

## **Ownership and Control:**

### **A Spanish Survey**

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## 1. Introduction

Along the lines of the insider-outsider discussion on matters of Corporate Governance, Spain remains somewhere in between. Market mechanisms do play an increasing role but, at the same time, important institutions such as the state, large banks and, more recently, managers of large and, often, recently privatised companies have become controlling shareholders, exerting important roles at the time of solving relevant issues on Corporate Governance.

By the end of 1995, our year of reference, Spanish companies were still immersed in a process of transition towards a more international, competitive and open system. The state still held important stakes in several of the largest Spanish companies, although the privatisation momentum was increasing. We could summarise the Spanish corporate ownership and equity market in the following 5 points:

1.) The number of **Spanish listed companies** remains still rather small, 606, and counts for only 0.5 % of the total number of Spanish public companies. Nevertheless, in 1995 the stock market turnover was equivalent to 10% of the Spanish GDP. Although still low respect to U.K. or U.S.A., this figure compares favourably to the situation in other European countries. Moreover, the depth and importance of the stock market, relative to other financial alternatives, keeps growing year after year and several large Spanish companies have started to be present in the NYSE and other foreign markets<sup>1</sup>.

2.) Overall, there is a **high degree of ownership concentration but this is lower than most European countries**. According to our data, the direct shareholding of the largest stake becomes, on average, 30.27%, and goes up to 32.13%, once we consider a sample of non-financial companies. Alternatively, if we repeat our calculations in terms of voting blocks, (i.e., the sum of direct and indirect voting rights in our analysis) both figures become larger, reaching a substantial 38.28 % and 40.09 % respectively. Furthermore, if we think in terms of potential coalitions and we add up the corresponding figures for other large shareholders, the new averages go beyond the majority line fairly quickly. For example, adding up the shares of the three largest shareholders, C3, we get an accumulated amount of 47.06 % for direct shares and a 56.59% voting block for our sample of 193 non-financial companies. In fact, a C2 measure is enough to achieve majority in the voting block case, while a C4 must be formed, on average, to reach the majority with direct stakes. Alternatively, one could appreciate the degree of ownership concentration through the average number of shareholders that report direct stakes equal or greater than 5%. This figure lies around 3.5 (3.41 for the sample of non-financial companies and 3.66 for our larger sample).

3.) When we take a look at the **type of shareholders**, we find that industrial (non-financial) firms<sup>2</sup> are the main investor category, followed by families and financial firms other than banks. We are able to distinguish six types of shareholders in our analysis: families (or individuals), banks, financial firms other than banks, the state, foreign firms and non-financial firms (or industrial firms). From our results, it seems as if **Spanish banks**, unlike German banks, were no longer playing at present an important ownership role. Nevertheless, when the banks participate in a firm, they do it with important stakes for the case of small firms and medium-large firms. Foreign firm's participation is also directed to gain control in the firms. On the other hand, family or individual ownership is not so prevalent in Spain as in other countries. Although individual participation averages 10.93% overall, this figure becomes less than 3% in the largest decile, where the most important companies are.

4.) Although we lack the precise information to address properly the issue of groups with our data on direct and indirect stakes, we believe that **group voting or voting blocks, as a whole, do not play an important role** for the listed Spanish companies. Indirect ownership becomes a device used by companies and individuals to exert voting power beyond the direct ownership. The indirect ownership contribution via holdings of intermediate companies to these voting blocks is 23%. Nevertheless, the distortion of the voting rights versus cash flow rights relationship is weak, about 4%. When computing indirect ownership, the figures of ownership concentration for the largest shareholder are, on average, an 8% higher than the direct ownership figure.

5.) Until recently, **state ownership** has been quite relevant in a number of large Spanish firms. Those companies were mainly involved in the historical and natural monopolies (oil, tobacco, energy and telecommunication services). After a strong privatisation process, such participation has almost disappeared and the state has been replaced by a large number of Spanish retail investors, some large Spanish institutional investors (banks, most of the time) and some international institutional investors. The state, nevertheless, has kept for itself **a golden share-type mechanism** to be used only under certain (and quite narrow) scenarios. The first time such mechanism was enacted was in 1995 with Repsol, the largest oil Spanish company, and some other cases have followed: Telefónica, the former telecommunication monopoly and Endesa, the largest Spanish electricity utility. Although this golden-share mechanism has been included in the privatisation processes as a protection of the public and national interest, the state has never used it.

Finally, previous to 1996 and more intensively during the last two years, several companies have joined the ranks of listed companies, either through privatisation or

through IPOs in the Spanish stock market. This shows the increasing importance of the market mechanisms.

## **2. Ownership and Control: the legal aspects.**

### **2.1 The Spanish Corporate landscape: the stock corporation (SA).**

Table 1 offers a summarised view of the Spanish Corporate landscape in terms of the legal forms. Once we exclude those firms formed by a single entrepreneur (and no individual workers), the prevalent categories become the "Sociedad Anónima", or SA, and the "Sociedad Limitada", or SL. That is, the stock corporation and the limited liability partnership respectively. To start up a SL, the Spanish law establishes a minimum capital requirement of 500,000pts. (approximately, 3,000 euros) while the requirement increases to a minimum of 10 million pesetas (approximately, 60,000 euros) for the case of an SA. The Sociedades Anónimas Laborales (SAL) are a mixed form, where workers are the main owners and keep control of the firm. Most of these SAL firms were, originally, SA firms that went through severe economics problems and where the workers, in order to keep their jobs, decided to adopt the legal form of an SAL.

(Table 1 near here)

Cooperatives represent less than 3% of the total number of firms and they are, furthermore, quite small in size and concentrated in specific sectors such as agriculture and distribution. The exception, of course, is the Mondragon Cooperative Group in the Basque country, that employs more than 34,000 people. This group includes some important industrial cooperatives, a savings bank, several research centres, and other service and agricultural cooperatives. At present, they are even considering ways to raise funds in the stock market through some form of holding companies or intermediate firms. Nevertheless, cooperatives as a whole remain quite a marginal form within the corporate landscape.

Among Spanish large firms, the majority of them are SA. These companies are subject to the Spanish Act, "Ley de Sociedades Anónimas" that also establishes a number of requirements in terms of information disclosure and corporate governance. More detailed information containing a summary of the legal requirements is presented in Table A1 in the appendix.

## **ELECTRONIC QUOTATION SYSTEM**

In April 1989, the Spanish Stock Exchanges began to implement the Electronic or Automated Quotation System, a system of computer-based trading of securities that connects the four Spanish Stock Exchanges and eliminates the traditional differences among such exchanges. During 1997, the Automated Quotation System accounted for approximately 98.7% of the total trading volume of equity securities on the Spanish Stock Exchanges. The remaining transactions involving only the local exchanges, and not the Automated Quotation System, were carried out on the Madrid, Barcelona, Bilbao and Valencia stock exchanges.

At the end of 1998, a total of 134 firms from the more than 600 firms listed in the Spanish Stock Market, operate in the electronic market, while the rest remain in the outcry market. Not all the sectors are equally represented as TABLE 2 shows, and the decreasing number of total listed companies is due to a rationalisation process by the CNMV excluding the least active companies, that is, those firms with very low transaction frequencies.

(Table 2 near here)

## **2.2 Ownership disclosure legislation.**

### SECURITIES MARKET LEGISLATION

The Spanish Securities Markets Act was enacted in 1988 (Ley 24/1988 de 28 de Julio) with the purpose of reforming the organisation and supervision of the securities markets. This piece of legislation and the regulation that followed achieved several goals. We want to emphasise the following: they (i) established an independent regulatory authority, the CNMV (Comision Nacional del Mercado de Valores) to supervise the securities markets, (ii) established a framework for the regulation of trading practices, tender offers and insider trading, (iii) required companies listed on a Spanish stock exchange to file annual audited financial statements and to make public quarterly financial information, (iv) established the legal framework for the Electronic Quotation System and (v) provided for transfer of shares by book entry or by delivery of evidence of title.

In particular, this Act establishes, in its chapter 53, the obligation to communicate to the supervising authorities and to the issuer of the titles the acquisition or transmission of relevant holdings.

The Council Directive 88/627/CEE of December 12 on reporting requirements for relevant holdings followed to the previously mentioned Act. And on March 22 of 1989, a Royal Decree 276/1989, established the relevant threshold levels and the time

considerations for the Spanish markets. Two years later, and in order to incorporate the accumulated experience and implement further the existent European legislation, a new Royal Decree 377/1991 on the Reporting of Relevant Holdings and Acquisition of Treasury Stock was enacted.

Concerning foreign investment in Spanish shares, at present they must be registered with the Spanish Registry of Foreign Investments.

## REPORTING REQUIREMENTS

Any person or group of persons that, directly or indirectly, transfer or acquire shares of the capital stock of a company listed on a Spanish Stock Exchange above certain levels must communicate the transfer. More specifically, when a shareholder's ownership increases above 5% or any multiple of 5%, or decreases below 5% or any multiple of 5% of the capital stock of a company, he must communicate the transfer. The report has to be done within seven business days after that transfer, and must be addressed to the objective company, to the stock exchange on which such company is listed, and to the CNMV. Furthermore, for the case of a foreign investor, they must report to the *Dirección General de Política Comercial e Inversiones Exteriores*, the government body in charge of supervising foreign investment in Spain. Members of the Board of Directors must report any transfer or acquisition of the capital stock of their company, regardless its size.

Under Spanish Corporations Law, a person or a group that, directly or indirectly, owns or controls 10 per cent or more of the outstanding shares of a listed company, or that increases his number of shares over 5%, or any multiple, of the outstanding Shares, must give notice of such ownership to that company. A person or a group that has not complied with these requirements will not be entitled to vote its shares until it informs that company.

Concerning the acquisition by a company of their own equity stock, the previously mentioned Royal Decree 377/1991 deals with the Reporting of Relevant Holdings and Acquisition of Treasury Stock. It establishes that any holding equalling 1% or more of the capital stock by the company itself or by its affiliates, must be reported to the CNMV within seven business days.

## INDIRECT OWNERSHIP, INVESTOR GROUPS AND VOTING PACTS.

The transparency directive focuses on the public knowledge of large shareholdings, based on the voting rights that (each person or firm) can exert. It is important to distinguish between (i) **direct stakes**, and (ii) **voting blocks**, that contain those

attributed votes either through intermediate companies or persons, or due to other devices mentioned in article 7 of the Directive 88/627.

The parent–subsidiary figure, or the intermediate companies designed as a bridge to exert large voting power are the main designs used by Spanish listed companies. There are also anti-takeover devices such as voting caps, supermajority requirements for some company decisions, or statutory rules that make more difficult the access to the Board of Directors. We will mention some of them for the case of Telefónica, although these instruments remain second in our interest with respect to our main concern: ownership structure of the Spanish firms.

The Spanish transposition of the transparency directive refers to the notification of large shareholdings in terms of ownership rights. These references are about current ownership or voting rights, but they never refer to future rights as it could be the case of large shareholders holding convertible bonds. The law only makes indirect references to voting rights in the R.D. 377/91 for cases where the “business groups” definition of the next section is appropriate.

To detach voting rights from cash-flow rights, the Spanish corporation law only accounts for the issue of non voting shares limited to the 50% of the outstanding equity and the transposition of the EU transparency directive only considers indirect ownership rights. There is no mention to other devices already introduced in the directive 88/627 such as the voting agreements. Out of the eight reasons mentioned in the Art. 7 of the transparency directive, only the second one (“Voting rights held by an undertaking controlled by that person or entity”) is applied in Spain. Thus, the “group block” concept, where several direct notifications are assigned to a large controlling shareholder who owns stakes of these companies, does not differ from the “voting block” concept, where voting attributions different from indirect ownership, such as voting pacts, are indeed reflected.

## BUSINESS GROUPS

The business groups phenomena was also important in Spain until the mid eighties, mainly with banks acting as controlling shareholders. After that period, there has been a decade without the presence of these large non-state owned groups, with few exceptions like the Kuwait Investment Office (K.I.O.), that used an industrial company as head of the group in Spain. Currently, and due to the privatisation process among other circumstances, some groups of stable shareholders have emerged within the large listed companies. Moreover, they are able, quite often, to exert some influence on managers, their decisions and even their appointments.



One piece of information we can provide, refers to the existence of banking groups. In Spain, as it used to be the case in other continental European countries, the financial system was, and still is, up to a certain level, mainly bank-oriented. Although there exists an important process to incorporate and move closer to a market oriented system (increasing importance of stock market) the role of some banks still remains quite important.

Even for those cases of banking groups, it remains difficult to establish which companies belong to a group. The accounting rules will determine which companies have to submit consolidate reports as a group. According to Spanish Company Law, a firm belongs to a group if one of the following conditions takes place: (i) there is a majority of voting rights (direct plus indirect shares); (ii) there is the right to appoint or remove the majority of the Board Members or (iii) there exists a majority of votes through internal contractual arrangements among companies.

The use of the legal definition of “group” for practical purposes is complex, and far from satisfactory for most companies. First, the legal criteria “having majority of voting rights” is hard to accommodate with the condition “having the right to appoint or remove the majority of the management Board Members”. Second, for a sample of companies, and given our set of voting and ownership data, the definition of “group” has to establish the percentage of shareholdings considered as “controlling ownership”. Such percentage could be fixed at the majority level and if so, we could say that a company belongs to a group when the head of the group, or some other companies in the group, hold more than 50% of shares. But in order to gain the right to appoint or remove Board Members, it is often unnecessary to own more than 50% of shares. Alternative thresholds, such as 25% of the shares or even lower figures, could be sufficient criteria. Third, there is also the legal way of defining a group through the “existence of a majority of votes through internal contractual arrangements among shareholders”. To the extent that these kind of agreements are not publicly reported, such a criterion cannot be used in our analysis.

Therefore, from the available data set, containing information on large shareholdings, it becomes quite hard to define, in practical terms, which firms belong to a business group due mainly to the disparity of criteria that can be invoked and, more importantly, to their difficult interpretation.

### **2.3 Voting rights dilution and restrictions. The rights of the minority shareholders.**

**Direct ownership:** we measure direct ownership of one shareholder through the direct voting power of his share stake. We conduct such calculations for the largest

shareholder, the second largest, the third one and so on. In order to check deviations from the one-share-one-vote rule, we will later compare this notion with the voting block measure. We also consider other examples of distortions from the one-share-one-vote rule, like the issue of non-voting shares, the presence of voting caps and the recent addition of a golden-share mechanism for newly privatised companies.

Under the current Spanish company law (RDL 1564/1989), the companies can issue non-voting shares up to 50% of the outstanding equity. In order to compensate the lack of vote, the law states that non-voting shares will yield a minimum dividend of 5%, and once this amount has been decided, non voting shares will have the same dividend right as ordinary shares. Until now, and with the only exception of Banco Guipuzcoano, Spanish companies have not used this possibility of financing while detaching voting rights from cash-flow rights.

Some other modifications on company statutes have been introduced as anti-takeover devices. One of these modifications limits the voting capabilities of large shareholdings with rules like “no shareholder can issue more votes than he/she would do in case of having 5% of equity”. Large listed corporations have started to introduce these voting caps, as the example of Telefónica will show later. Other statutes modifications increase majority requirements to approve important company decisions such as mergers, activity changes, etc. In those cases, the requirements of supermajorities of 75% or 90% imply that some minority shareholders can block key board decisions. A third way to limit the voting rights that cash flow rights would represent consists in changing the appointment rules of board members, by requiring some degree of seniority as shareholder or increasing the number of votes required by reducing the board size.

#### CONCERNING THE GOLDEN-SHARE TYPE MECHANISM

The Spanish Law 5/1995, of March 23, regulates sales and certain other transactions involving the Spanish state interests in those companies providing a public service. This law establishes that such transactions will require prior authorisation from the Spanish Government. The provisions of Law 5/1995 must be applied to each transaction pursuant to a specific Royal Decree. On these lines, the Royal Decree 1525/1995 establishes specific procedures to obtain **administrative authorisation** for such transactions.

Once the State's ownership of a public firm falls below 15%, this law requires, for a period of of time as long as ten years after the selling date, prior Government approval for the following scenarios: (i) the direct or indirect acquisition by one single group or

individual of 5% or more of the capital stock of a public firm, or any securities which confer directly or indirectly a right to subscribe or acquire 5% or more of the capital stock of a public firm; (ii) the direct or indirect acquisition by a single group or individual of 10% or more of the capital stock of any of the relevant companies<sup>3</sup> (and related companies), or any securities which confer directly or indirectly a right to subscribe or acquire 10% or more of the capital stock of any of the relevant companies; (iii) any resolution to sell, dispose of or encumber in any way any of the capital stock in any Relevant Company of which that public firm may be the holder, or any securities held by such public firm which confer a right to subscribe or acquire capital stock of such relevant company; or (iv) any resolution by the public firm or any of the relevant companies for the voluntary liquidation (*disolución voluntaria*) of such company, the split up (*escisión*) of such company, or the merger (*fusión*) of such company with any other company.

The consequences of carrying out any of the transactions previously described, without obtaining first the Government approval will be that any of such acts, agreements or transactions would be null and void, and strict limitations would apply to the voting and other rights attached to any shares or securities which are subscribed, acquired or transferred pursuant to such unapproved transaction. The Spanish government has not made use of this mechanism until now. Nevertheless, one would expect that these measures should affect the perception of the potential shareholders and, consequently, the final value of the shares. Interestingly enough, no significant effect seemed to follow the measures, and no debate on their nature and their implications has been opened yet<sup>4</sup>.

#### THE CASE OF TELEFÓNICA S.A.

We briefly present now the case of Telefónica, the largest listed company in Spain. Until 1997, the State owned a significant (and the largest) stake in the firm: 21.15% of the shares was the remaining state shareholding to be privatised in the last global offering. All the other shares in private hands have been traded for many years in the Spanish stock markets, representing always an important portion of the daily trading.

At the time of the privatisation, the State was encouraging the active involvement of several large Spanish companies (called core shareholders or “*núcleo duro*”) in the newly privatised companies. In particular, three financial institutions hold shares around or beyond 5% in Telefónica: BBV, Argentaria and La Caixa. The new private company has established that each one of them is entitled to nominate two members in the Board of Directors. Furthermore, as it has been mentioned earlier, the Spanish law allows for the existence of golden-share mechanism for former state-owned

companies in certain scenarios. This possibility has been also introduced in the case of Telefónica, although until now the government has never used its administrative approval. What are the consequences of privatisation on issues of corporate governance? How does this change affect the incentives of managers or the ownership structure of the new firm? Those are important questions to be addressed.

By May 1998, and right after privatisation had been completed, the managerial team of Telefónica has promoted (and successfully passed) several measures that may have a strong impact on corporate governance:

- a) the approval of a **10% voting cap**. That is, independently of his holdings, no shareholder can issue votes for more than 10 % of the total votes.

At the Shareholders' General Meeting of June 24, 1998 a resolution was passed to limit the voting rights attached to the shares: shareholders shall have the right to one vote for each share they own or represent except that no shareholder may exercise a number of votes which exceeds the number of votes which corresponds to 10% of the total capital stock with voting rights existing from time to time, even though the number of shares held by such shareholder exceeds 10% of the capital stock of Telefónica. This limitation applies to the number of votes cast by any two shareholding companies which belong to the same group of companies or to any two or more shareholding companies which are controlled by any one shareholder, whether the shares held by such companies are issued jointly or separately. In spite of the limitations on voting rights, all shares belonging to one holder, or to one group of companies or to one person and the companies which such person controls, will be included together for the purpose of establishing whether a quorum is present for the carrying on of business at any Shareholders' General Meeting.

Interestingly enough, Germany has recently passed a piece of legislation that will prevent firms from imposing voting caps. Basically, voting caps and multiple voting rights have to be phased out over the next few years. The reasons invoked include the excessive managerial power that this mechanism may generate.

- b) Requirements for the members of the Board of Directors: the candidate must have held more than 1000 shares of Telefónica for at least three years before their nomination, unless 85% of the members of the Board agree to remove such condition.
- c) Requirements to become Chairman, or occupy any other position in the Executive Committee: the candidate must have held a position in the Board of Directors for

at least three years before its nomination. Again, this seniority rule can be removed if 85% or more of the members of the Board agree to do so.

Given the existent dilution for this company, these measures create an added power for the managerial team. We believe this case is especially relevant because we are dealing precisely with the largest company within the Spanish economy and others could follow this trend. Through these measures, we are breaking the one-share-one-vote rule, giving more discretionary power to managers and seriously affecting the governance of the firm.

### **3. Data collection**

The available ownership and voting data come from the Comisión Nacional del Mercado de Valores (CNMV) files. The CNMV is the Spanish regulatory agency of the stock markets. The transposition of the transparency directive in 1989 allow us to collect and update data until now. In Spain, only significant shareholdings (at least 5%) and ownership of the members of the board must be reported. At December 31, 1995, there were 615 companies listed and traded on the Spanish Stock Markets. The market capitalisation of all these companies as of December 31, 1995, was approximately 23.6 trillion Ptas (155 billion Euro), while the reported trading volume of the companies for the previous twelve months reached the amount of 7916 trillion Ptas (52 billion Euro)

In order to homogenise data across countries, we present the tables and the corresponding information evaluated at the end of 1995<sup>5</sup>. For that period there is information for 721 listed companies, which is the number of available companies starting on December 1989. (see Table 3)

From table 2 we already observed that the number of listed firms was decreasing overtime when we look at the total number of companies, the active companies or the number of listed firms in the outcry market. Nevertheless, the relative importance of the Stock Markets and the number of firms in the electronic market, the most active, are both increasing. After 1995, this trend has followed.

The information contents of the CNMV data come from the forms that companies and significant shareholders present to the Commission. With the information of large ownership positions above 5%, there is also available information about those important facts able to influence share prices, accounting information of listed companies and board members data with their respective shareholdings in an individual basis.

The original data set, with 721 firms, has been arranged in order to obtain a sample comparable to other EU countries. The initial number of companies with available information on ownership is biased toward the financial sector (more than 40% of cases, 307 companies). This initial data set reduces to 394 firms, once we cross ownership data with market values from stock exchanges. The reasons to remove companies from this set of data are (i) the low trading frequency for some companies that makes difficult to calculate capitalisation values (ii) the cases where the sum of all known ownership stakes was higher than 100% due to errors on the shareholders' notifications (iii) companies where full identification was impossible to obtain and (iv), differences in data codification between stock exchanges and the CNMV.

Given our interest on the industrial issues and the self impose requirement of harmonisation with other countries data, most of the following analysis has been conducted for a subsample of 193 non-financial companies, even though we believe similar results can be extracted from the larger sample. Table 3 presents detailed information about samples compositions and sectors of activity distribution.

(Table 3 near here)

The aggregated market value of the 394 companies included in our large sample is 19.3 Ptas billion. This figure represents 88% of the electronic market capitalisation in 1995, and the 81.7% of the total (the four Spanish stock markets) capitalisation. The concentration of the market capitalisation in a reduced number of companies is a characteristic of the Spanish stock markets, concentration that is even larger when looking at trading volumes.

We have calculated voting power and ownership structures using the last notification for every large shareholder and board member before December 31, 1995. The reported shareholdings have been divided in several categories. The first distinction is between Spanish and foreign investors. Moreover, among the Spanish shareholders is possible to distinguish between individuals (or families) and companies. From the companies' code, the identification between state ownership, non-financial and financial companies follow. This last category is also divided in banks and financial companies other than banks (investment trusts, investment companies, real state financing and insurance companies in our case).

#### **4. Direct ownership**

The Spanish transposition of the EU transparency Directive does not allow to determine differences between the information on significant shareholdings and information on voting rights for listed companies. There is no publicly available

information concerning voting agreements or voting coalitions. However, in between the direct share stakes and the ultimate voting blocks, there are frequently indirect shareholdings, which allow some firms or individuals to control listed firms via intermediate companies without the corresponding cash flow rights. As a consequence, we will distinguish among direct stakes and voting blocks. We cannot track for the Spanish case the ultimate voting blocks in some companies. Thus, the distinction between direct stakes and group blocks will be identical to the previous one.

First, we present the data concerning direct stakes of the largest shareholders, by sectors of activity according to the CNMV classification.

(Table 4 near here)

Notice that the sum of the different investors' largest share does not coincide with the total figure. This is so by construction: while the second column captures the average proportion of shares owned by the largest investor of any kind, the following columns refer to the average largest share stake for each category (independently of being the largest investor in that firm or not).

It is interesting to emphasise that the largest investor holds on average quite a large share. The differences between the average of the largest stake of non-financial companies sample and financial companies are not huge, 32.13 and 28.49 respectively. We also observe, as Galve and Salas (1993) already pointed out, that shareholdings of Spanish companies turn out to be the predominant largest stake. The sector of Chemicals could be a good example, with non-financial companies holding an average of 20.90%. This is a fact that some papers, like Laporta et al (1998), with a reduced sample for each country, do not detect. They do mention though, the important influence of state ownership. In Spain, the government role as a largest shareholder has been very important in certain sectors such as utilities, transport and communications (mainly via Telefónica). On average, nevertheless, the state participation lies below 5%, even in the industrial sample. It is also important to mention the weak influence that banks seem to have as largest shareholders on average. Banks emerge as the largest shareholder of banks and other financial institutions, showing the parent-subsiary structure of the banking sector in Spain, with only a bunch of independent banks. This would explain the 41.11% largest stake on average in the bank sector.

Foreign firms seem to focus their holdings in certain sectors, where they may enjoy the largest stake. Metal manufacturing and Cement and Building Materials could be good examples of this.



Figure 1 shows now the average and median direct ownership of the largest shareholder, along with the second largest, the third, the fourth, the fifth and the contribution of the remaining known shareholders for our subsample of 193 non-financial companies.

These results follow a similar pattern to the one observed for the larger sample and there are no significant differences on average direct stakes when we only consider non-financial companies (193 firms) and add up the stakes of other top shareholders.

(Insert figure 1 near here)

The 0.86% value in the largest stake bar fits in our 5% minimum threshold to compute ownership structure. This case, and few others with direct stakes below 5%, corresponds to reports that adding up direct plus indirect stakes achieve the mentioned 5%. The reason why it is not possible to detect the remaining value until 5% is that it is not mandatory to report it as direct stake, and only board of directors members have to report below the 5% limit. This situation does not happen when computing voting blocks, formed by direct plus indirect stakes. (see Figure 2). The zero values in the minimum bars of the rest of shareholdings mean simply that, at least for one of the cases, there are no large second shareholder that has a 5% stake.

Once the high level of ownership concentration for the Spanish listed companies has been detected, it is also interesting to look at the contribution of other top shareholders and observe how quickly the majorities can be formed. Thus, the combination of the three top shareholders goes to 47.06% which seems a high figure. The decreasing marginal contribution of the 4<sup>th</sup> and the 5<sup>th</sup> largest stakes reinforces the idea of ownership concentration in few hands. The median values moving to zero after the fourth shareholder denote also the level of concentration. The group of the top three shareholders becomes the break line in the sense that the marginal contributions of the 4<sup>th</sup> and the 5<sup>th</sup> largest shareholders are almost non-significant with median values closed to zero.

## **4.1 Direct Ownership by Size Classes**

Next, we present our analysis on the 193 industrial companies, combining direct ownership and companies' size in TABLE 5.

(Table 5 near here)

This table shows that ownership concentration does not decrease with size. Around the median and the third quartile there is a significant number of companies with average largest shareholder greater than smaller companies. In fact, for those cases, a coalition formed by the top three to five direct stakes have, on average, 50% of the shares.

As it can be appreciated in the C1 column, the average direct share is 32.13%, for the Spanish companies and this figure becomes even larger for the segment of firms which are relatively large although not the largest, reaching a 44.74% in the 75-90% size interval. The figure then hints that the largest shareholder seems to enjoy a fair amount of control over the firm.

## **5. Voting Blocks**

For the Spanish data the term "voting block" becomes identical to the concept "group block" used in other country reports. The shareholder's attributed votes are from indirect ownership, through some intermediate companies which enjoy voting rights on the listed companies.

We calculate voting blocks considering direct and indirect holdings. In order to avoid double counting, we introduce a correction for amounts of indirect holdings greater than 5% (the Spanish threshold to communicate) through intermediate companies. In such context, the direct shareholding of the intermediate company is removed as a direct holding and added to the voting block of the mother company. This method allows us to value accurately blocks of vote or ownership when we add up percentages of shares for several large shareholders for a given company.

The average value of the largest voting block for the full sample, that is, including the financial companies, is over 38%, and it reaches 40% for the non-financial companies.

Overall, non-financial companies become the most important investor category. State ownership is also quite important, but only in sectors linked to the previous existence of monopolies such as utilities, transport and communication. Comparing these results with direct stakes, foreign and individual investors or families become more powerful as voting block, using Spanish companies as intermediary instrument to control corporations.

(Table 6 near here)

As we did for the direct stakes case, we present now a more detailed analysis of the ownership structure of the 193 firms, where we make use of the notion of voting block. Figure 2 shows how important is the largest shareholder in controlling companies compared with the direct ownership values. Once we incorporate indirect shares, the largest owner controls an average of 40%, while the top two shareholders can reach the majority. The 40% average value is far from the 10% of the average second largest voting block.

(Insert figure 2 near here)

The largest voting block presents an average value of 40% and including the three largest the average block is over 56%. Like the previous figure on direct shareholdings, the contribution of voting power of the fourth and subsequent shareholders is weak, and only significant for a reduced number of companies (median close to zero)<sup>6</sup>.

## **5.1 Voting Blocks By Size Class**

It is also useful to present these ownership data for the different sizes. Table 7 shows that in the medium size range (25%-75%) we have more than 50% of companies with a special characteristic: they present the larger values in terms of ownership and voting power concentration. This goes, some how, against the general intuition in the sense that one would expect a decreasing relationship between voting blocks and company size. Crespi (1998), for a sample of Spanish listed companies in the period 1990-1994 found an inverse relationship between ownership and size for all categories of shareholders except individuals.

(Table 7 near here)

## **6. Voting Blocks vs. Direct Stakes**

Comparing voting blocks with direct ownership give us information about the extent in which large shareholders use indirect ownership through intermediate companies to leverage the voting power. Histogram of Figure 3 shows us that for direct stakes, there is a considerable proportion of sample observations in the low range of ownership. In the 0-5% range, the values come from communications of board members, obliged by law to report their shareholdings in any case. There is a displacement to the right, starting in the 5% level when accounting for voting blocks, which add up direct plus indirect shareholdings. For some cases, largest shareholders have a small amount of shares via intermediate companies, smaller than 5% taken one by one, but when computing voting blocks the amounts achieves the 5% threshold.

From Figure 4, we also appreciate some steps around the 25% and the 50% level, which can be interpreted. Spanish Takeover legislation determines that for acquisition of 50% of company equity, the takeover bid has to be addressed to the 75% of the outstanding equity. This could explain, to some extent, the peaks we found below the 75% threshold.

For the voting blocks measure, we observe that small shares are now much less prevalent and still remain some steps around the mentioned levels of 25% an 50%, which seem to be sensitive to control. The use of intermediate companies for control purposes (voting blocks) displaces to higher values the sample distribution, when compared with direct ownership stakes.

(Insert figure 3 near here)

The intuition that the compared histogram give us is confirmed by the percentile plot of Figure 4. The 25% and 50% control thresholds. The contribution of intermediate shareholdings to create the called voting blocks, displaces the curve of direct shareholdings to higher concentration levels of voting power.

(Insert figure 4 near here)

It is interesting to observe that at the 25% threshold there are more companies in both measures; direct holdings and voting blocks. The takeover legislation help us to understand those weak flat segments in the curves.

## **6.1 Separation Measures**

In the case of Spain, where there is no deviation from one-share one-vote rule<sup>7</sup> it is interesting to know, according to the public available information, the importance of voting blocks to separate ownership from voting rights.

In this section we are interested to see how powerful are the indirect shareholdings as a separation device between real voting power and cash flow rights. Independently from the mentioned antitakeover devices as voting caps, supermajority requirements, or rules difficulting the access to the board of directors, the use of the parent - subsidiary figure, or intermediate companies as a bridge to control companies, is the main design available to spanish listed companies.

To the extent that there is no public information about voting agreements or similar instruments, indirect shareholdings is the way to compute the power of this procedure. Is it really important, in aggregated terms, the separation of cash flow rights from voting rights? To answer this question, we focus on the shareholder's communications instead of companies voting or ownership structure. Looking at the available communications of large shareholders for our 193 industrial companies sample we know the pattern they follow when using indirect ownership through third companies instead of direct holdings.

The analysis is done over two samples of large shareholder's communications in order to answer two questions. The first is about the significance of the indirect ownership as a general device to have voting power, which can be used by all large shareholders. The second question applies to those that use the indirect shareholdings and is about the degree in which the instrument is applied.

Panel A of TABLE 8 refers to all shareholder's communications (direct plus indirect) of 5% and larger and refers to the questions of the importance of the use of indirect shareholdings in the building of voting blocks. These 660 observations at December 31, 1995, have, on average, a 20,69% of voting rights, just one percent above the cash flow rights. The proportion of direct vs indirect voting rights is 77% to 23% which is a strong value of the direct shareholdings, without significant deviation from cash flow rights.

The second question deals with the subsample of shareholder's communication above 5% that declare indirect ownership. When significant shareholder's use the device of indirect ownership, how important is it in relation to the direct ownership?

Panel B accounts for 211 observations (almost 30% of total observations) where shareholders that declare indirect ownership have on average a 26,7% of voting rights representing a 28,1% of cash flow rights. Although there is a difference, this is not a powerful separation measure. The proportion of indirect voting rights is 79% in relation to 21% of direct voting rights, which is clearly different from the Panel A data.

(Table 8 near here)

## **7. Conclusions**

By the end of 1995, Spanish firms presented a situation of highly concentrated ownership. Nevertheless, if we compare this data with other European countries, the Spanish levels are the lowest with the exception of the U.K. Non-financial firms were the most important investors among the different categories. Bank participation, unlike it used to be the case in the past, was not so important and remained focused in certain sectors and companies. Banks as large shareholders are important mainly in the banking sector, and they also have average values of 16% as larger shareholders in the communication industry, with a voting power similar to the government's one.

Once we calculate direct stakes we saw that ownership concentration turns out to be rather large in the Spanish case, without the presence of holdings or other indirect ownership mechanisms. This view is reinforced by the fact that the second largest direct stake is also

quite large on average. Then, an important question arises: why would Spanish firms need pyramidal schemes? Probably not for ownership or control reasons as these data show. Leverage could provide an alternative explanation.

This ownership view from 1995 has recently changed due to the privatisation process. State participation that until 1995 was quite relevant in specific sectors and in many of the largest companies, has practically disappeared by mid 1998.

To check the consequences of privatisation on ownership and other features of corporate governance, such as the incentives of managers, their monitoring and the relation with the shareholders of these new firms are important questions that should be addressed.

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## 9. Appendix

TABLE A1  
COMPANY LAW

Company Law	COOPERATIVES Sociedad cooperativa	LABOR MANAGED FIRMS Sociedad Anónima Laboral	COMPANIES Sociedad Anónima	COMPANIES with LIMITED LIABILITY Sociedad Limitada	COMPANIES with UNLIMITED LIABILITY Sociedad Colectiva y Comanditaria
Register when a company is founded.	Co-operatives Register. For Insurance Co-operatives a previous authorisation by the Ministry of Economy is required	Administrative Register at Dirección General De Cooperativas y SAL., Companies Register Registro Mercantil.	Companies Register Registro Mercantil.	Companies Register Registro Mercantil.	Companies Register Registro Mercantil.
Documents that the company have to deposit:	Public Inscription of the statute in the Companies Register.				
Legal procedure for transferring shares				Account annotations in the company. Document Shares. These can be nominative or bearing without person's name	
Limits on the Directors to hold ownership certificates of the company	No	No	No	No	No
Company notification for acquisitions or holdings of a stake in another company	No	No	No	No	No
Is the list of the owners deposited ?	Yes, in the Creation Statute (Escritura Pública)	Yes, in the Creation Statute (Escritura Pública)	No. Only the founder's names and Directors	Only for Collective members	
Where is the registration data transmitted?	Instituto Nacional de Fomento de la Economía Social Ministerio De Economía Y Hacienda Federaciones de cooperativas.	Instituto Nacional de Fomento de la Economía Social Ministerio De Economía Y Hacienda	No transmission is done. BORMI (Boletín Oficial del Registro Mercantil)		
Are the company Register Centralised?	Centralised in the Direccions General de Cooperativas y SAL Exception for Catalunya, Basque Country, Valencia and Andalucia	Centralised in the Direccions General de Cooperativas y SAL Exception for Catalunya, Basque Country, Valencia and Andalucia	Centralised only for Headlines and general information when inscribed Detailed information at provincial level	Centralised only for Headlines and general information when inscribed Detailed information at provincial level	Centralised only for Headlines and general information when inscribed Detailed information at provincial level



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Table 1  
Number of Companies by legal form. December 1995

Legal Form	Number
Sociedades Anónimas (S.A.)	116,888
Sociedades Limitadas (S.L.)	326,644
Sociedades Regular Colectiva (S.R.C.)	604
Sociedades Comanditarias (S. Com.)	85
Cooperativas	16,494
Sociedades Anónimas Laborales (S.A.L.)	5,939
Empresario Individual (Autónomo)	1,086,256

Source: Anuario El País 1997

TABLE 2.  
COMPANIES LISTED ON THE SPANISH STOCKS EXCHANGE. EQUITY SEGMENT

	1991	1992	1993	1994	1995
Panel A: Number of companies					
Total	868	801	763	652	615
Electronic Market	122	124	121	127	127
Outcry Market	746	677	642	525	488
Active Companies	715	665	616	608	585
Panel B: Stock Exchange Activity					
Turnover / GDP at current prices	7.7%	6.3%	8.7%	10.8%	10.9%
Effective Equities trading (Secondary markets Pta. Billion)	4709.6	4450.3	6508.0	9085.7	7913.3
Market Capitalisation (Equity segment Pta. Billion)	14902.2	13961.1	21253.1	20895.1	23629.3

Table 3  
Number of companies by sector: initial data set and sample

Sector of economic activity	Initial Firms	Our Sample
Agriculture and Fishing	4	3
Utilities, Mining and Electricity production	30	22
Basic Metals	21	6
Cement and Building Materials	18	14
Chemicals	21	9
Metal Manufacturing	41	22
Other Manufacturing (Food, paper,...)	77	49
Construction	14	11
Commerce and Services	34	15
Transport and Communications	20	10
Property	62	32
<b>Non-Financial Sample</b>	<b>342</b>	<b>193</b>
<b>Financial and Insurance</b>	<b>379</b>	<b>201</b>
Banking	48	28
Insurance	14	5
Investment Trusts	307	164
Investment Companies	5	4
Real State Financing	5	
Total	721	394



TABLE 4  
DIRECT STAKES. PERCENTAGE OF DIRECT SHARES OWNED BY  
THE LARGEST INVESTOR OF DIFFERENT CATEGORIES. ON AVERAGE.

Sector	Number	Total %	Type of Investors					
			Banking	Financial other than Banking	Foreign	Non Financial Companies	State	Individuals
Agriculture and Fishing	3	38.74			6,99	38,74		0,00
Utilities, Mining and Electricity produc.	22	40.56	6,65	8,00	5,05	10,84	23,80	0,65
Basic Metals	6	26.84	8,81	15,83	4,82	12,15		0,22
Cement and Building Materials	14	38.29	1,61	2,53	13,96	28,49		2,33
Chemicals	9	21.02	2,26	4,39	2,34	20,90		2,27
Metal Manufacturing	22	33.65	1,34	2,60	21,74	11,02	0,70	3,59
Other Manufacturing (Food, paper,...)	49	29.48	1,54	2,19	7,47	13,29	2,17	11,05
Construction	11	25.62	1,99	1,99	4,46	19,86		2,14
Commerce and Services	15	32.11	1,32	3,21	11,80	15,94	4,10	4,73
Transport and Communications	10	35.42	4,74	4,74	5,41	20,71	14,10	1,84
Property	32	31.38	2,83	7,47	5,85	18,64		5,49
<b>Non-Financial Sample</b>	<b>193</b>	<b>32.13</b>	<b>2,73</b>	<b>4,49</b>	<b>8,75</b>	<b>16.43</b>	<b>4.39</b>	<b>5,07</b>
Banking	28	41.11	29,86	30,17	7,28	2,87	2,51	1,06
Insurance	5	33.28	0,12	0,12	2,68	33,28		1,76
Investment Trusts	164	26.54	2,38	5,56	3,43	13,03		13,17
Investment Companies	4	14.62	6,11	6,11	2,68	12,67		1,53
<b>Financial and Insurance</b>	<b>201</b>	<b>28.49</b>	<b>6,20</b>	<b>8,86</b>	<b>3,92</b>	<b>12,05</b>	<b>0.35</b>	<b>11,01</b>
<b>TOTAL Sample</b>	<b>394</b>	<b>30.27</b>	<b>4,50</b>	<b>6,72</b>	<b>6,29</b>	<b>14.19</b>	<b>2.33</b>	<b>8,10</b>

TABLE 5  
DIRECT OWNERSHIP BY SIZE CLASS. DISTRIBUTION OF THE SAMPLE OF 193 NON-FINANCIAL COMPANIES

Percentile size	Size cut Ptas Billion	Fraction of Data	C1	C3	C5	C All
< 5	Lower	0,052	30,88	50,39	59,49	67,22
5-10	249	0,052	31,55	46,25	51,11	59,86
10-25	444	0,145	25,87	45,62	53,46	56,74
25-50	1 561	0,249	23,36	40,77	45,92	49,76
50-75	7 815	0,259	36,41	48,54	51,73	53,28
75-90	41 430	0,150	44,74	57,18	60,82	61,41
90-95	140 007	0,041	38,17	49,77	50,33	50,48
> 95	241 100	0,052	30,83	39,78	39,94	39,96
Mean	66 496		32,13	47,06	51,60	54,39

TABLE 6  
VOTING BLOCKS. PERCENTAGE OF THE LARGEST VOTING BLOCK FOR DIFFERENT CATEGORIES, ON AVERAGE.

Sector	Number	Total %	Type of Investors					
			Banking	Financial other than Banking	Foreign	Non Financial Companies	State Blocks	Individuals
Agriculture and Fishing	3	45,21	0,00	0,00	6,99	38,11		13,97
Utilities, Mining and Electricity produc.	22	46,03	9,38	10,30	11,59	8,28	28,25	3,88
Basic Metals	6	30,82	15,83	7,49	2,73	13,68		0,23
Cement and Building Materials	14	55,71	3,91	3,91	23,31	28,27		2,11
Chemicals	9	36,02	5,84	5,84	12,99	25,09		6,73
Metal Manufacturing	22	36,19	1,40	2,66	22,18	15,34	0,70	5,84
Other Manufacturing (Food, paper,...)	49	36,86	3,05	3,81	9,96	11,78	2,17	17,33
Construction	11	40,82	3,06	3,88	4,71	30,40		7,46
Commerce and Services	15	45,56	1,32	3,22	16,45	11,53	4,10	5,17
Transport and Communications	10	41,00	16,26	16,26	5,44	15,45	14,10	2,26
Property	32	36,12	6,42	8,61	7,46	17,57		13,07
<b>Non-Financial Sample</b>	<b>193</b>	<b>40,09</b>	<b>5,24</b>	<b>5,98</b>	<b>11,93</b>	<b>16,26</b>	<b>4,90</b>	<b>9,31</b>
Banking	28	51,02	27,59	29,83	9,68	5,61	2,66	1,37
Insurance	5	65,60	2,32	19,50	1,06	59,21		4,81
Investment Trusts	164	33,64	4,13	7,13	4,07	14,55		14,78
Investment Companies	4	20,71	12,61	12,61	2,68	12,67		7,17
<b>Financial and Insurance</b>	<b>201</b>	<b>36,55</b>	<b>7,46</b>	<b>10,68</b>	<b>4,73</b>	<b>14,31</b>	<b>0,37</b>	<b>12,54</b>
<b>TOTAL Sample</b>	<b>394</b>	<b>38,28</b>	<b>6,37</b>	<b>8,37</b>	<b>8,26</b>	<b>15,27</b>	<b>2,59</b>	<b>10,96</b>

TABLE 7  
SAMPLE OF NON-FINANCIAL COMPANIES. VOTING BLOCKS AND SIZE DISTRIBUTION.

Percentile size	Size cut Ptas Billion	Fraction of Data	C1	C3	C5	C All
< 5	Lower	0,052	30,99	50,93	62,50	67,96
5-10	249	0,052	38,76	51,79	60,19	65,71
10-25	444	0,145	32,66	53,13	63,13	65,41
25-50	1 561	0,249	33,28	52,68	61,07	63,16
50-75	7.815	0,259	47,43	61,49	67,31	68,30
75-90	41 430	0,150	48,04	61,34	64,59	65,51
90-95	140 007	0,041	39,32	52,75	55,68	55,82
> 95	241 100	0,052	45,21	60,40	62,16	62,18
Mean			40,09	56,59	63,38	65,14

TABLE 8  
SEPARATION MEASURES FROM DIRECT STAKES TO VOTING BLOCKS

Panel A							
		Voting Power			Cash Flow Rights		
Summary Statistics for all blocks (over rows)		Total Voting Block	Contribution of component to total block (in %)		Total Block	Contribution of component to total block (in %)	
			Direct	Indirect		Direct	Indirect
660 Obs.	Mean	20,69	0,77	0,23	19,54	0,78	0,22
	Standard Deviation	21,40	0,40	0,40	20,35	0,40	0,40
Panel B							
		Voting Power			Cash Flow Rights		
			Direct	Indirect		Direct	Indirect
211 Obs.	Mean	26,77	0,21	0,79	22,81	0,25	0,75
	Standard Deviation	24,74	0,36	0,36	22,29	0,39	0,39

Figure 1  
Direct ownership stakes. Mean and median of shareholdings.  
Sample of 193 Non-Financial Companies, December 1995

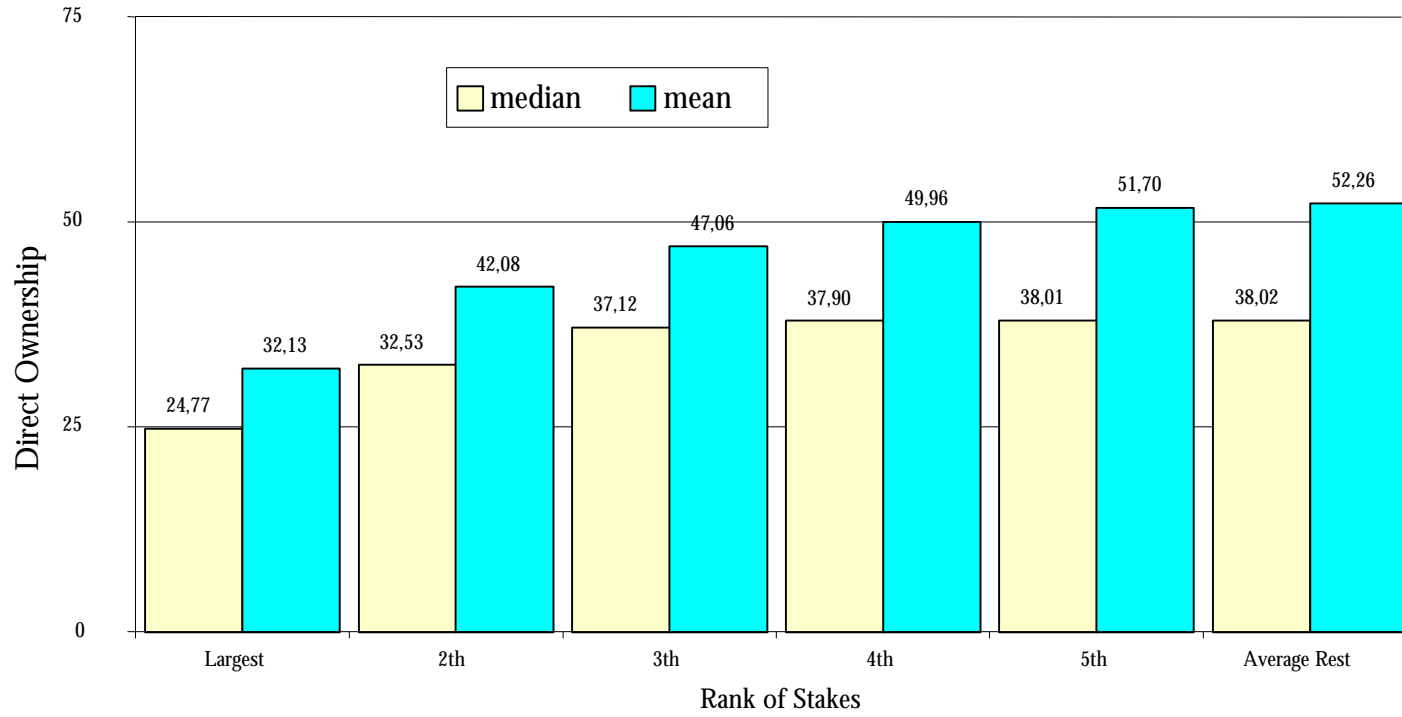


Figure 2  
Direct Ownership and Voting Blocks for 193 Non-Financial Companies, December 1995.

### Direct Ownership and Voting Block by Rank

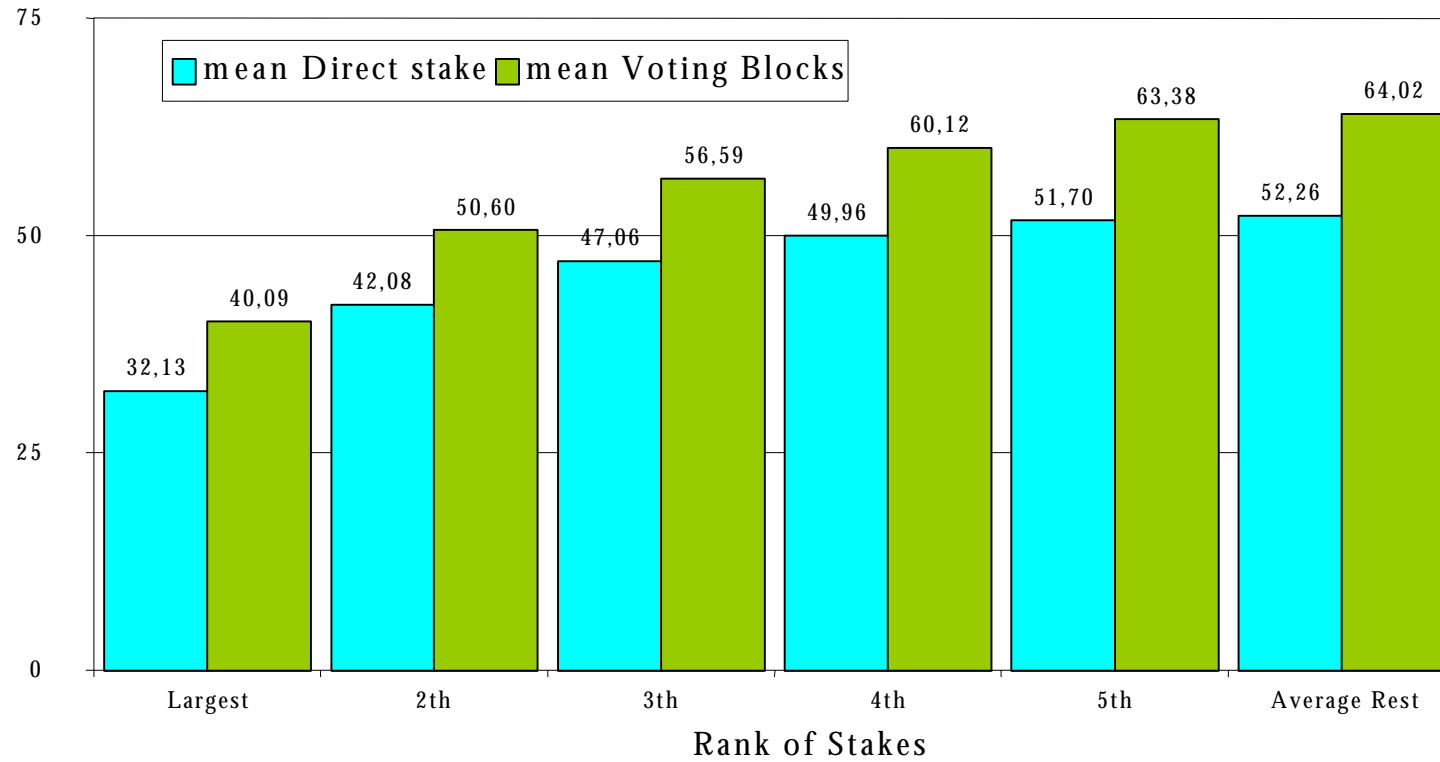


Figure 3  
Histogram of the largest direct stake and the largest direct voting block.  
Sample of 193 non-financial companies, december1995

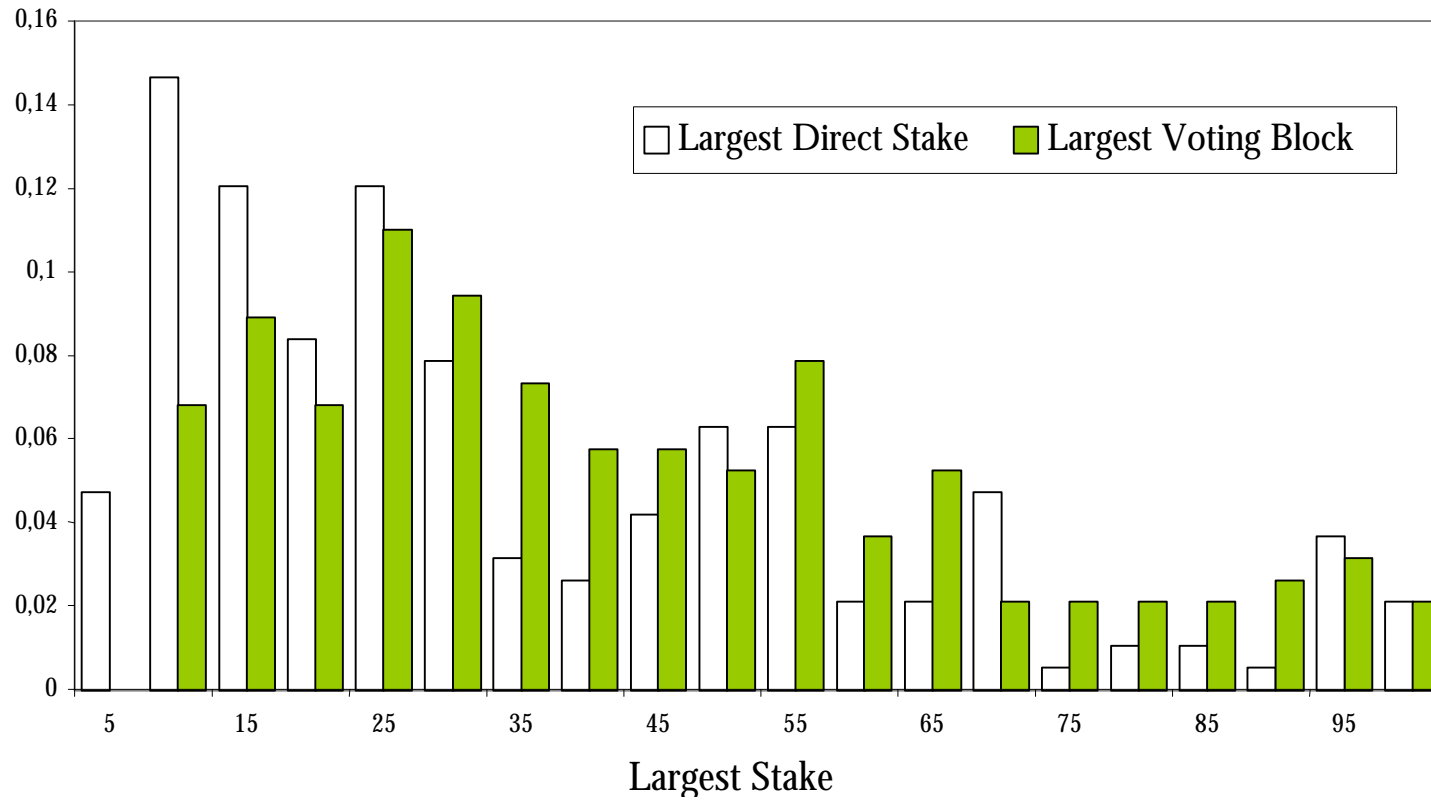
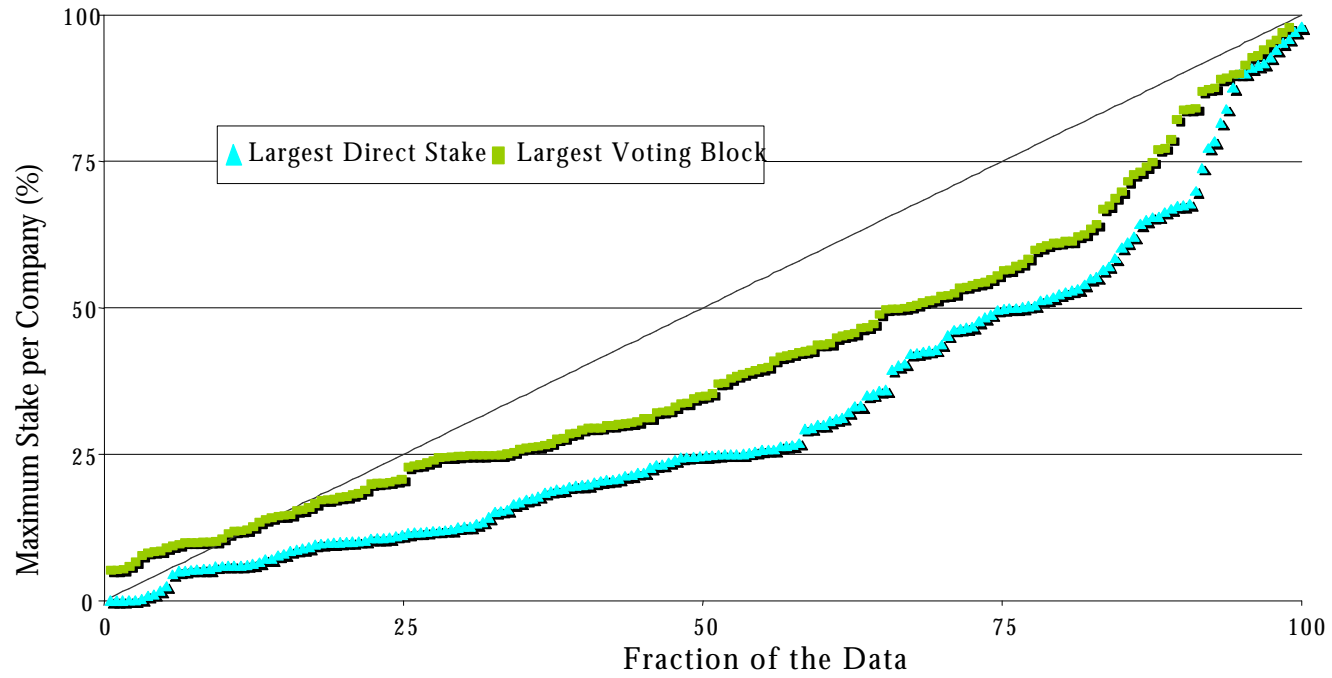




Figure 4  
Percentile Plot of the largest direct stake and the largest voting block.



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<sup>1</sup> At the end of 1998, there are 7 Spanish companies listed in the NYSE, and 13 are listed in Frankfurt.

<sup>2</sup> As a simplification, we call this last type “industrial firms”, even though there are some firms among them that belong to other sectors. Table 2 provides a more detailed description of the sample, where most of the 193 firms included do belong to the industrial sector.

<sup>3</sup> The notion of "relevant companies" refers to those firms belonging to a holding being privatised. For example, in the case of Endesa and for the purposes of the preceding paragraph, this notion would include utilities such as FECSA, ENHER, ERZ, or VIESGO, companies where Endesa has acquired relevant shareholdings.

<sup>4</sup> A theoretical approach to this problem can be seen in García-Cestona y Salas (1997).

<sup>5</sup> Although we focus on the 1995 data for most of the tables, we are also able to conduct some time comparisons of the ownership structure and its changes from 1991-1995.

<sup>6</sup> The minimum values equal zero for the second largest, third largest shareholder and so on, corresponds to companies where there is respectively only one shareholder, two shareholders, etc. with a stake of direct and indirect ownership larger than 5%.

<sup>7</sup> There is only a case under the current law where this deviation is possible. Companies can issue non voting shares, but to the extent we know, for listed companies only one of them made use of this possibility, Banco Guipuzcoano.