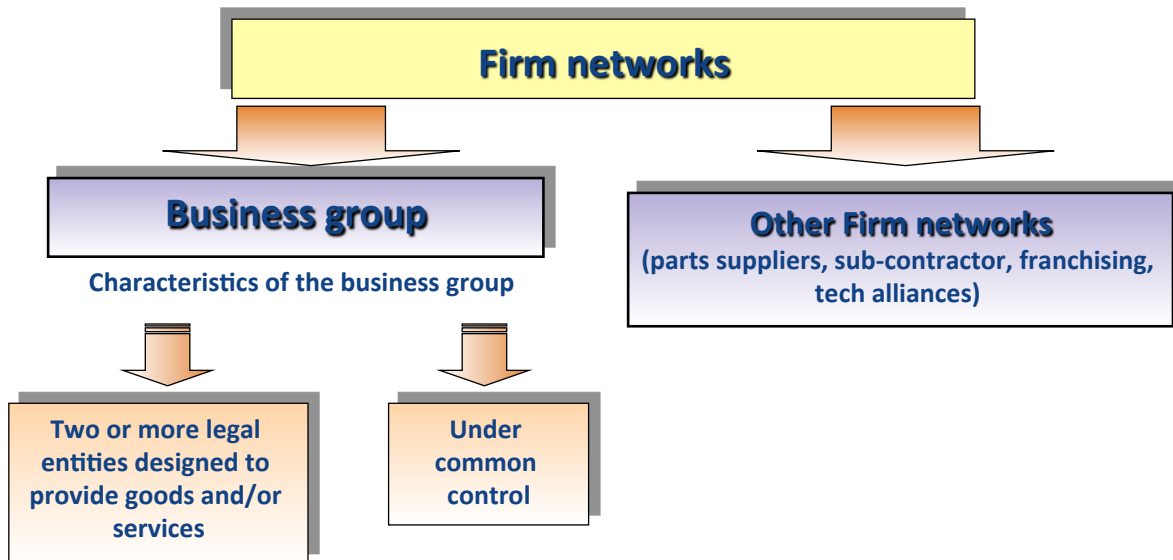




Part Three – Business groups governance

Business group definitions

Classification of firm networks



Part Three – Business groups governance

Our concept of business group - IAS 27 (Consolidated and separate financial statements) – Key definitions

Definitions

4 The following terms are used in this Standard with the meanings specified:

Consolidated financial statements are the financial statements of a group presented as those of a single economic entity.

Control is the power to govern the financial and operating policies of an entity so as to obtain benefits from its activities.

A group is a parent and all its subsidiaries.

Non-controlling interest is the equity in a subsidiary not attributable, directly or indirectly, to a parent.

A parent is an entity that has one or more subsidiaries.

Separate financial statements are those presented by a parent, an investor in an associate or a venturer in a jointly controlled entity, in which the investments are accounted for on the basis of the direct equity interest rather than on the basis of the reported results and net assets of the investees.

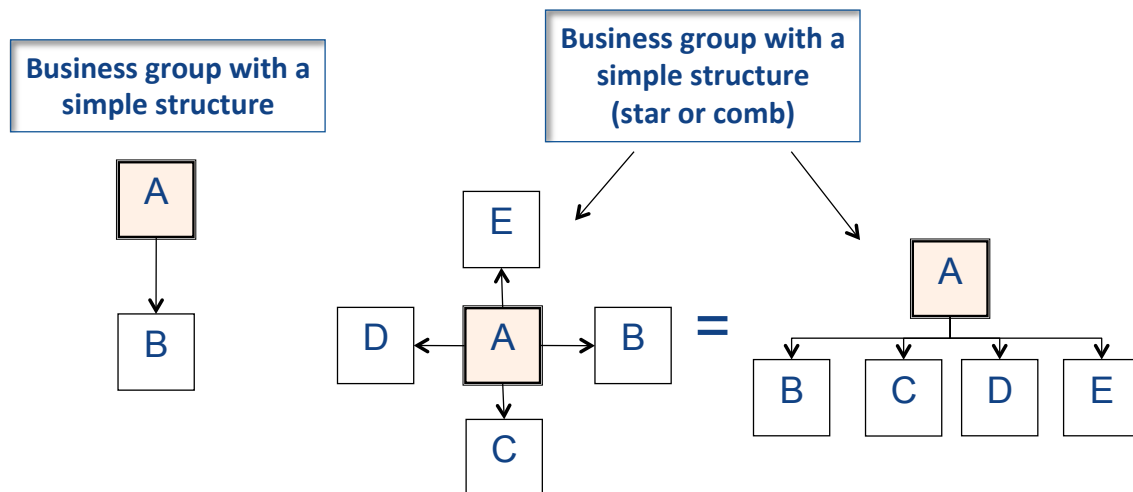
A subsidiary is an entity, including an unincorporated entity such as a partnership, that is controlled by another entity (known as the parent).



Part Three – Business groups governance

Business group structures

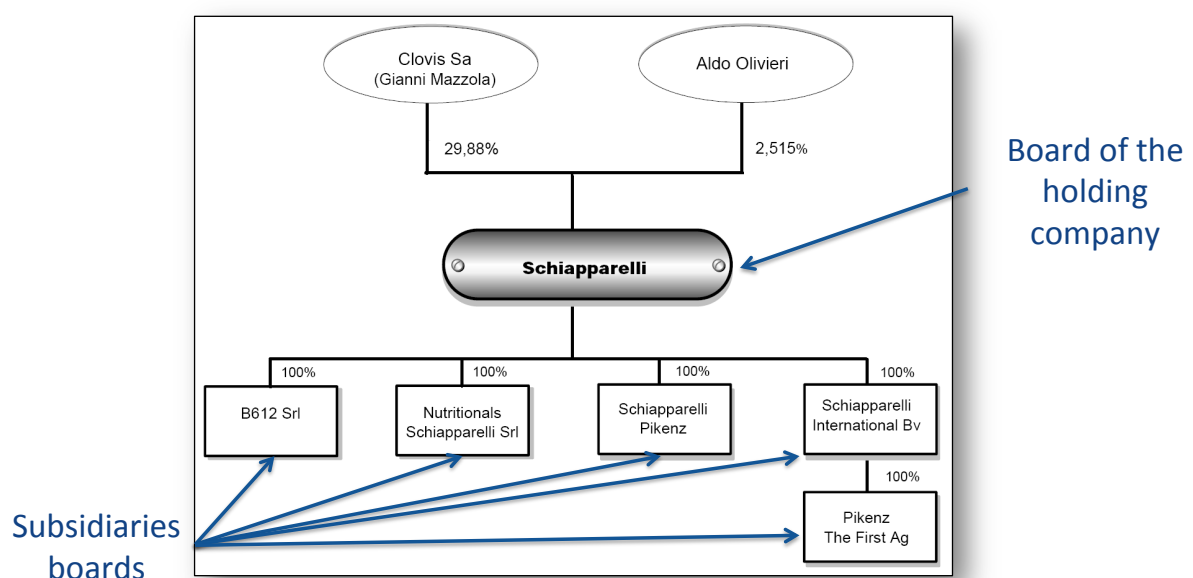
Simple structure



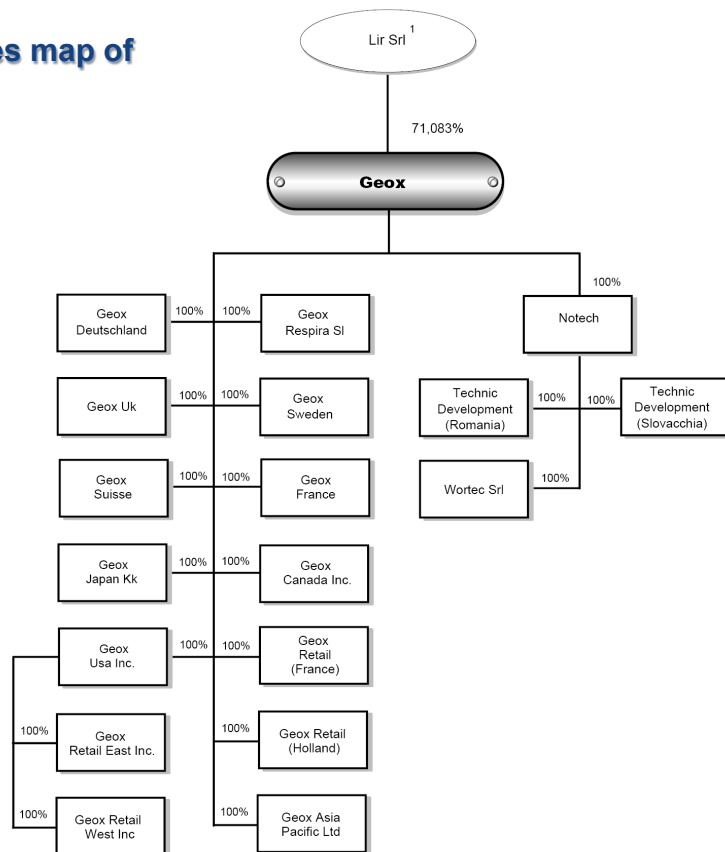
Part Three – Business groups governance

Business group structures

Legal entities map of Schiapparelli group



Legal entities map of Geox group



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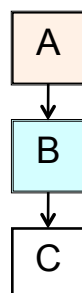


Part Three – Business groups governance

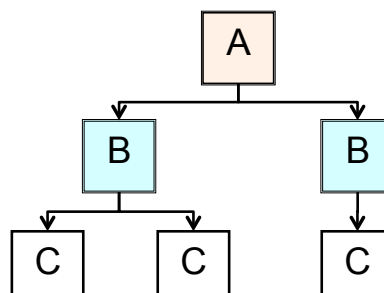
Business group structures

Business group with complex structure

Group with direct and indirerc control



Group with different levels of grouping

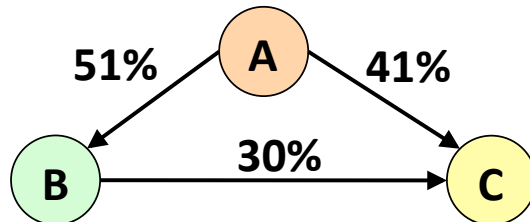




Part Three – Business groups governance

De jure and de facto indirect control

De jure indirect control (of A over C)

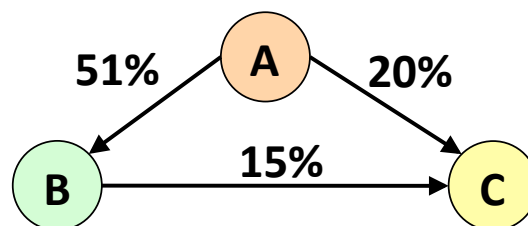


$$(51\% * 30\%) + 41\% = 56,3\%$$

De facto indirect control (of A over C)

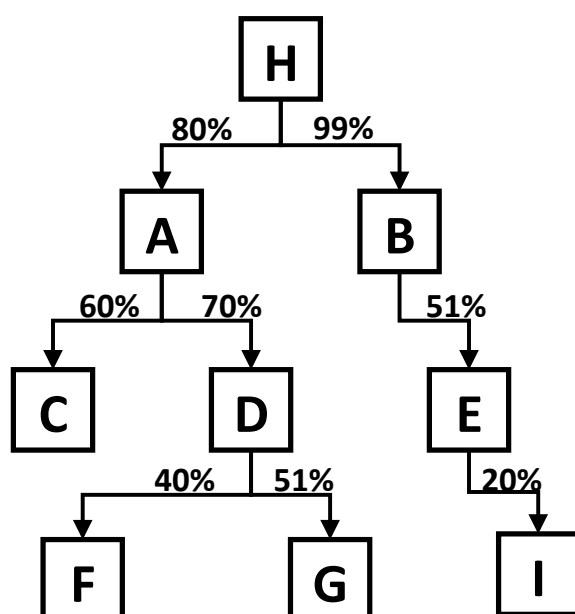
$$(51\% * 15\%) + 20\% = 27,65\%$$

72,35% is dispersed



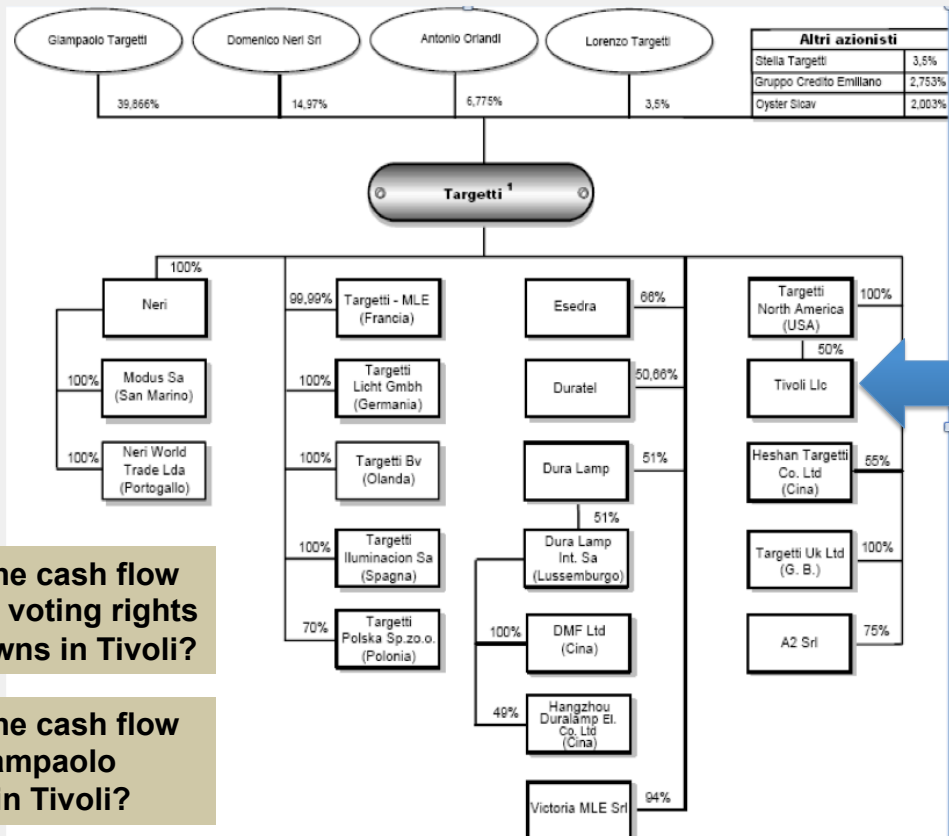
Part Three – Business groups governance

Direct and indirect investments



| Firm | Direct investments (<i>voting rights</i>) | | Indirect investments (<i>cash flow rights</i>) | |
|------|--|----------|---|----------|
| | Majority | Minority | Majority | Minority |
| H | 100% | 0 | 100% | 0 |
| A | 80% | 20% | 80% | 20% |
| B | 99% | 1% | 99% | 1% |
| C | 60% | 40% | 48% | 52% |
| D | 70% | 30% | 56% | 44% |
| E | 51% | 49% | 50,5% | 49,5% |
| F | 40% | 60% | 22,4% | 77,6% |
| G | 51% | 49% | 28,6% | 71,4% |
| I | 20% | 80% | 10,1% | 89,9% |

Targetti is the listed parent company of Targetti group. Please, analyse the Targetti group legal entities map and answer to the following questions:



What are the the cash flow rights and the voting rights that Targetti owns in Tivoli?

What are the the cash flow rights that Giampaolo Targetti owns in Tivoli?

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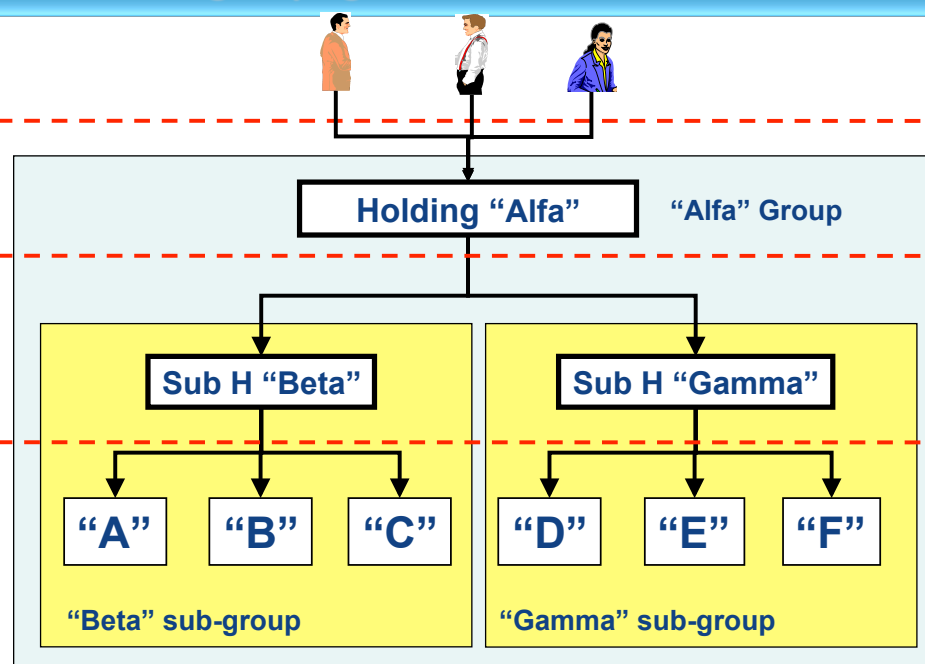
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Ultimate owner

Holding or parent company (headquarters)

Sub- holding

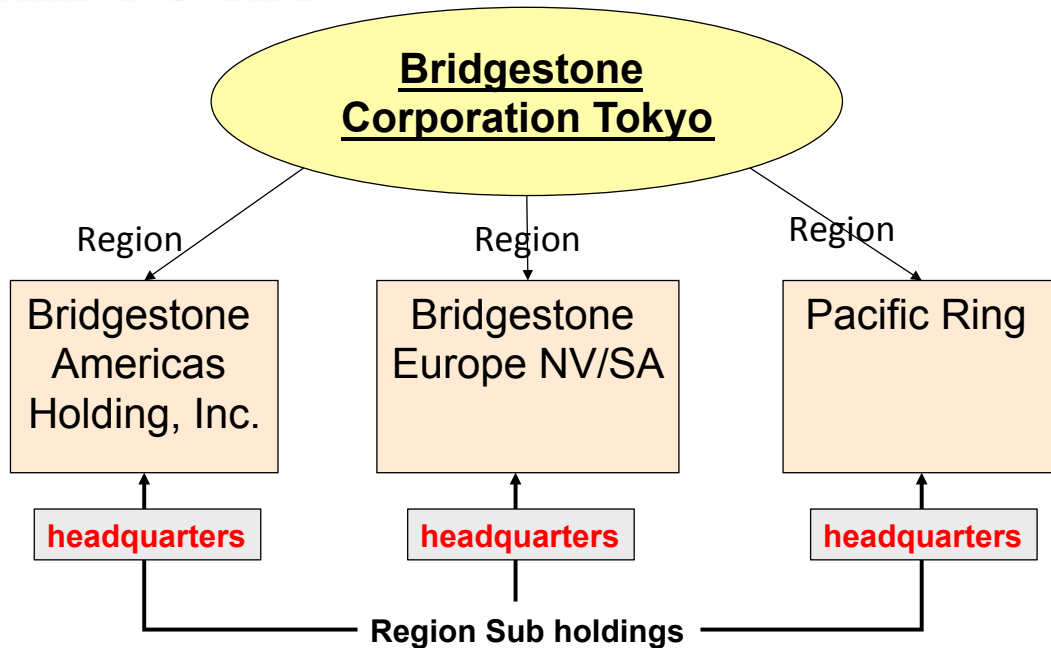
Subsidiaries (O1, O2, etc.)



9 legal entities, one group, two sub-groups



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Part Three – Business groups governance

| Bridgestone Americas Holding, Inc. | Bridgestone Europe NV/SA | Pacific Ring |
|---|--|--|
| <ul style="list-style-type: none"> -Bridgestone North American Tire, LLC 100% -BFS Retail & Commercial Operations, LLC 100% -BFS Diversified Products, LLC 100% -Morgan Tire & Auto, Inc 64,4% -Bridgestone APM Company 100% -Bridgestone Aircraft Tire (USA), Inc 100% -Bridgestone Argentina S.A.I.C. 100% -Bridgestone do Brasil Industria e Comercio Ltda. 100% -Bridgestone Chile, S.A. 89,7% -... | <ul style="list-style-type: none"> -Bridgestone Aircraft Tire (Europe) S.A. 100% -Bridgestone France S.A. 100% -Bridgestone Deutschland G.m.b.H. 100% -Bridgestone Italia S.p.A. 100% -Bridgestone Benelux B.V. 100% -Bridgestone Finance Europe B.V. (in Netherlands) 100% -Bridgestone Poland Sp.z o.o 100% -Bridgestone Portugal Lda. 100% -Bridgestone C.I.S. L.L.C. 100% -Bridgestone Hispania S.A. 99,7% | <ul style="list-style-type: none"> - Bridgestone cycle Co., Ltd. 100% -Bridgestone Flowtech Corporation 100% -Bridgestone Elastech Co., Ltd 100% -Bridgestone Kaseihin Seizo Corporation 100% -Bridgestone Sports Co., Ltd 100% -Asahi Carbon Co., Ltd 99,4 -Bridgestone Finance corporation 100% -Bridgestone Tire Hokkaido Hanbai K.K 100% -Bridgestone Tire Tokyo Hanbai K.K 100% -Bridgestone Tire Chubu Hanbai K.K 99,7% -Bridgestone Tire Osaka ... |



Part Three – Business groups governance

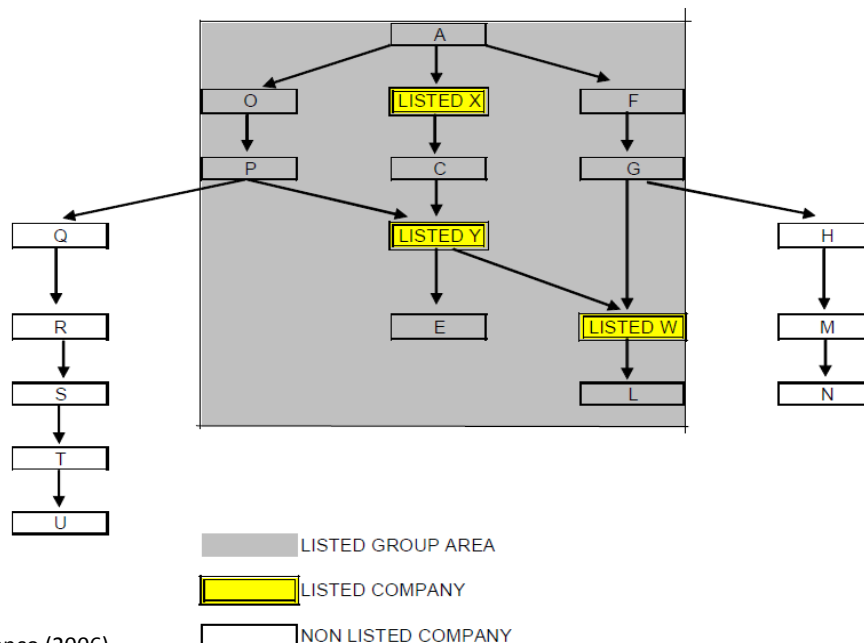
The Keiretsu is a set of companies with interlocking business relationships and shareholdings. It is a type of business group.



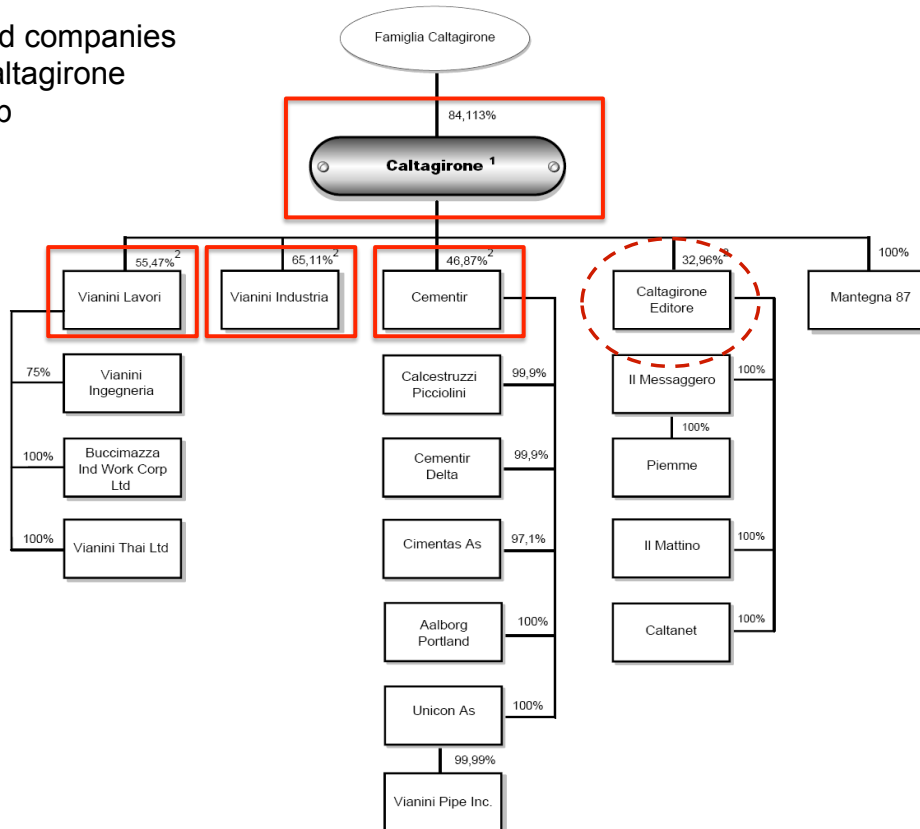
Part Three – Business groups governance

Business group structures

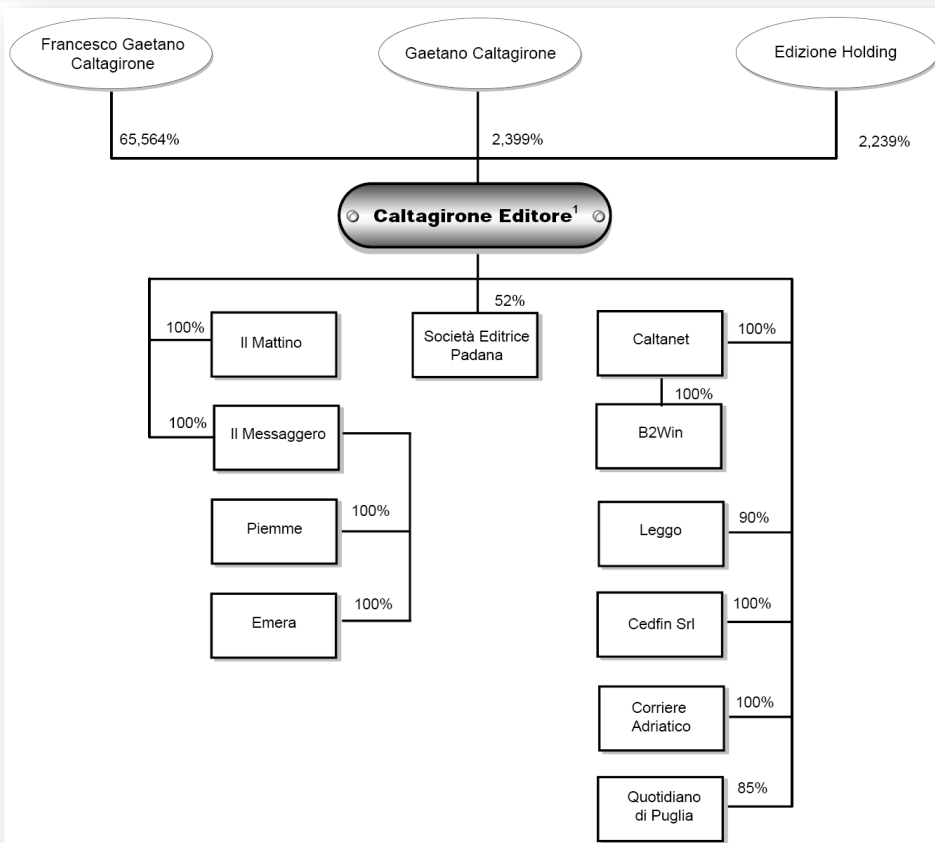
The listed business group



Listed companies
in Caltagirone
group



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From the single legal entity to the business groups

Definitions

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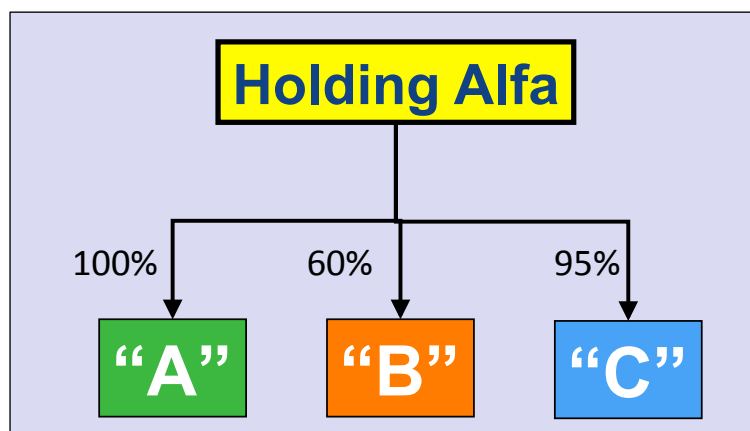
A *subsidiary* is an entity, including an unincorporated entity such as a partnership, that is controlled by another entity (known as the parent).



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From the single legal entity to the business groups

One economic entity composed by four legal entities



Each legal entity of the group has a board of directors



Part Three – Business groups governance

From the single legal entity to the business groups

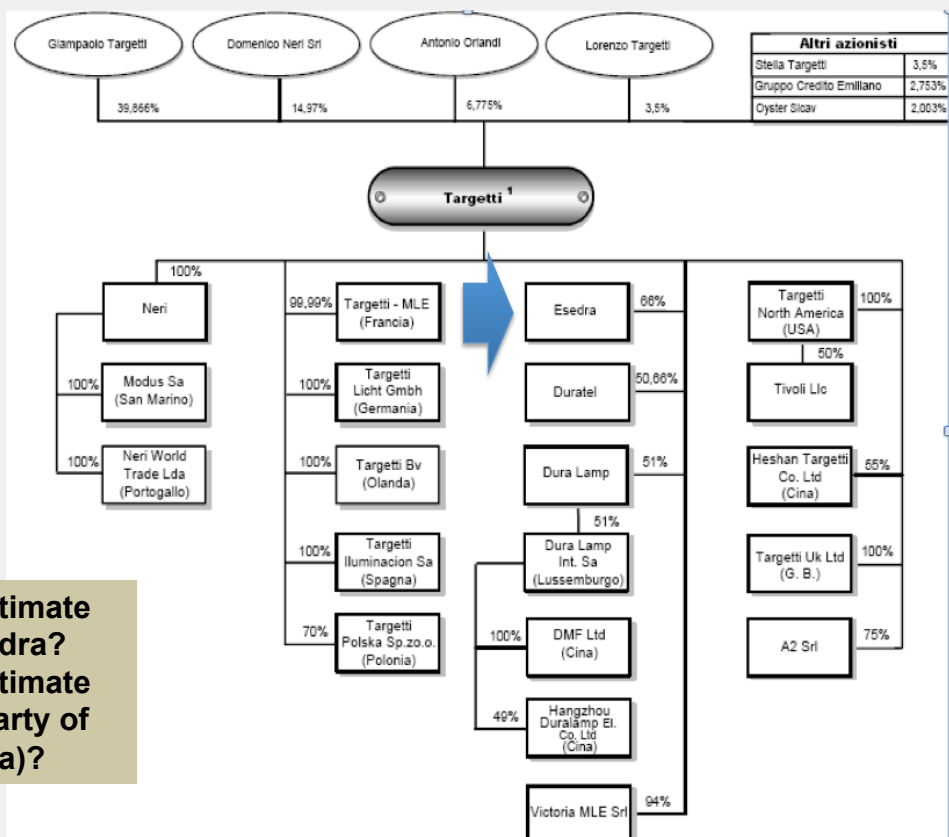
Economic entity and azienda

Boundaries of the
ECONOMIC ENTITY



Boundaries of the
AZIENDA

Targetti is the listed parent company of Targetti group. Please, analyse the Targetti group legal entities map and answer to the following questions:



**Who is the ultimate owner of Esedra?
Who is the ultimate controlling party of DMF Ltd (Cina)?**



Part Three – Business groups governance

IAS 27 (Consolidated and separate financial statements) – Key definitions

Definitions

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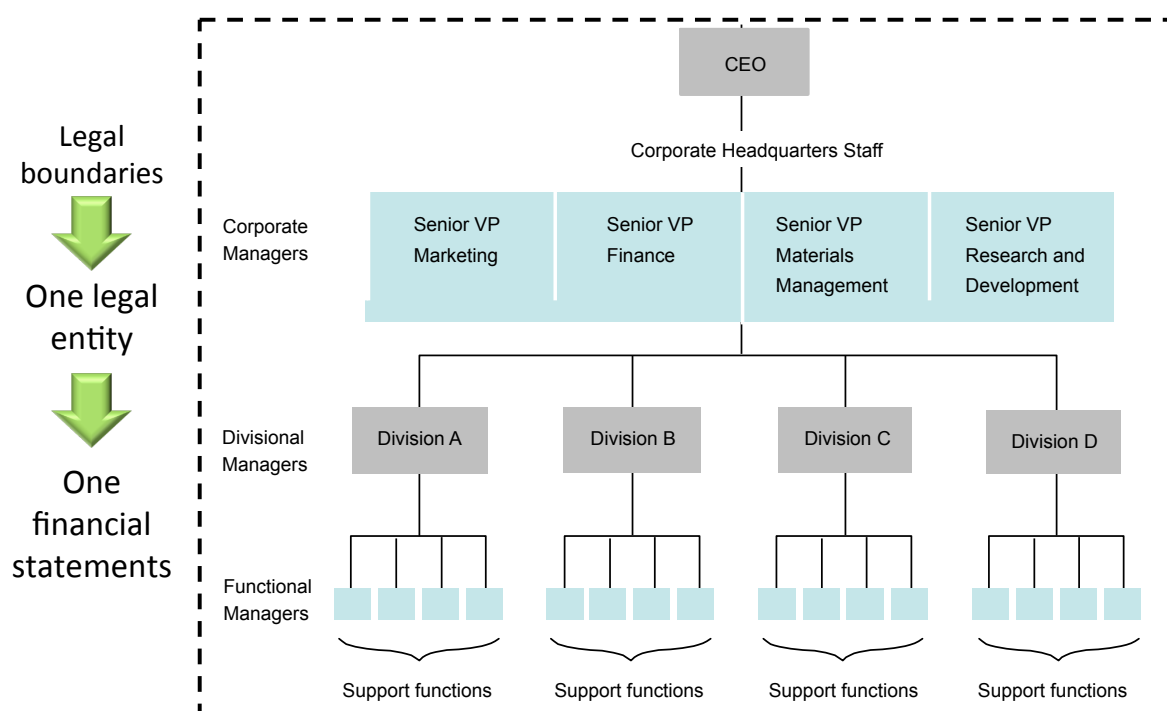
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Multidivisional structure

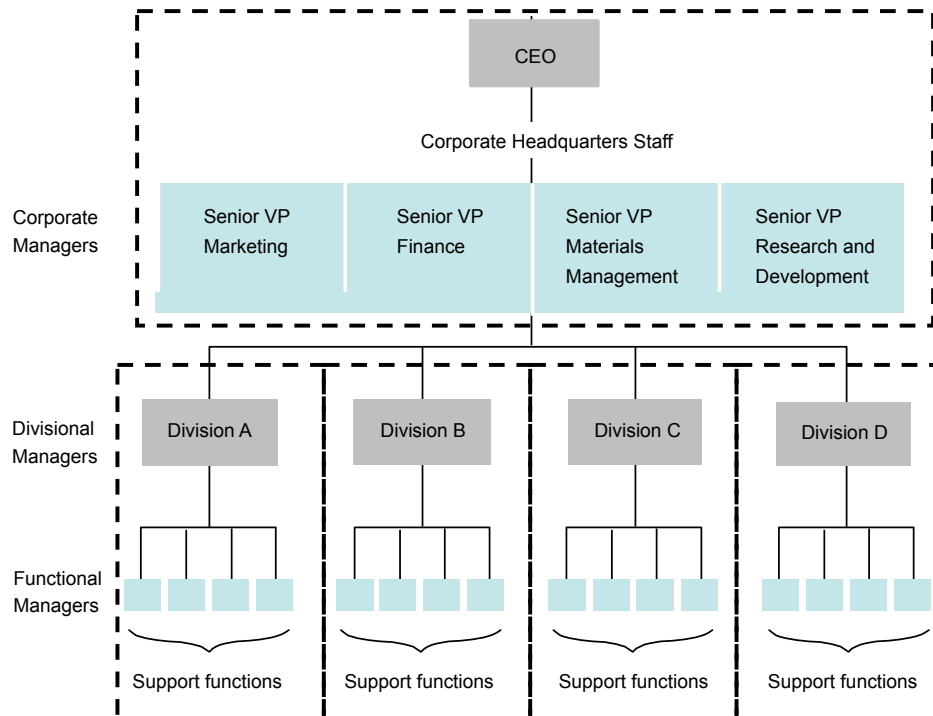




Part Three – Business groups governance

Business group with a Multidivisional structure

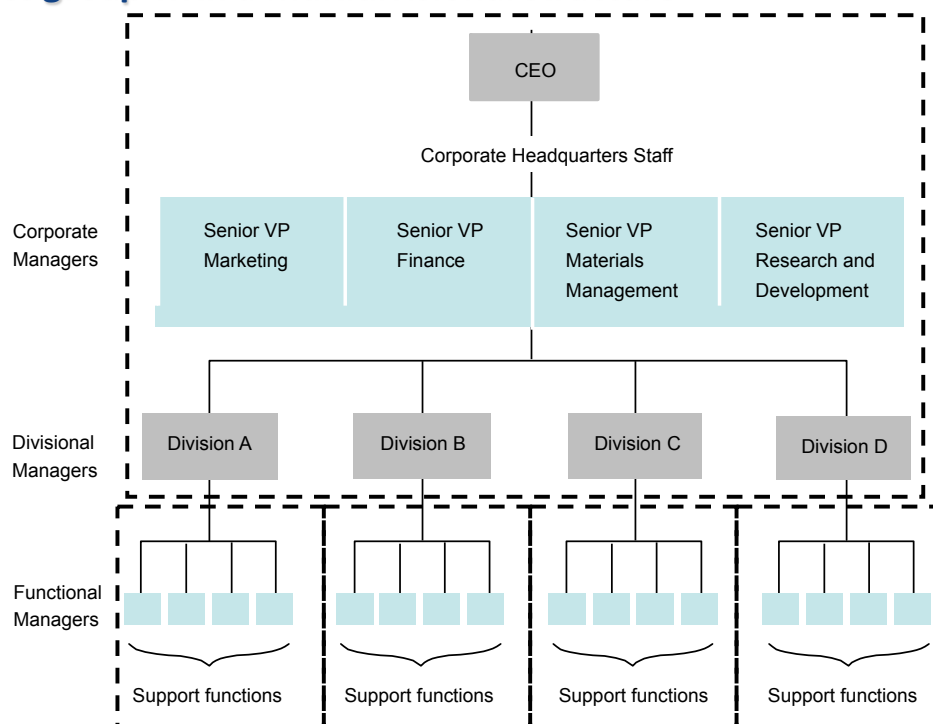
Legal
boundaries
↓
Five legal
entities
↓
Five separate
financial
statements
↓
One
consolidated
financial
statements



Part Three – Business groups governance

Business group with a Multidivisional structure

Legal
boundaries
↓
Five legal
entities
↓
Five separate
financial
statements
↓
One
consolidated
financial
statements

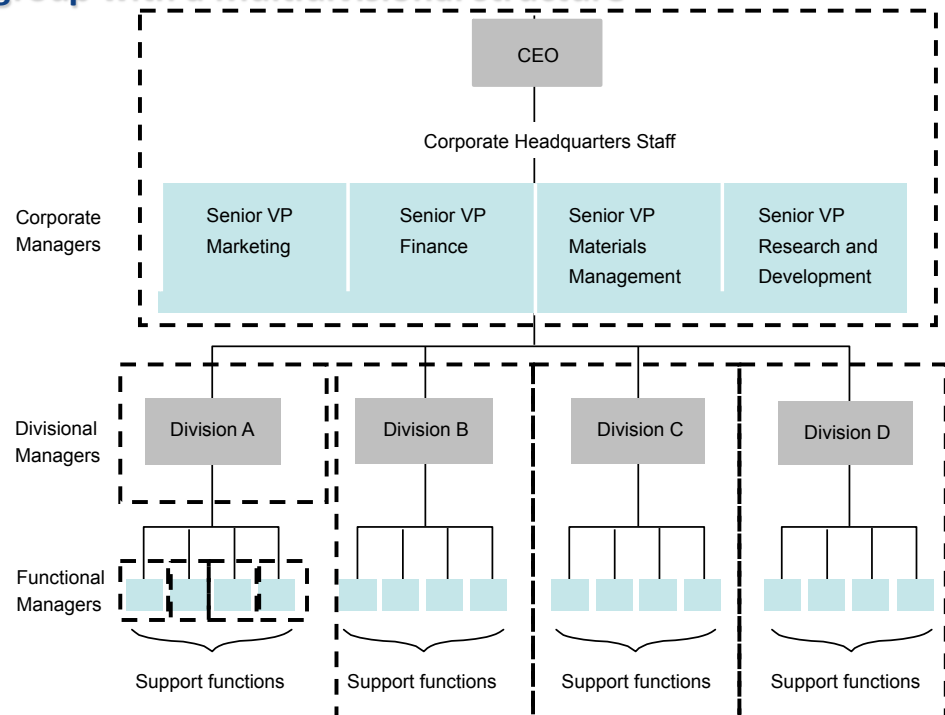




Part Three – Business groups governance

Business group with a Multidivisional structure

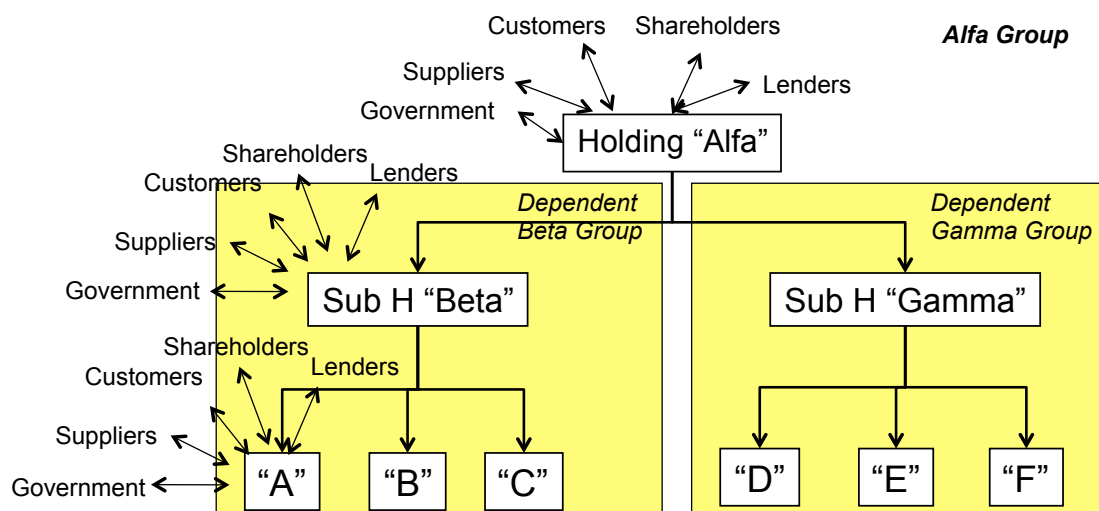
Often, separate legal entities are created to invest directors with responsibility



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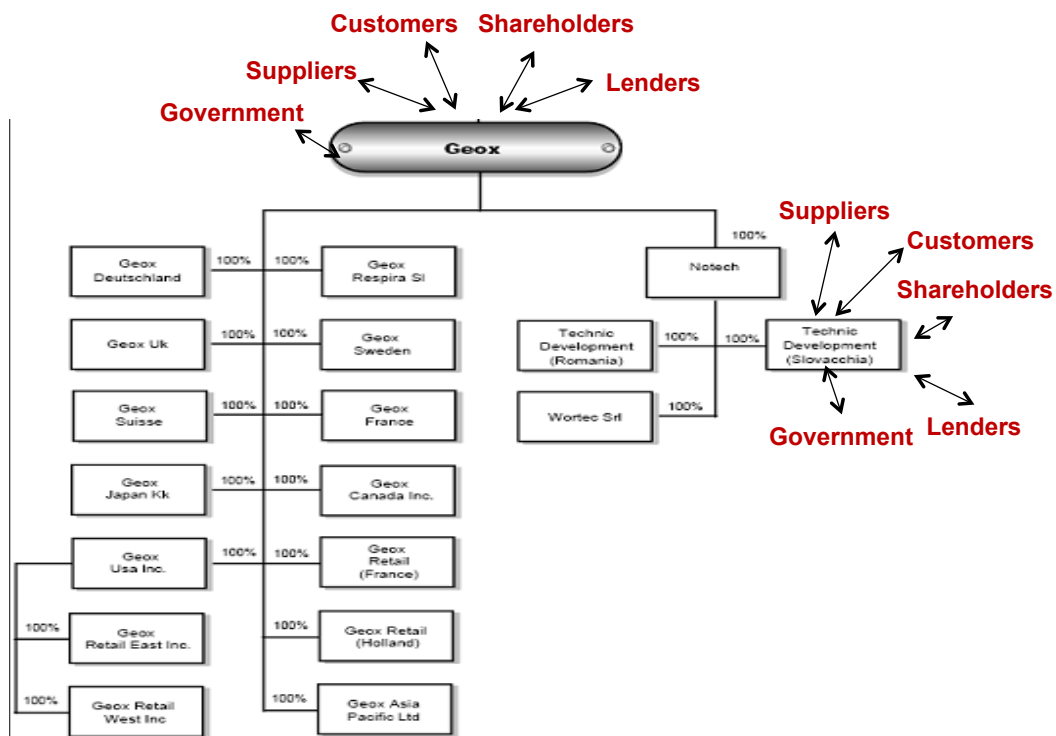
Stakeholders of the firm and stakeholders of the business group

The business group is not a single legal entity





Part Three – Business groups governance



Part Three – Business groups governance

Subsidiary' board dilemma

"Imagine, for example, that you are a director of a wholly-owned subsidiary. You suspect that the parent company wants to loot the subsidiary or have the subsidiary engage in various sweetheart deals with the parent in order to improve the parent's bottom line.' What should you do? You certainly have a fiduciary duty to the parent. But you also have a duty to the wholly-owned subsidiary as an entity.' In addition, you may (depending on the circumstances) have duties to the subsidiary's creditors, as well as certain government regulators. Finally, the interests of other constituencies may need to be considered...



Part Three – Business groups governance

Subsidiary' board dilemma

...You are faced with a dilemma. You can either: serve the parent and risk being sued by creditors, regulators and/or other constituencies; serve the subsidiary and risk being sued and/or fired by the parent; or, you can quit. Where shall you look for guidance? This is obviously an important area of the law ...”



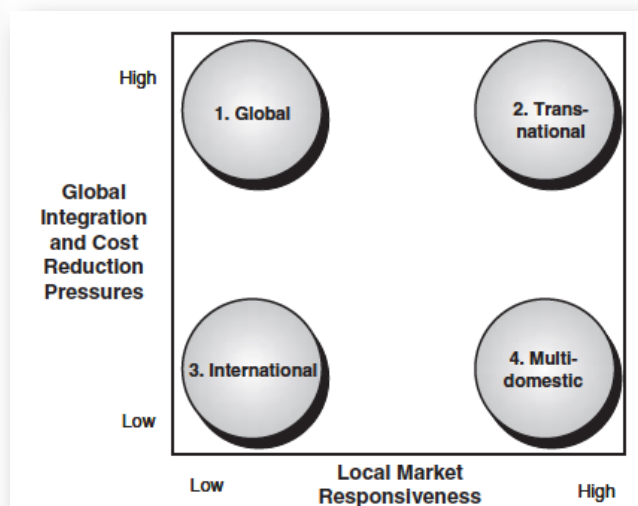
Part Three – Business groups governance

The role of subsidiary boards in multinational enterprises

Corporate Governance Options for the Local Subsidiaries of Multinational Enterprises*

Geoffrey C. Kiel**, Kevin Hendry and Gavin J. Nicholson

Direct control
Dual reporting
Advisory Board
Local Board





Part Three – Business groups governance

The role of subsidiary boards in multinational enterprises

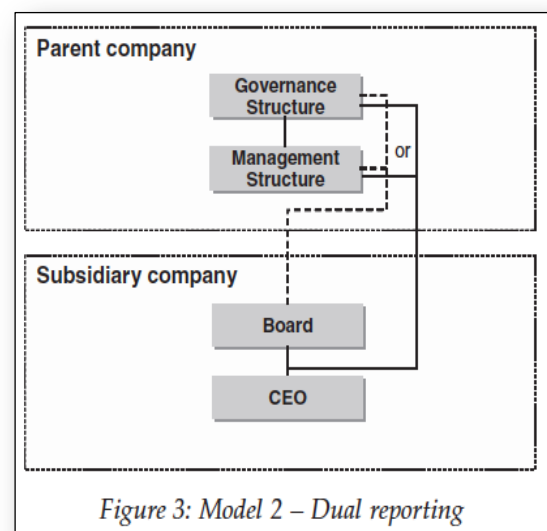
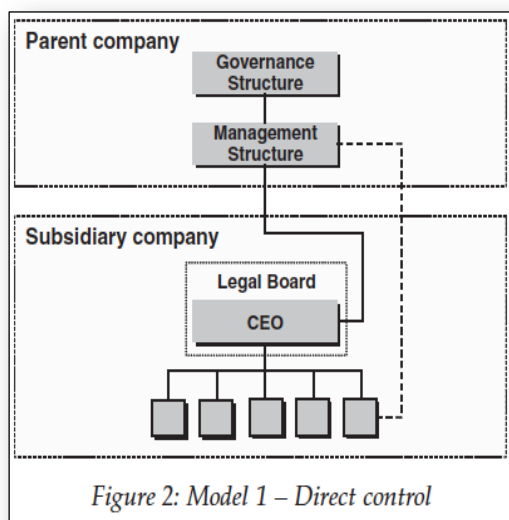
The four models proposed are the following:

1. **Direct Control:** the parent board governs the subsidiary, while the local board is a mere compliance board with no responsibilities other than those required by law;
2. **Dual reporting:** there are both a local board and a parent board governing the subsidiary, with the local CEO facing a dual reporting line (i.e. to the local board and to the parent management structure);
3. **Advisory Board:** the parent company's management solely undertakes the subsidiary's corporate governance but it is assisted by a local advisory board when greater local market knowledge is relevant;
4. **Local board:** the local board is legally constituted and governs the subsidiary with full autonomy. In this model the parent only acts as a shareholder.



Part Three – Business groups governance

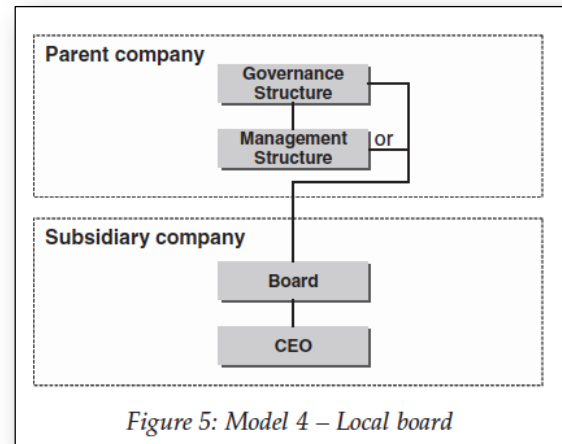
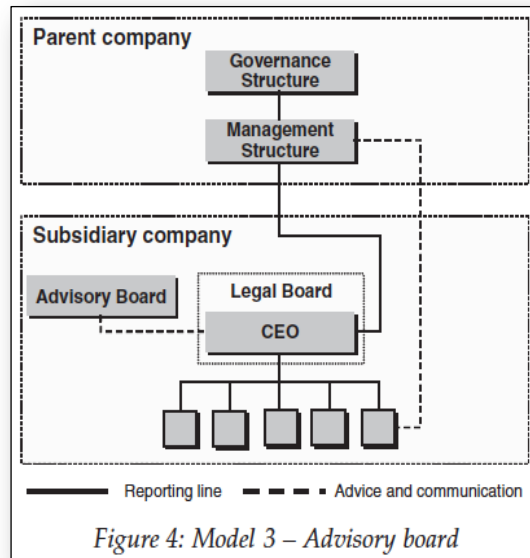
The role of subsidiary boards in multinational enterprises





Part Three – Business groups governance

The role of subsidiary boards in multinational enterprises



Part Three – Business groups governance

Separation between control and direction in business group

Within a business group *control* is separated from *management* when the parent company delegates the exercise of the decision-making power to the boards of its subsidiaries.

Subsidiary autonomy can be defined as the decision-making rights that are granted by the parent (Gammelgaard et al., 2012). A subsidiary possesses high autonomy when it exercises the power to direct the operational and/or strategic decisions. Low autonomy arises when the parent largely makes such decisions.



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What are the related party transactions

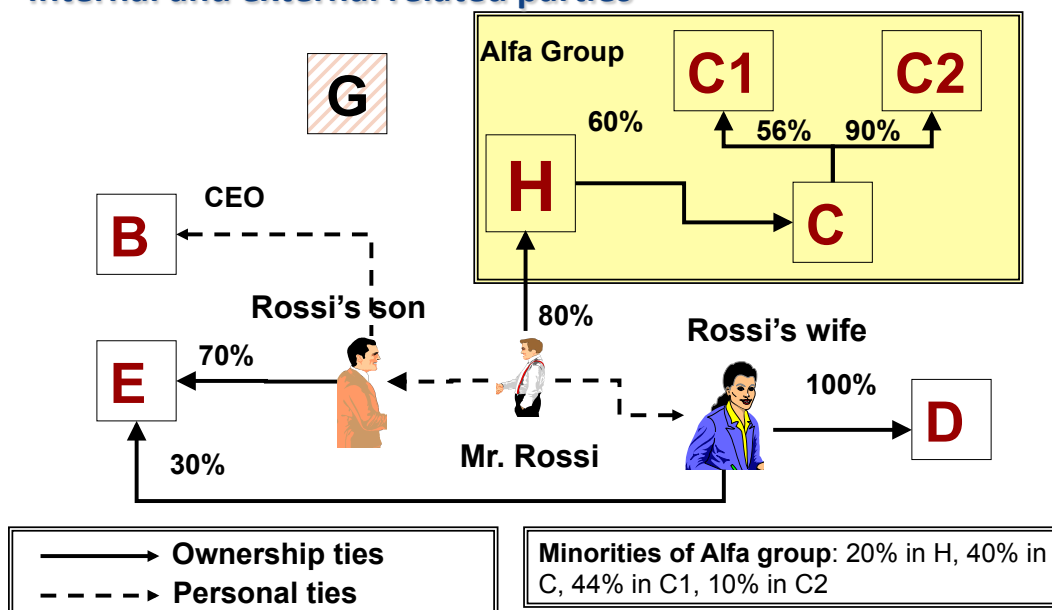
RPTs are those transactions that the firm engages with its subsidiaries, parent company, associates, managers, directors and majority shareholders, as well as their close relatives (IAS 24, 2009).

IAS 24 provides guidance on the disclosure of transactions with related parties in the financial statement



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Internal and external related parties



Related parties of the group: "H", "C", "C1" e "C2"

Related parties external to the group: Mr. Rossi, Mr. Rossi's son, Mr. Rossi's wife, "D", "E", "B"

Unrelated party: "G"



Part Three – Business groups governance

Example of directors' related party transactions in Fiat group, disclosed in the financial statements

Franzo Grande
Stevens

Vice Chairman
Director and Secretary
of the Board

We also effected the following transactions with other related parties:

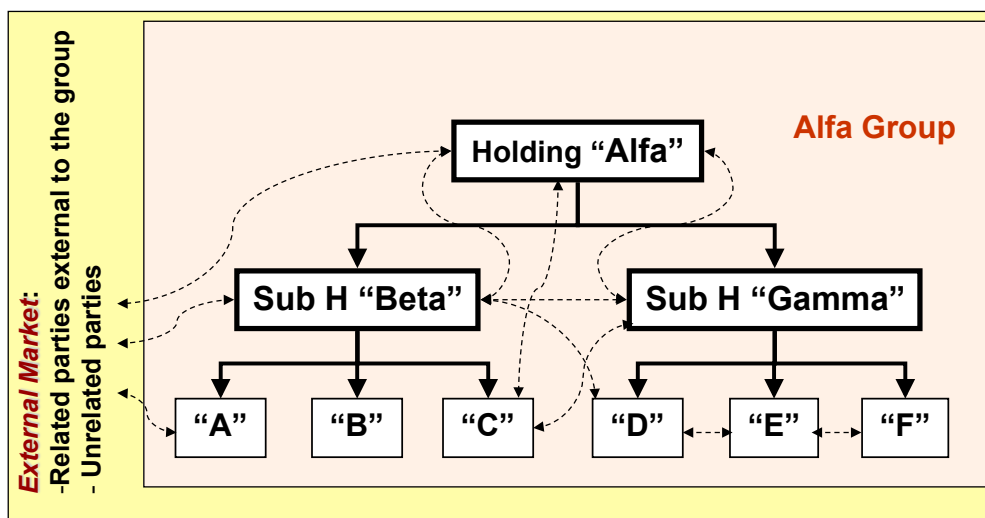
- Franco Grande Stevens, a member of the Board of Directors until April 2004, received compensation in 2003 of €317,000 for legal services rendered to Fiat S.p.A., and €599,000 for such services rendered to Fiat Partecipazioni S.p.A.
- Luigi Arnaudo, a former member of the Board of Directors of IFIL, received compensation of €40,000 for consultancy services provided to Fiat S.p.A.
- Studio Benessia Maccagno, a law firm in which director Angelo Benessia is a partner, received compensation of €2.5 million for professional services rendered in connection with our equity investment in Italenergia Bis.

Font: Form 20-F (2003) Fiat group



Part Three – Business groups governance

Related party transactions (internal and external)





Part Three – Business groups governance

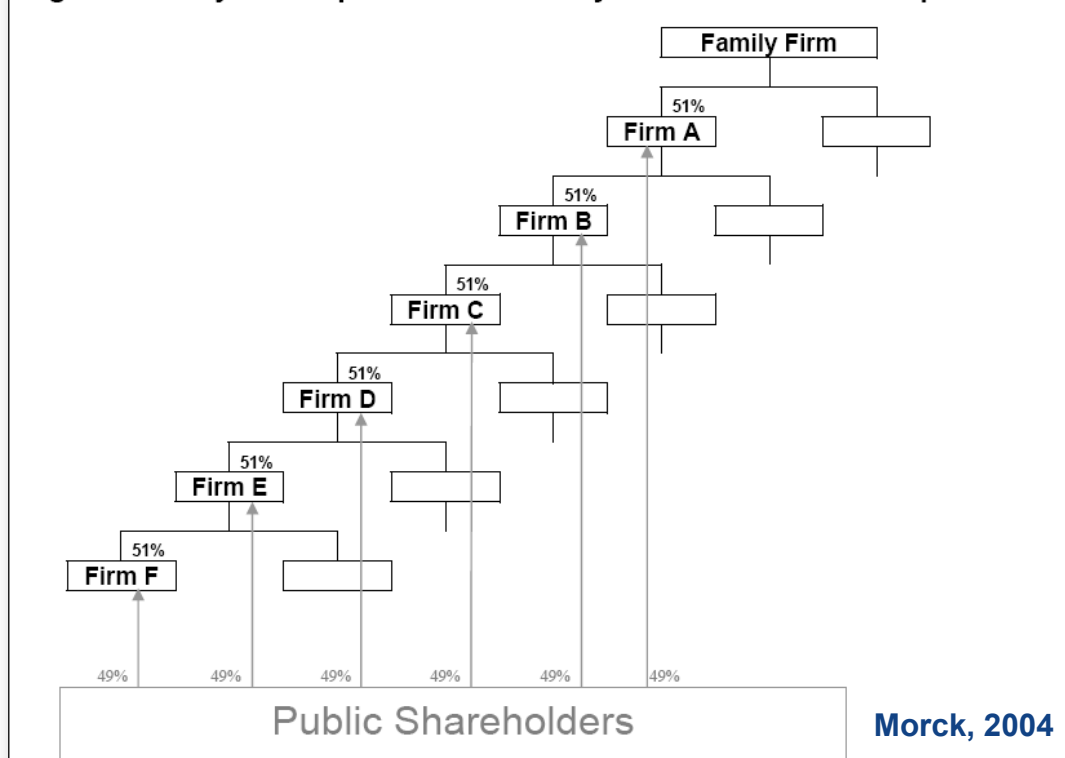
Pyramids and the separation between ownership and control

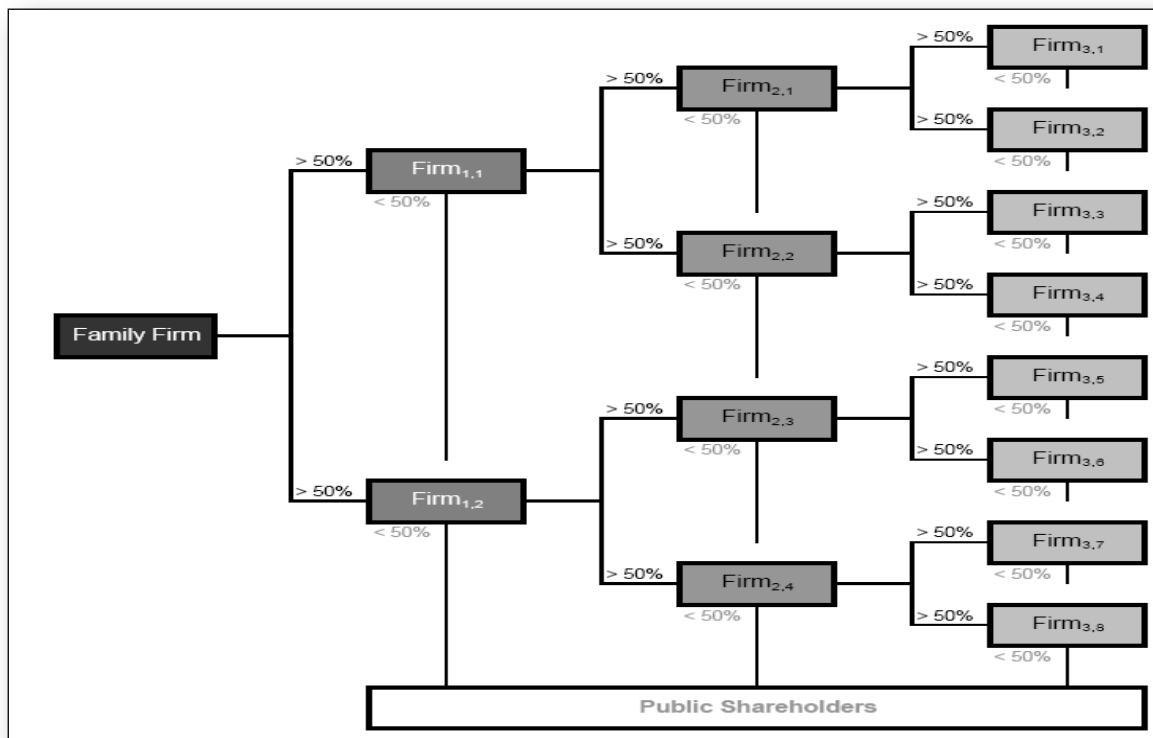
Definition

The pyramidal business group is one of the more common features of ownership structure in continental Europe. This is an organizational arrangement in which a holding company at the top owns shares in subsidiaries, which in turn have subsidiaries of their own. The subsidiaries at the bottom of the pyramid are also called operating companies, while those at intermediate levels are known as subholding companies.

A family that controls 51% of a listed corporation that controls 51% of another that controls 51% of yet another and so on actually owns only 0.51^n of the corporation n tiers down the in pyramid, with the remainder of each corporation financed by public or minority shareholders.

Figure 1. A Stylized Representation of a Pyramidal Business Group





Part Three – Business groups governance

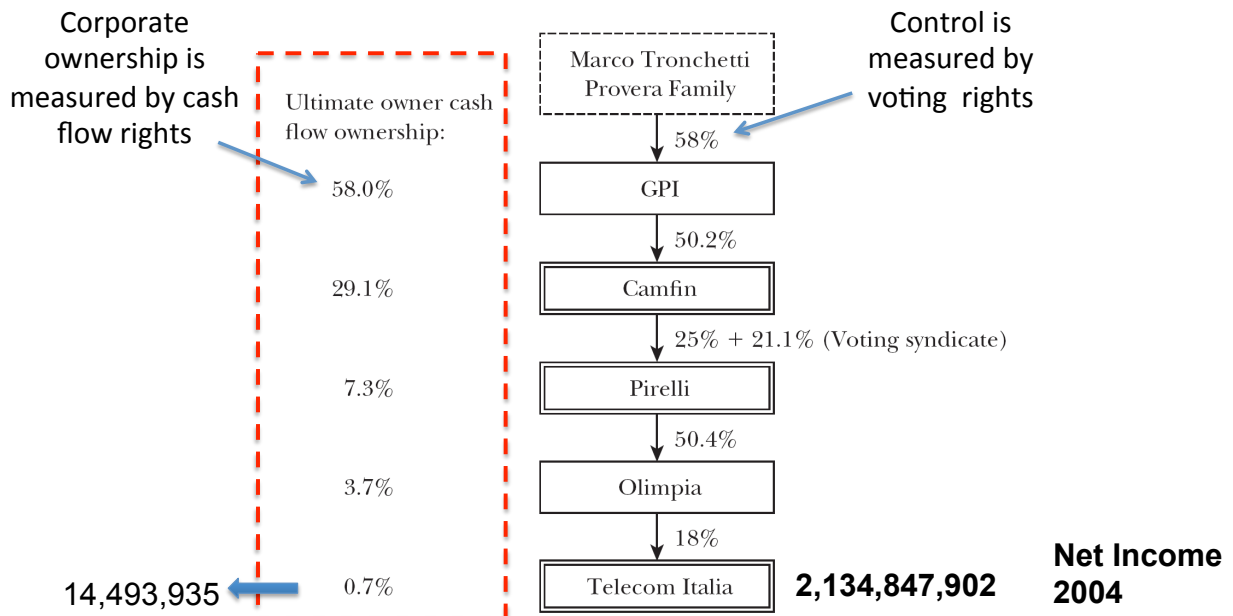
Tunneling and propping

Tunnelling: is defined as the transfer of assets and profits out of firms for the benefit of their controlling shareholders.

Propping: Internal capital markets are used to save firms from failure during especially moderate negative economic shock periods.

- ☐ Funds in profitable firms or resources brought by large shareholders are transferred to firms that are in distress to save them.
- ☐ The short term costs of funding is less than the expected benefit of future cash flows.
- ☐ Once these distressed firms become profitable again, they may become the new targets of tunneling.

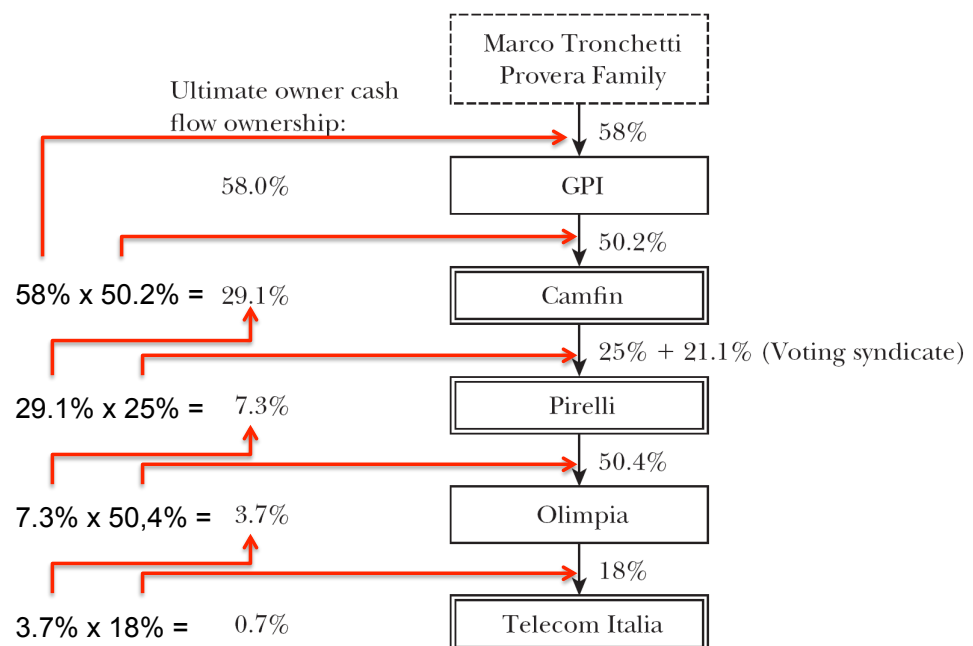
Ownership Structure of Telecom Italia in 2005



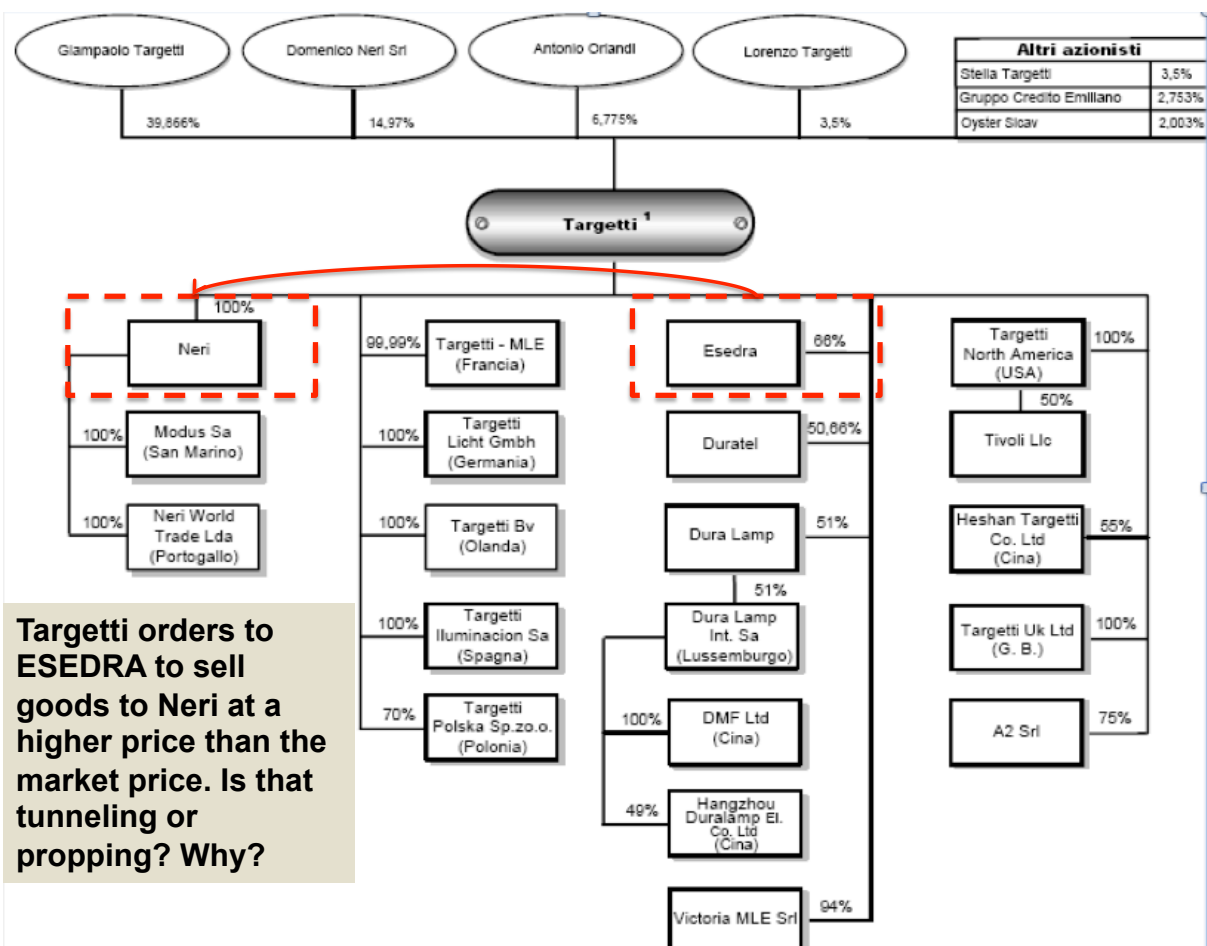
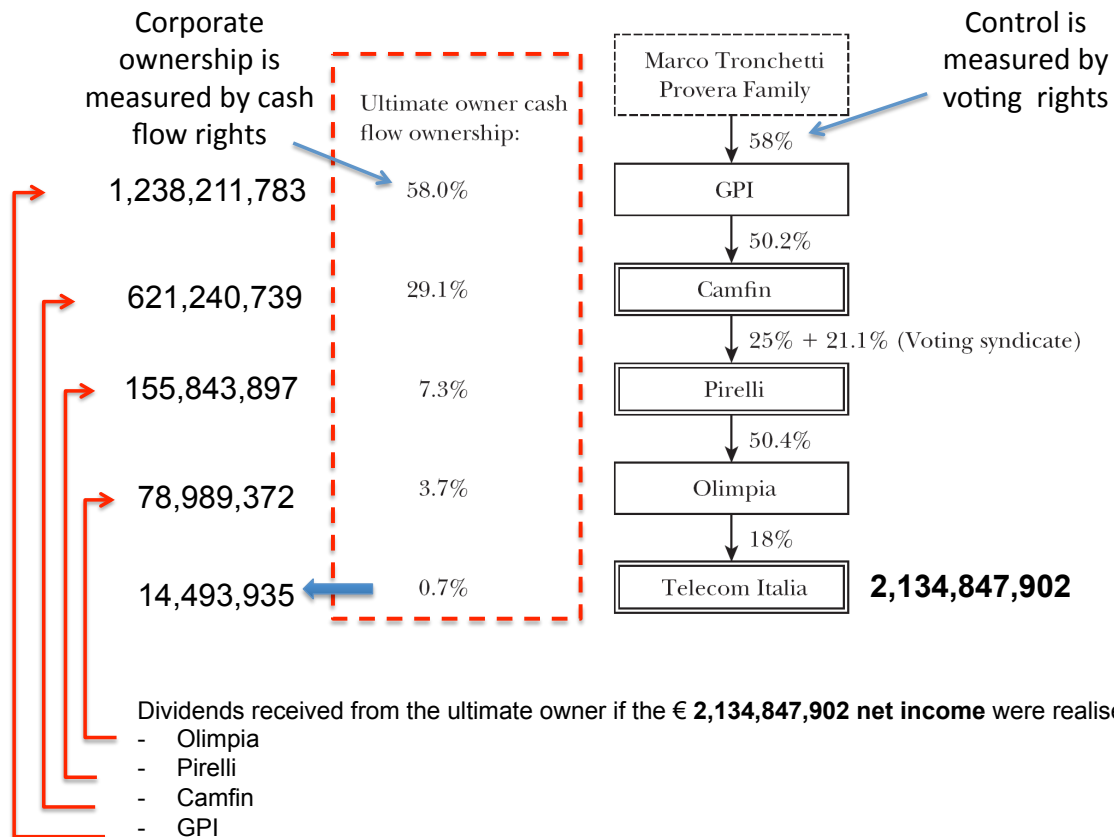
Source: Consob webpage.

Note: The ultimate owner is indicated in a dash-line bordered box at the top. Single-bordered boxes represent nonlisted companies. Double-bordered boxes represent listed companies. The arrows indicate the direction of control. The numbers next to the arrows indicate the fraction of votes owned. The numbers on the left represent the fraction of cash-flow rights owned directly and indirectly by the controlling shareholder in each of the companies in the pyramid.

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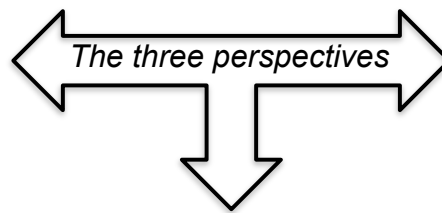


Part Three – Business groups governance

Literature review. How to interpret the related party transactions?

Conflict of interest

(Grossman and Hart, 1998;
Jhonson et al. 2000;
Shleifer and Vishny, 1997;
Zingales, 1994; Almeida
and Wolfenzon, 2005;
Friedman et al., 2003),



Contingency
(Pizzo, 2011)

Efficient transactions

(Claessens et al., 2006;
Goto, 1982; Leff, 1978;
Khanna and Palepu, 1999;
Khanna and Yafeh, 2007;
Loon, 2009)

The empirical literature on RPTs has sought various ways to demonstrate the effect that disclosure of RPTs may have on firm performance (Ge et al., 2010; Kohlbeck and Mayhew, 2010; Cheung et al., 2009a; Jian and Wong, 2010). However, researchers come to conflicting results and inappropriate policy solutions.



Part Three – Business groups governance

The institutional Italian background

- The Italian Legislative Decree No. 6/2003 has introduced a set of corporate rules (the 'Corporate Law Reform') for the **regulation of corporate groups**:
 - (1) the subsidiaries have the obligation to disclose if they are managed and coordinated by the parent company and the reasons that led to transactions with some particular types of related parties (e.g. RPT between two subsidiaries directed and coordinated by the parent company)
 - (2) Holding company is liable for the damage caused to the outsiders of the subsidiaries;
 - (3) the prejudicial impact of the parent company's decision may eventually be offset by the benefits arising from the directed companies' participation in the group structure.
- The purpose of the group regulation is not to prevent the possibility of the parent to manage its subsidiaries, but rather to advert and discourage transactions imposed by the group without considering the interests of the subsidiaries and their stakeholders (Pernazza, 2010).

Direction And Coordination Of Companies

1.1 New Article 2497 CC provides that the company (the "Directing Company") that, when directing and coordinating other companies (the "Directed Companies"), acts in its or others' interest in violation of the principles of fair corporate and business management of the Directed Companies, shall be directly responsible to (i) the shareholders of the Directed Companies for the prejudice caused to the remunerability and value of their shareholding and (ii) the creditors of the Directed Companies for the prejudice caused to the integrity of their assets. However, such direct liability shall not exist when the damage to the Directed Companies (x) does not exist in light of the entire result of the activity of direction and coordination performed by the Directing Company or (y) is entirely eliminated also further to actions having specifically such purpose.

Article 2497-bis CC provides that the Directed Company has to indicate its subjection to the direction and coordination activity of the Directing Company in its records and correspondence. Both the Directing Companies and the Directed Companies shall register themselves with specific registers kept by the Registers of Enterprises. Directors who do not comply with these rules are liable for the damages that the failure of knowledge of such facts may have caused to shareholders or third parties.

Under art.

-sexies there is a legal presumption (unless proved otherwise) that the direction and coordination of companies is exercised, inter alia, by those companies which control them pursuant to Article 2359 CC. It is therefore important to briefly describe the contents of this and its related provisions.

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Conclusions (1/2)

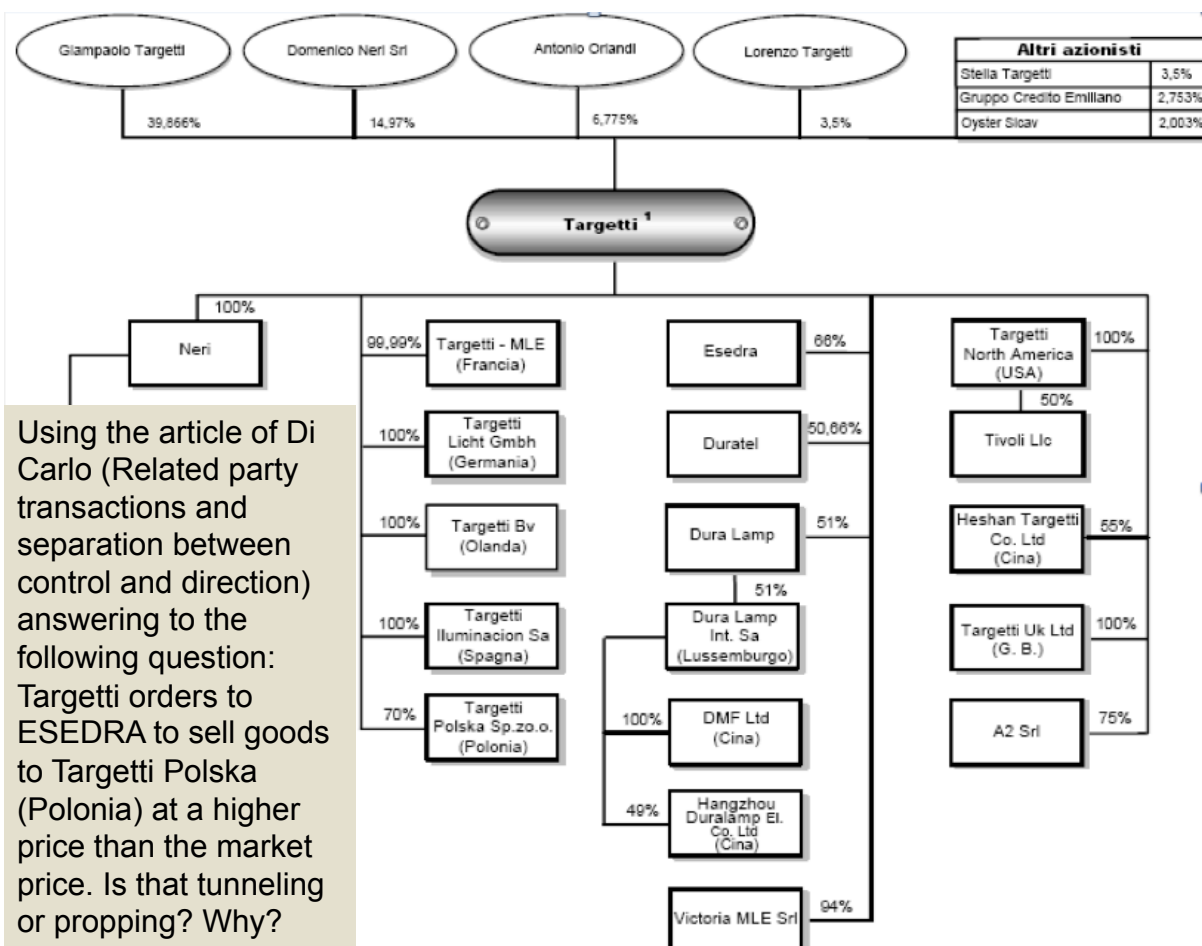
- **All types of RPTs can potentially be efficient or harmful to the company.** Find out which are the RPTs concluded with the first rather than with the second purpose can be extremely difficult, if not impossible for the outsiders.
- Normally, **it is neither the nature of the related party (e.g. manager, dominant shareholder, subsidiary) nor the type of transaction (e.g. loans, sells of goods)** in being able to represent the watershed between benign and fraudulent transactions, but **the price charged**.
- However, **even the price may not be indicative when the RPT is not performed in the interest of the company and its outsiders**, but in the interests of insiders (e.g. managers and dominant shareholder).
- The explanatory analysis shows that in **case of high separation between ownership and control, parent company tends to demonstrate that the group is not managed as a single economic entity and then that subsidiaries are free to engage in intragroup transactions**.
- The declaration of no directing activity by the controlling party seems used to **persuade minorities that there would not be extractions of private benefits**, and thus to prevent a reduction of share value;

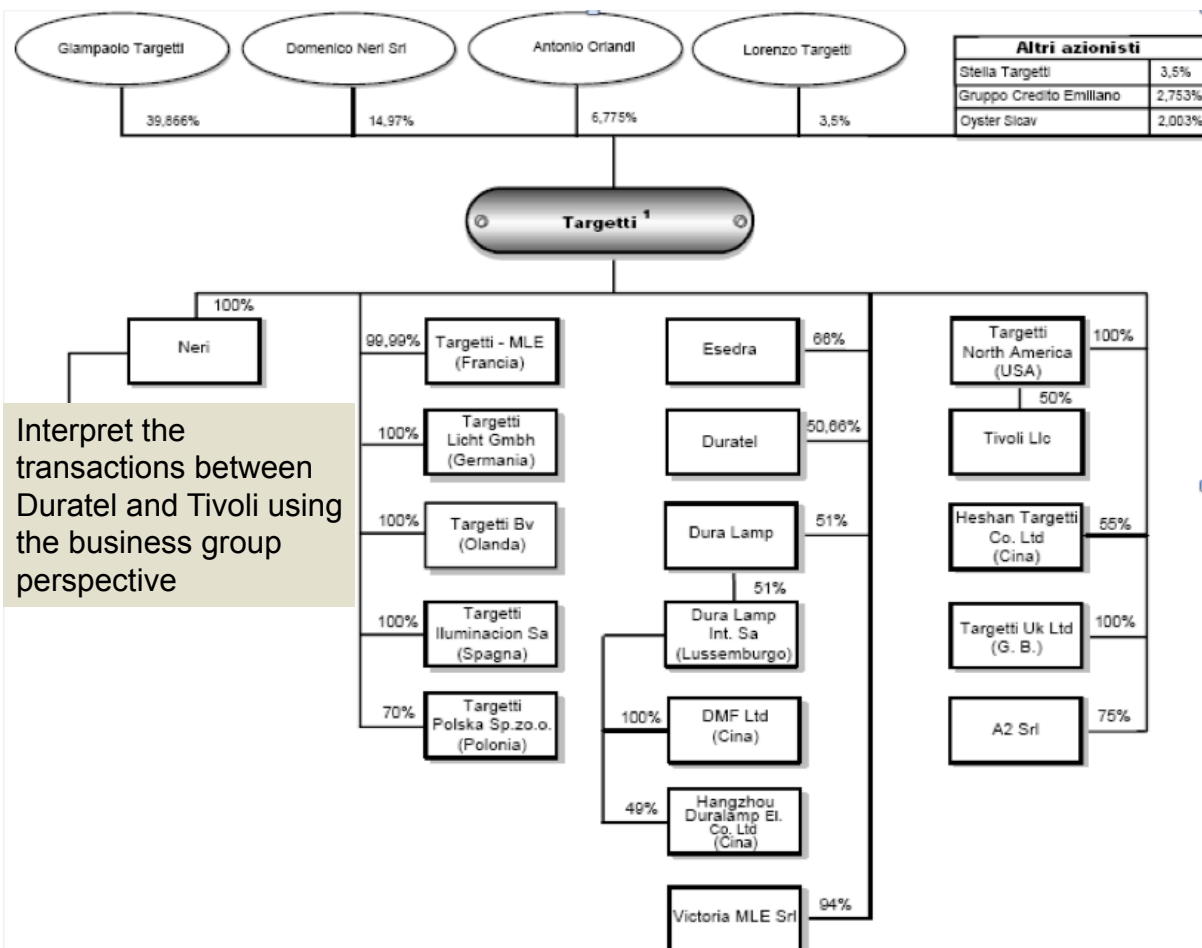


Part Three – Business groups governance

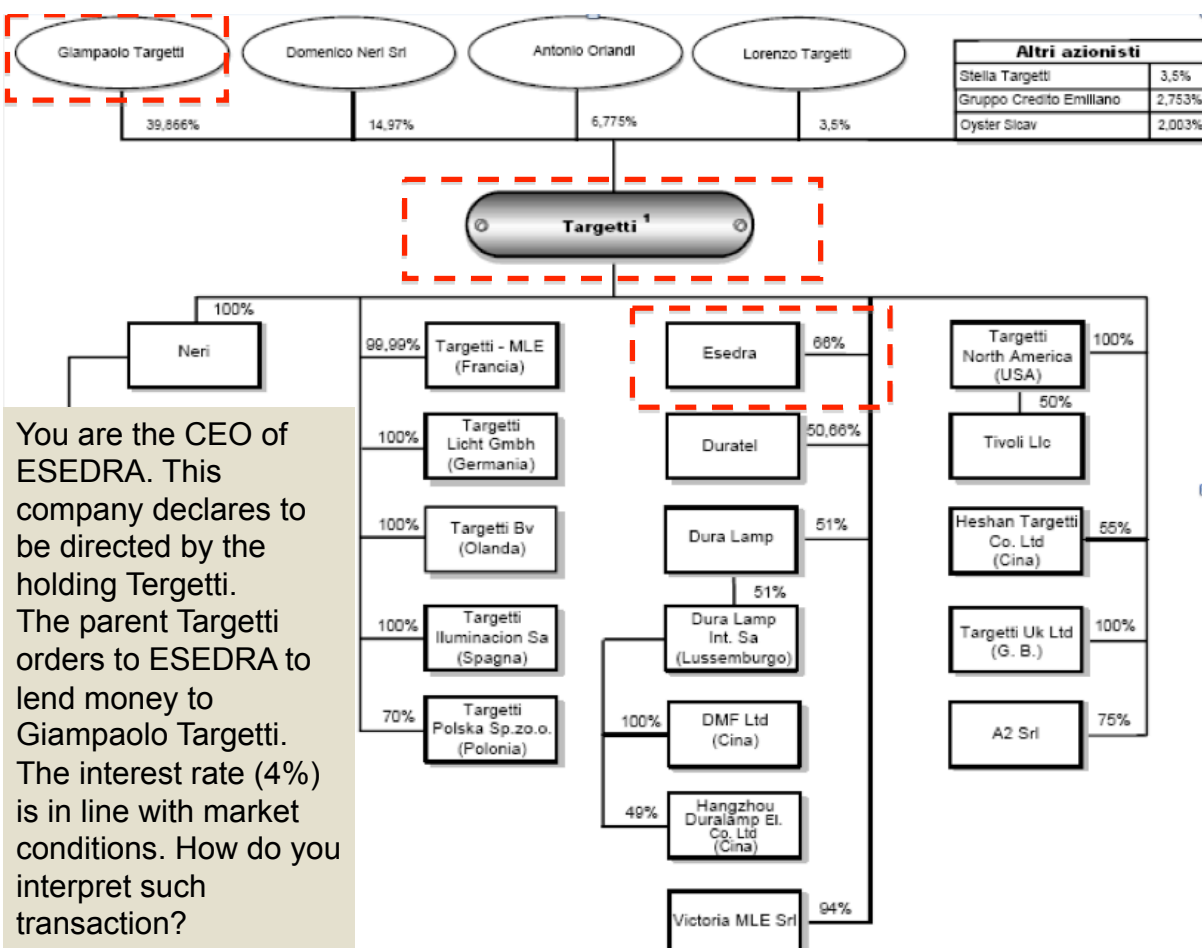
Conclusions (2/2)

- In Italian business group the ***conflict of interest perspective seems to prevail on the efficient one***;
- In case of directing activity, considering the interest of the group means **do not interpret the intra-group transactions as isolated transactions** but in a wider perspective, that of the group;
- The interpretation of RPT by practitioners and scholars should take into account not only the disclosure of the RPT (e.g. type, nature and price charged), but also the following disclosure: (1) ***the reason, the business purpose that lead to RPT***; (2) ***the interest of the company in engaging such transactions***; (3) ***the procedures for their approval***;
- It is also important that the interpretation takes into account: **the ownership structure, the separation between ownership, control and direction and the governance characteristics of the firms involved in such transactions** (e.g. board independence).





403



You are the CEO of ESEDRA. This company declares to be directed by the holding Targetti. The parent Targetti orders to ESEDRA to lend money to Giampaolo Targetti. The interest rate (4%) is in line with market conditions. How do you interpret such transaction?

404



Part Three – Business groups governance

Esedra lends money to Giampaolo Targetti

Statement of financial position of ESEDRA

(€ millions)

ASSETS

Intangible assets

Property, plant and equipment

Investment property

Investments and other financial assets:

- Investments accounted for using the equity method

- Other investments and financial assets

100

Leased assets

Defined benefit plan assets

Deferred tax assets

Total Non-current assets

Inventories

Trade receivables

Receivables from financing activities

Current tax receivables

Other current assets

Current financial assets

- Current investments

- Current securities

- Other financial assets

Cash and cash equivalents

Total Current assets

Assets held for sale

TOTAL ASSETS

Income statement of ESEDRA

(€ millions)

Net revenues

Cost of sales

Selling, general and administrative costs

Research and development costs

Other income (expenses)

Trading profit

Gains (losses) on the disposal of investments

Restructuring costs

Other unusual income (expenses)

Operating profit/(loss)

Financial income (expenses)

4

Result from investments:

- Net result of investees accounted for using the equity method

- Other income (expenses) from investments

Profit before taxes

Income taxes

Profit from continuing operations

Profit from discontinued operations

Net profit/(loss)



Part Three – Business groups governance

The previous transaction is detrimental when alternative investments with unrelated party generate, for example, a ROI=6%

Statement of financial position of ESEDRA

(€ millions)

ASSETS

Intangible assets

Property, plant and equipment

Investment property

100

Investments and other financial assets:

- Investments accounted for using the equity method

- Other investments and financial assets

Leased assets

Defined benefit plan assets

Deferred tax assets

Total Non-current assets

Inventories

Trade receivables

Receivables from financing activities

Current tax receivables

Other current assets

Current financial assets

- Current investments

- Current securities

- Other financial assets

Cash and cash equivalents

Total Current assets

Assets held for sale

TOTAL ASSETS

Income statement of ESEDRA

(€ millions)

Net revenues

Cost of sales

Selling, general and administrative costs

Research and development costs

Other income (expenses)

6

Trading profit

Gains (losses) on the disposal of investments

Restructuring costs

Other unusual income (expenses)

Operating profit/(loss)

Financial income (expenses)

Result from investments:

- Net result of investees accounted for using the equity method

- Other income (expenses) from investments

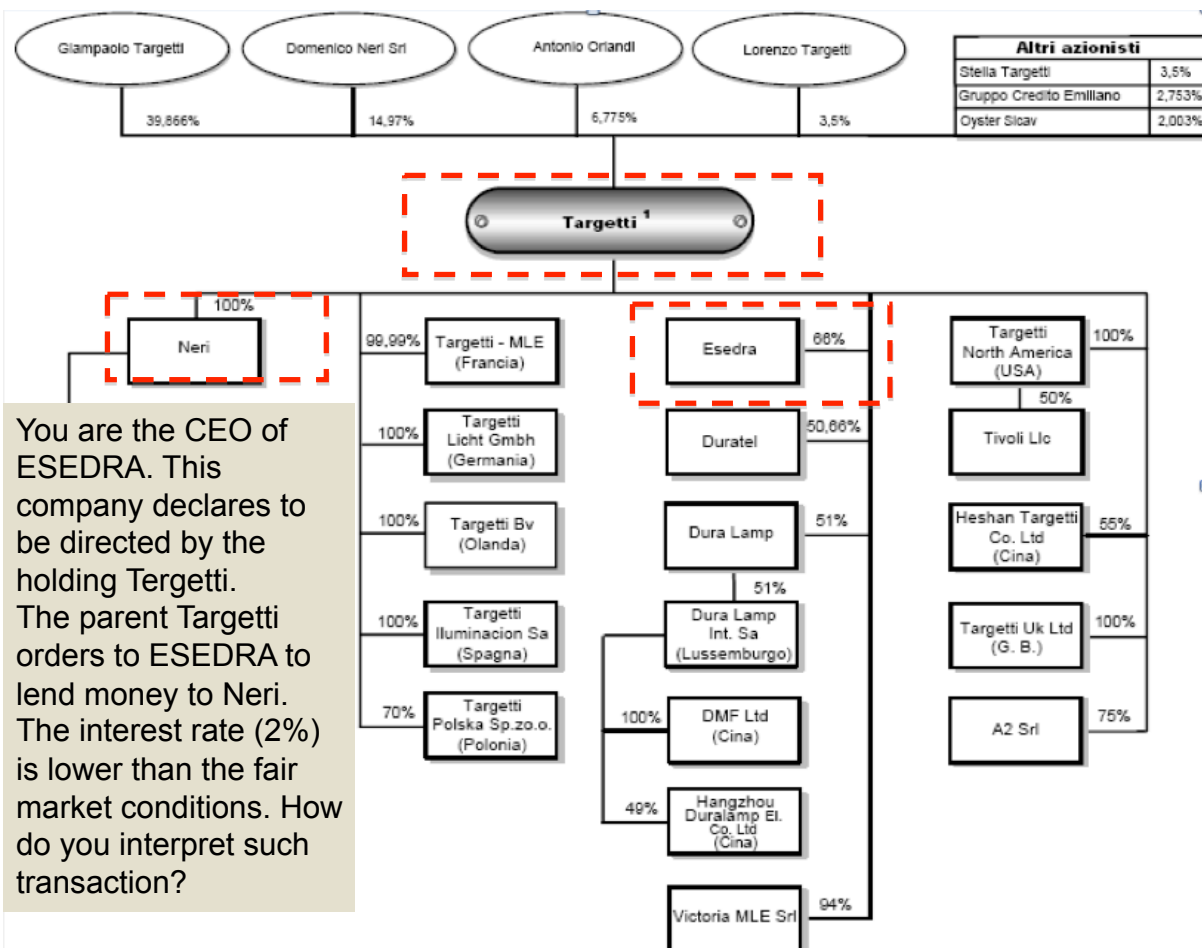
Profit before taxes

Income taxes

Profit from continuing operations

Profit from discontinued operations

Net profit/(loss)



407



Part Three – Business groups governance

Esedra lends money to Neri

Statement of financial position of ESEDRA

(€ millions)

ASSETS

Intangible assets

Property, plant and equipment

Investment property

Investments and other financial assets:

- Investments accounted for using the equity method

- Other investments and financial assets

Leased assets

Defined benefit plan assets

Deferred tax assets

Total Non-current assets

Inventories

Trade receivables

Receivables from financing activities

Current tax receivables

Other current assets

Current financial assets

- Current investments

- Current securities

- Other financial assets

Cash and cash equivalents

Total Current assets

Assets held for sale

TOTAL ASSETS

100

Income statement of ESEDRA

(€ millions)

Net revenues

Cost of sales

Selling, general and administrative costs

Research and development costs

Other income (expenses)

Trading profit

Gains (losses) on the disposal of investments

Restructuring costs

Other unusual income (expenses)

Operating profit/(loss)

Financial income (expenses)

Result from investments:

- Net result of investees accounted for using the equity method

- Other income (expenses) from investments

Profit before taxes

Income taxes

Profit from continuing operations

Profit from discontinued operations

Net profit/(loss)

2



Part Three – Business groups governance

Alternative investments with unrelated party (ROI=6%)

Statement of financial position of ESEDRA

(€ millions)

ASSETS

Intangible assets

Property, plant and equipment

Investment property

Investments and other financial assets:

- Investments accounted for using the equity method

- Other investments and financial assets

Leased assets

Defined benefit plan assets

Deferred tax assets

Total Non-current assets

Inventories

Trade receivables

Receivables from financing activities

Current tax receivables

Other current assets

Current financial assets

- Current investments

- Current securities

- Other financial assets

Cash and cash equivalents

Total Current assets

Assets held for sale

TOTAL ASSETS

100

Income statement of ESEDRA

(€ millions)

Net revenues

Cost of sales

Selling, general and administrative costs

Research and development costs

Other income (expenses)

Trading profit

6

Gains (losses) on the disposal of investments

Restructuring costs

Other unusual income (expenses)

Operating profit/(loss)

Financial income (expenses)

Result from investments:

- Net result of investees accounted for using the equity method

- Other income (expenses) from investments

Profit before taxes

Income taxes

Profit from continuing operations

Profit from discontinued operations

Net profit/(loss)



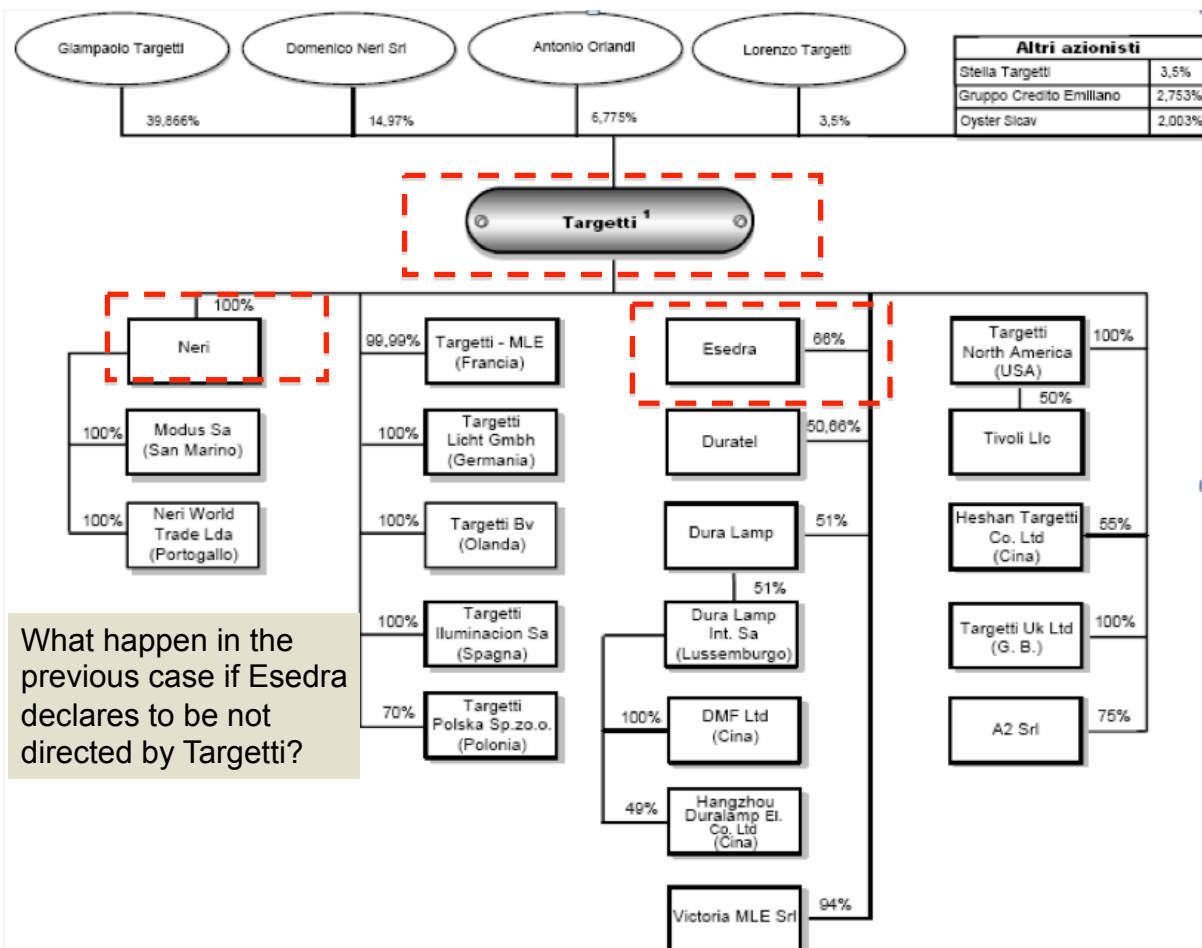
Part Three – Business groups governance

Direction And Coordination Of Companies

1.1 New Article 2497 CC provides that the company (the "Directing Company") that, when directing and coordinating other companies (the "Directed Companies"), acts in its or others' interest in violation of the principles of fair corporate and business management of the Directed Companies, shall be directly responsible to (i) the shareholders of the Directed Companies for the prejudice caused to the remunerability and value of their shareholding and (ii) the creditors of the Directed Companies for the prejudice caused to the integrity of their assets. However, such direct liability shall not exist when the damage to the Directed Companies (x) does not exist in light of the entire result of the activity of direction and coordination performed by the Directing Company or (y) is entirely eliminated also further to actions having specifically such purpose.

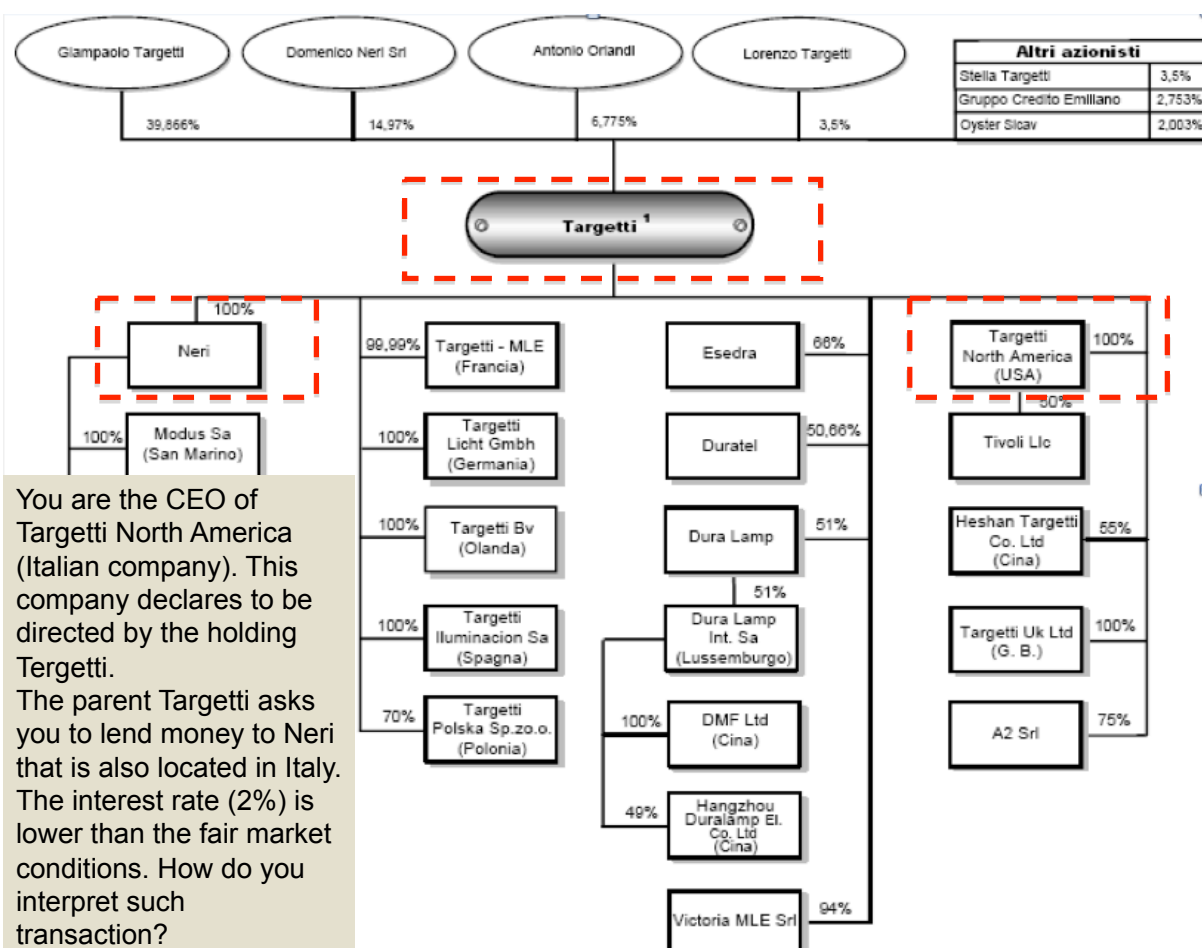
Article 2497-bis CC provides that the Directed Company has to indicate its subjection to the direction and coordination activity of the Directing Company in its records and correspondence. Both the Directing Companies and the Directed Companies shall register themselves with specific registers kept by the Registers of Enterprises. Directors who do not comply with these rules are liable for the damages that the failure of knowledge of such facts may have caused to shareholders or third parties.

Under art. 2497-sexies there is a legal presumption (unless proved otherwise) that the direction and coordination of companies is exercised, inter alia, by those companies which control them pursuant to Article 2359 CC. It is therefore important to briefly describe the contents of this and its related provisions.



What happen in the previous case if Esedra declares to be not directed by Targetti?

411



You are the CEO of Targetti North America (Italian company). This company declares to be directed by the holding Targetti. The parent Targetti asks you to lend money to Neri that is also located in Italy. The interest rate (2%) is lower than the fair market conditions. How do you interpret such transaction?

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Part Three – Business groups governance

Direction And Coordination Of Companies

1.1 New Article 2497 CC provides that the company (the "Directing Company") that, when directing and coordinating other companies (the "Directed Companies"), acts in its or others' interest in violation of the principles of fair corporate and business management of the Directed Companies, shall be directly responsible to (i) the shareholders of the Directed Companies for the prejudice caused to the remunerability and value of their shareholding and (ii) the creditors of the Directed Companies for the prejudice caused to the integrity of their assets. However, such direct liability shall not exist when the damage to the Directed Companies (x) does not exist in light of the entire result of the activity of direction and coordination performed by the Directing Company or (y) is entirely eliminated also further to actions having specifically such purpose.

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