

**SEBI**

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**Market for Corporate Control  
and Takeover Regulations:  
Trends and Analysis**

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The views expressed in this paper are those of the authors and do not necessarily reflect those of the Securities and Exchange Board of India. We sincerely thank Shri G. N. Bajpai, Chairman, SEBI for his unlimited support and encouragement in conducting research work. But for him, it would not have been possible to bring out this paper on time. We also thank many of our colleagues for their comments and suggestions.

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## Foreword

Optimising wealth creation and management is the new game that the corporate leaders across the continents have to play with pragmatism, sagacity and dexterity. Slow movers, lower performers, standard bearers are being out-witted by pacers, standard setters and visionaries. The stakeholders, in particular, shareholders, support the march towards greater value creation which has led to a new market for corporate control. The power shift from one set of controlling shareholders is being organized through corporate mergers, takeovers and raids. The external mechanism used to occupy the driver's seat obviously entails:

- (a) payment of premium as advance for,
- (b) raising the level of value creation.

Whereas, the race for control keeps the managing executives at tenterhook, guessing and seepage of chill down the spines, the existence of efficient market for control is being increasingly believed to be extremely crucial for maximizing wealth creation and management.

The Indian economy until the nineties was subjected to regimentation in the nature of control and regulations. The reforms initiated in 1991 metamorphosised the economy from controlled to that of market driven. The restructuring of corporates through mergers, amalgamations and takeovers was necessitated by the wave of liberalization and globalization unleashed henceforth. Since 1991, the companies are being increasingly exposed to competition, both domestic and international, and competitiveness has become the *sine qua non* for survival. There are several economic motivations that guide takeovers like gaining efficiencies through synergies and minimising risk through diversification.

From the falling shades of takeover scenario in India, period subsequent to the institution of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997, this working paper attempts to decipher the emerging trends. The Analysis includes both open offers and

automatic exemptions for the period of seven years spanning from 1997 to 2004 and enquires into the relationship between takeover games and overall market activity.

A total of 493 companies have opted for the open offer route while another 1479 companies have availed of the automatic exemption process over the study period. There are clear and visible indications with regard to the industry clusters both in terms of the number of companies and amount involved. Besides the classification of the takeover activity on the basis of objectives and nature of acquirer, break up of automatic exemptions etc. have also been studied.

In view of the considerable interest generated amongst the general public as well as those with immediate concern on takeover issues, the working paper is expected to provide a fresh outlook on the takeover scenario of the country.

The market participants and researchers may also find it an informative source in view of the comprehensive statistics that it provides.

I congratulate the team of Research Department for the efforts in bringing out this working paper.

**September 10, 2004**  
**Mumbai**

**G. N. Bajpai**  
**Chairman, SEBI**

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## **Securities and Exchange Board of India**

The Securities and Exchange Board of India (SEBI) was constituted on 12 April 1988 as a non-statutory body through an Administrative Resolution of the Government for dealing with all matters relating to development and regulation of the securities market and investor protection and to advise the government on all these matters. SEBI was given statutory status and powers through an Ordinance promulgated on January 30 1992. SEBI was established as a statutory body on 21 February 1992. The Ordinance was replaced by an Act of Parliament on 4 April 1992. The preamble of the SEBI Act, 1992 enshrines the objectives of SEBI - to protect the interest of investors in securities market and to promote the development of and to regulate the securities market. The statutory powers and functions of SEBI were strengthened through the promulgation of the Securities Laws (Amendment) Ordinance on 25 January 1995, which was subsequently replaced by an Act of Parliament.



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## Introduction

The concept of limited liability company has revolutionized the way businesses are set up, grown, run and wound up. Limited liability has become a dominant form of running business in the world economy. Companies set up under this system can be changed hands from one management group to another quite easily subject to regulatory environment in different jurisdictions. Limited liability companies can have wide spread ownership, large canvas of resources, and highly talented professional management. The agency relationship is also well established, regulated and managed. Insider and outsider divide has been in focus in the recent past owing to several corporate malfeasances worldwide especially in the US, the UK, Italy, Japan, South Korea and also in India. There has been considerable rethinking on the relationship between owners and managers and responsibility of managers to different kinds of stakeholders in the company. In this context the market for corporate control would have wide ranging ramifications on several constituents of the economy. These constituents include shareholders, creditors, employees, government and the nation as a whole.

Regulators continuously strive to provide congenial regulatory atmosphere so that the efficient and healthy market is moulded in the corporate sector. Mergers and takeovers are the two instruments with the help of which managers strive to achieve corporate control and growth. In India, mergers are outside the purview of Securities and Exchange Board of India (SEBI). Takeovers of listed companies are regulated by SEBI. Prior to the SEBI regulations these were enforced by stock exchanges as per the Listing Agreement. The takeover regulations were first framed in 1994 as SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1994. Pursuant to the Bhagawathi Committee's recommendations the regulations were further reframed as SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. Amendments were made in the regulations in 2002 to finetune it further. Over a decade, SEBI made several amendments, from time to time, to meet the ever growing and fast changing economic milieu.

Structurally Indian industry and corporate edifice are quite different from the corporate structure of the US, Canada and the European countries. Some of the Asian countries resemble Indian corporate ownership and

management style to a limited extent. Historically and traditionally majority of the Indian companies have been set up by families belonging to trading communities. In certain cases, families own large number of voting stock and in some others, financial institutions, institutional investors and banks largely support this capital. In the latter category many a time stake of promoter/family owner is insignificant. Despite low ownership stake the companies are run by the minority promoter or family.

Globalization of Indian economy has started changing the landscape of Indian industry and its management style. With liberalization and globalization, emphasis shifted to increased competition, more resources, professional talent and latest technology. All these factors and other related issues have dictated changes within and outside the industry. In response to these changes and to be a proactive regulator, SEBI formulated takeover regulations in order to facilitate smooth transformation of Indian companies and make them grow inorganically also.

Owing to these specific, economic and non-economic reasons our Regulations, many a times, appear to be quite different from the takeover regulations of other countries. General principles followed while framing any takeover regulations include:

- a) Transparency – the mechanism and the process used to acquire control of companies should be transparent and known to all concerned in advance so that everyone can take informed decision and all will have equal opportunity.
- b) Fairness – Takeover code should be fair to all concerned i.e. majority owners, institutional investors, minority shareholders and other shareholders. Therefore, valuation and pricing of securities are of paramount importance in an emerging market like India where sometimes the pricing of securities can be improper and valuation may not be fair to all concerned. Therefore, the regulations should address these issues also.
- c) Valuation and Payment - Corporate valuation and payment to shareholders are two important pillars. Payment can be made either in cash or in kind, basically in the form of securities of acquirer or a third company.

- d) Disclosures - SEBI made an elaborate, and rightly so, regulations, so that the present and prospective investors have all the information with them before they take a decision either to continue with the new management or to quit the company at the offer price or at the market price. Financial and non-financial disclosures are made and sufficient time is given to the investors to take an informed decision.
- e) Conflict of interests - Since stakeholders have different expectations, naturally there will be a conflict of interest. This conflict of interest could be amongst the shareholders group, current owners, management, institutions, small shareholders etc. Conflict of interest can also arise between owners and creditors and between owners and Government, owners and institutions, etc. Therefore, the Regulations should be addressing the issues of conflict so as to minimize the conflict of interest among the competing stakeholders.

### **Objectives of the study**

This study proposes to evaluate the performance of Takeover Regulations in the past seven years in order to examine:

- a) the extent of their usage;
- b) nature of the industry that availed the Regulations;
- c) type of investors who disinvested and took control;
- d) the process or technique used in the takeover of companies;
- e) total amount changed over the period;
- f) establish relationship between stock market performance and takeover activities;
- g) identify seasonality, if any, in the takeover business; and
- h) identify drivers shaping the acquisition business in India.

### **Industry analysis**

Companies are acquired owing to several economic and non-economic reasons. We would like to examine dominance (lack of it) of any industry over the seven year study period and reasons thereof. A close look at

the data in Tables 1 and 2 and Chart 1 and 2 provide insights into the industry pattern at aggregate level for the entire period. Finance industry, in terms of number of companies, is way ahead of other industries in terms of acquisition. A total of 99 companies have been taken over, which account for about 20 per cent of the total companies acquired. The second place is secured by Metal industry with 45 companies and a percentage share of nine. Infotech industry came third in the order with total number of 37 companies and percentage share of 7.5.

Year wise analysis throws up the following additional facts. The second rank is shared by many industries in different years namely Food-processing, Metals, Chemicals. In four of the seven years, 97-98, 98-99, 01-02 and 02-03, the third position was held by Healthcare industry. Other industries that shared this position included Electronics and Electrical (97-98 and 98-99), Cement and Construction (99-00), Infotech (00-01 and 01-02). Large number of takeovers (88) took place in 2002-03 followed by 82 in 2001-02 and 77 in 2000-01. 2002-03 witnessed higher activity in terms of takeovers and ranks moved backwards till 98-99 in sequence. The year 2003-04 occupies sixth position with 65 companies.

If one looks at the characteristics of these industries, some of the following interesting and useful observations can be made.

- a) The capital invested in these industries, by and large, is relatively small,
- b) Entry and exit are comparatively easy,
- c) Amount of money required to acquire these companies also is very small,
- d) Acquiring and running companies belonging to say for example Finance and Infotech is relatively smoother than companies of industry say Cement, Petrochemicals etc. Therefore, large number of acquisitions might have taken place in these categories. On the other hand, industries with high capital intensity and long gestation period like power sector, petrochemicals, paper and pulp, mining, witnessed quite a few number of takeovers.

Examination of the open offer amount involved in takeovers throws out altogether different results. Number one position has been secured by Electronics and Electrical industry with Rs.2,162 crore out of total

amount of Rs.15,308 crore in the entire seven years period. In terms of percentage, the Electronics and Electrical industry has about 14 per cent share. This is closely followed by Petrochemical industry with a total amount involved being Rs.2,083 crore and in terms of its percentage position is 13.6 per cent. The third position has gone to Metal industry with Rs.1,820 crore and it has a percentage share of 12 per cent.

Though the number of offers both in first and second rank industry is small, the value involved is very large. Once again the nature of industry and other factors play important role. All these three industries generally have high investment needs and they are capital intensive in nature. Restructuring in these sectors has been long overdue. Therefore, entrepreneurs progressed ahead with taking over of these companies. Finance and Infotech have very low share in the total takeover amount. Finance has about one per cent share in offervalue as against 20 per cent share in number of companies and Infotech's share is about 2.6 per cent (value) while it had about nine per cent share in terms of companies.

A total amount of Rs.15, 308 crore was involved in all the seven years by way of open offers. The year 02-03 topped at Rs.6, 389 crore followed by 2001-02 with Rs.3, 635 crore and third position is obtained by latest year 2003-04 with Rs.1,849 crore. In other words, the past three years have seen higher level of takeover activities in terms of value involved. 2002-03 and 2001-02 secured top two ranks, both in terms of companies and amount involved.

### **Objective wise analysis**

As per SEBI's (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 there are three objectives under which the takeovers are generally considered and classified:

- a) 'Change in Control';
- b) 'Consolidation of Holding'; and
- c) 'Substantial Acquisition of Shares'.

Of the total number of 493 companies, about 60.4 per cent of the companies (298) have changed hands due to 'Change in Control'. This is distinctly followed by 'Consolidation of Holding' with 26.6 per cent

(131) and a far distant third position occupied by 'Substantial Acquisition of Shares' with 13 per cent (64). In all the years, the objective of 'Change in Control' consistently secured the first position with a varying degree of per cent share. 2000-01 is a curious year to examine. About 91 per cent of the companies in this year changed hands owing to 'Change in Control'. Other two objectives shared a paltry nine per cent. 'Consolidation of Holding' objective held second position in five of the seven years. For the past four consecutive years it held to its second position. Only in 97-98 and 99-00 the second position was held by objective of 'Substantial Acquisition of Shares'. This pattern raises several interesting observations. There is a need to further examine the basic philosophy, objective and other environmental issues concerning this dominant and minor position occupied by each of them. Tables 3 and 4 and Charts 3 and 4 give detailed information on objective wise analysis.

When examined, on the basis of amount involved also, the ranks remain unchanged. Change in Control's percentage came down to about 51 per cent with total amount involved Rs.7,788 crore which is followed by 'Consolidation of Holding' with a percentage share of 38 per cent and amount is Rs.5,838 crore. 'Substantial Acquisition of Shares' occupies third position in terms of amount involved also. Its share is eleven per cent with an aggregate amount of Rs.1,683 crore.

Year wise analysis opens little different picture compared to the analysis in terms of number of companies of the seven years. The top position is equally shared between 'Change in Control' and 'Consolidation of Holding' in three years each. The top position is held by 'Change in Control' while 'Consolidation of Holding' occupied the first position with fifty nine per cent, fifty eight per cent and fifty per cent share respectively. In the final year of analysis, 03-04, the top rank was secured by 'Substantial Acquisition of Shares' objective and its share stood at 56.4 per cent. The second position was occupied by 'Consolidation of Holding' in four of the seven years and in two years it was occupied by 'Substantial Acquisition of Shares' objective (98-99, 99-00) and in one year i.e. 03-04, the second position was changed to 'Change in Control'. Between, the number of companies and amount involved, the consistency in position is felt in terms of number of companies while the position got swapped (between change in control and substantial acquisition of shares) in some years when analyzed in terms of value involved. To some extent it can be interpreted that, many a time, the size of companies that changed due to 'Change in Control' appears to be smaller.

## **Nature of acquirer**

Broadly nature of acquirer is divided into three groups. Group one has two sub-categories namely; foreigner and Indian companies. Group two is classified into promoter and non-promoter and finally Group three is sub-divided into existing shareholders and new shareholders. This analysis will bring in a dimension of who is taking over, what are the interests of the acquirers and if analyzed deeply it may also bring in additional information such as horizontal versus vertical integration, diversification versus consolidation, dominance in the industry etc. Under Group one, always the Indian companies occupy top position. Four-fifths of the companies are taken over by Indian companies and the residual one-fifth is acquired by foreign companies. The Indian dominance is consistent throughout the period. In almost all of the years, the shares of Indian acquirer has been fifty per cent and in some years it was as high as ninety per cent. This data dispels some of the notions present in the minds of certain quarters that Indian companies are gobbled up by foreigners. At least in terms of number of companies that are taken over, it doesn't appear to be true. In Group two, non-promoters dominated the scene. Little less than three-quarters of the total acquisitions are by non-promoter group. This non-promoter group dominated in all the seven years of the study. Of the total 493 companies, about 359 are acquired by non-promoters. It is interesting to examine the reasons for acquisition by non-promoters. The promoters may be getting out of the business due to several reasons and amongst them the more important ones are :

- a) lack of experience;
- b) lack of core competence;
- c) family reasons;
- d) lack of further finance;
- e) unable to compete owing to globalization and;
- f) unable to expand/diversify due to any other specific reasons.

Non-promoter taking over is also a very interesting fact to note that new entrepreneurs are able to take over the companies to add additional business (related/unrelated) to the existing menu. The third and final group throws up a little but divided picture. Though new shareholders' share is little higher at fifty six per cent, the existing shareholders

continue to exhibit interest in taking over companies. Out of the seven years, in six years, new shareholders share was higher. Only in one year, 2002-03 the existing shareholders had a higher per cent of share. All these analyses are on the basis of number of companies involved. If we look at the amount invested by each category, the results could bring out a new dimension altogether. For further details refer to table 5.

### **Offers through MoU**

The potential acquirers, sometimes, enter into an agreement with the existing shareholders or group of shareholders to acquire substantial / bulk of shares. In the past seven years there were 334 MoUs. The highest number was sixty seven in 2000-01, followed by sixty two in 1999-00 and forty eight in 2001-02. In terms of number of shares acquired, 2002-03 accounts for fifty per cent of the aggregate. The total of 21,175 lakh shares have been acquired over the seven year period. In the years 99-00, 2000-01, 2001-02 and 2002-03 roughly ten per cent of the total shares were acquired. The average number of shares per MoU works out to be 469 lakh. Yearly analysis indicates that 2002-03 had highest number of shares per MoU at 246 lakh shares.

The total amount involved in MoU agreement was Rs.9,333 crore. In 2002-03 more than fifty per cent of the aggregate was acquired through MoU and this amount stood at Rs.5,395 crore. Other years registered small proportions. 2001-02 had a share of twelve per cent at Rs.1,148 crore closely followed by eleven per cent in 2000-01 at Rs.1071 crore. The dominance of 2002-03 could be due to PSU disinvestment. Average value of shares acquired through each MoU is Rs.208 crore. The highest per MoU deals was recorded in 02-03 at Rs.125 crore. In all other years per MoU deal value was very less.

Table 7 provides comparative picture of open offers and MoUs. Open offers recorded higher amount at Rs.15,308 crore. Some of the similarities include that 2002-03 and 20001-02 under both the categories of offers secured first and second positions. In terms of number of shares offered, average number of shares offered and average value of shares offered, the year 2002-03 topped. Only in 1999-00, the amount offered under MoU is higher than the total amount of open offer in that year.

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## **Exemptions**

The category of exemptions is one of the innovative and novel ideas of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. Under certain predetermined conditions, a few types of acquisitions are exempt and they need not make open offers. Regulations 3(1)(a), 3(1)(b), 3(1)(c), 3(1)(e)(i), 3(1)(e)(ii), 3(1)(e)(iii)(a), 3(1)(e)(iii)(b), 3(1)(i) discuss details of exemptions under each category.

Some of the categories under which exemptions are permitted include:

- a) Issue of shares through public offers;
- b) Rights issue;
- c) Preferential allotment; and
- d) Interse transfer of shares (group and relatives, Indian promoters and foreign collaborators, promoters, transfer from state financial institutions etc.)

Table 6 and Charts 7 and 8 are presented with details regarding statistics on exemptions. Over the entire study period the value for exemption, under all categories, amounted to Rs.19,908 crore. This is much higher than the amount paid by acquirer through open offers and MoUs. Exemptions have been widely used to acquire shares and control of the management of companies. 2000-01 saw maximum amount of exemption at Rs.4,873 crore followed by 99-00 at Rs.4,677 crore and in 97-98 at Rs.3,502 crore. These three years accounted for more than two-thirds of the total amount paid through exemption category. The role of exemption receded in the latter period and mainly its share dropped substantially in 02-03 and 03-04. In terms of number of companies, where exemptions were availed, the year 01-02 scored top position at 276 closely followed by 99-00 at 252 and in 00-01 at 248. The latest two years recorded fall not only in terms of amount, but also in numbers. Analysis in various sub-headings reveal that the route of preferential allotment is the most favored one. The aggregate amount of Rs.14,360 crore was paid to the shareholders of target companies which works out to roughly about over 70 per cent of the amount. Year wise analysis reveals that in 01-02 the preferential allotment route secured top position with an amount of Rs.4,202 crore followed by Rs.3,264 crore in 97-98 and Rs.3,062 crore in 99-2000. Again within preferential allotment, these three years account for about 75 per cent of the total amount paid under preferential

allotment in all the seven years. This highly skewed position also influences the overall ranking in these three years. The second most favored route appears to be group transfer under interse transfer of shares and the amount transferred under this category amounted to Rs.2,322 crore accounting for about twenty four per cent of the total amount for the entire period. These two categories together account for a lion's share of roughly Rs.16, 682 crore. All other categories account for about only Rs.3,000 crore which is less than 20 per cent of the aggregate. The third slot was secured by transfer of shares among the promoter under interse transfer of shares. The amount transferred stood at Rs.1,369 crore.

### **Stock market performance and takeover activity**

It is interesting and useful to examine whether there was any identifiable pattern between the performance of secondary market for shares and takeover activity. This examination can also bring out any lead-lag relationship which may indicate whether there was any benefit that informed have over less informed and uninformed investors. Acquirers are expected to have professional expertise, access to sophisticated tools, information and advice. Therefore, it is possible for them to acquire shares and/or make open offers in falling markets so that any commitment by the acquirers is at the lowest possible share price. SEBI's regulations are transparent and known in advance. If the predators can forecast bearish period/fall period, then they can acquire shares during this period and compute offer prices which is possibly low.

We have made an attempt to enquire into the relationship between index movements and acquisitions in terms of number of companies acquired and amount paid. This has been studied in three sub-headings namely Consolidation of Holding, Change in Control and Substantial Acquisition of Shares. A close look at charts from 11 to 16 reveals some amount of relationship. For example, Consolidation of Holdings during the year 98-99 was at twenty two and during this period there was a fall in the market. The following year the market went up substantially. The number of consolidation also fell sharply and the story is repeated next year, albeit slight fall in the market compared to 98-99.

The years 2001-02 and 2002-03 present very interesting story. In both the years compared to immediate preceding year, the market recorded

fall, whereas Consolidation of Holding was higher in these two years. In 03-04, the market went up substantially and Consolidation of Holding's share fell down. From this limited examination, it appears that promoters are able to time their consolidation of holdings. The next chart compares index movement and Change in Control. Highest number of transfers in terms of change in control took place in 00-01 followed by 01-02 and 02-03. The three connected preceding years for example 99-00, 2000-01, 01-02, the market continuously recorded fall compared to its immediate previous closure, and went up in 03-04 and the change in control fell down to thirty eight. In the previous three years also (97-98 to 99-2000) the market was going up and the consolidation although went up, but the peak was attained in 2000-01 at seventy. This observation reinforces once again the ability of acquirers to foresee movement in market and acquire shares to make change in control. The third category is Substantial acquisition of shares. This category exhibits a different picture altogether. Substantial acquisition of shares in terms of number of companies were high in the first three years when the market was going up and the next three years the number of companies acquired shares through substantial acquisition of shares fell down sharply and again it recorded very high growth in 03-04 as the market also registered higher appreciation in the recent history of Indian stock market. The charts 14, 15 and 16 are prepared using the value involved in each of these three categories. The charts exhibit almost similar pattern which was seen in the analysis in terms of number of companies. This analysis further reinforces the belief that the informed players are able to use the market to their advantage. This demands a closer look at our Regulations and we need to make necessary amendments if warranted.

### **Seasonality in Takeovers**

An attempt has been made to find out whether there is any seasonality in the acquisition pattern of companies. Seasonality is in terms of a favored month/months, before/after the budget, festival season, or any other unknown seasonality. For this purpose the data has been organized month wise under each year under one of the three objectives. A close examination of the data does not show any strong seasonality in any month or any period. Though there are certain months where aggregate number of companies acquired was large, but dissecting the data year wise does not repeat its position in any year. Therefore, it would be very difficult to conclude the presence of seasonality in acquisition pattern.

### **Main Findings/Observations :**

- For the past seven years (97-98 to 03-04), since SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 a total of 493 companies had been taken over by way of making open offers. 1479 companies availed exemptions during this period. Thus, these two categories together accounted for 1972 companies. Under open offer category, a maximum of ninety eight companies made public offers in 02-03. In the first six years, the number had been continuously on a rise. Only in 03-04, it fell down to sixty-five. Regulations pertaining to Exemptions underwent major changes in September 2002. Therefore, the number of exemptions had been on a decline since then.
- There are clear and visible indications with regard to industry clusters. Twenty per cent of the total number of companies changed hands belonging to Finance industry, nine per cent to the Metal Industry and 7.5 per cent to Infotech industry. These three industries together accounted for about thirty seven per cent of the total takeovers. The size of the companies in these industries is small by nature and consequently management appears to be simple in these industry categories.
- On the basis of the amount involved, the picture throws quite different result. Petrochemical industry with about 13.6 per cent stood at first place, followed by Electronics and Electricals with 13.2 per cent and Metal with 11.9 per cent. The scales might have turned in favor of Petrochemicals industry due to two highly capital intensive acquisitions (PSU disinvestment) belonging to Petrochemical industry. In terms of amount involved, Finance industry and Infotech industry shared very meagre percentage.
- The Takeover Regulations classify Takeovers into three broad categories namely 'Change in Control', 'Consolidation of Holdings' and 'Substantial Acquisition of Shares'. The data reveals (on the basis of number of companies) that 'Change in Control' has a predominant share with about sixty per cent of the companies' acquired under this category. This is distantly followed by 'Consolidation of Holding' at about twenty seven per cent and the third place was secured by 'Substantial Acquisition of Shares' with thirteen per cent. Change in Control of management could be direct or indirect. It could also arise

due to several other reasons, one of them being 'Substantial Acquisition of Shares'.

- Analysis on the basis of the amount involved also provides almost consistent results in terms of objectives of acquisition. The share of 'Change in Control' fell down but it retained its numero uno slot. 'Consolidation of Holdings' made progress by controlling about thirty-eight per cent of the total amount. The third position, under this analysis also was retained by 'Substantial Acquisition of Shares' objective. Year wise analysis provides some changes.
- The acquisitions are analyzed on the basis of the background of acquirer. Acquirers are mostly Indians in almost four out of five cases. Only one-fifth of the total number is acquired by foreigners. A different angle of analysis i.e. promoters and non-promoters discloses that non-promoters are dominant acquirers with a share of about seventy-three per cent. The existing promoters played minor role with about twenty-seven per cent while taking over companies. This indicates that new entrepreneurs (not connected with existing management) are taking keen interest in taking over listed companies. This is further reinforced by role of new shareholders whose stake stood at about fifty-six per cent. Existing shareholders (promoters and non-promoters) had a share of about forty-four per cent. Certain illusion present such as, foreigners garnering Indian companies doesn't appear to be a fact.
- MoU acquisition account for Rs.9, 333 crore which is slightly less than half of the amount offered in open category. The number of companies that entered into MoU account for 334 in the entire period. The number under this category has been continuously on rise till 2000-01 and thereafter there is a continuous fall. This could be due to a major change made in September 2002.
- Exemptions – Total number of 1479 companies were exempt from the making of open offers during the period. This is almost three times the number of that made open offers. The amount involved works out to Rs.19, 908 crore. This is much higher than open offer amount of Rs.15, 308 crore. The role of exemptions receded since September 2002 as a result of changes made to the Regulations. The numbers have been falling since then along with the amount involved possibly due to the hangover effect.

- Preferential allotment route was dominant method used to avail exemptions till September 2002. Thereafter, this route became a less used one.
- An attempt has been made to see the relationship between secondary market and takeover activities. From the analysis it is found that there appears to be a relationship between stock market performance and takeover activity. Acquisition generally precedes a rise in the market. In other words, the predators acquired shares in falling market so that their commitment in the open offers could work out to be less.
- Seasonality was examined to see any repeated pattern in terms of acquisition. We could not find out any seasonality.

### **Some Recommendations**

- Takeover Regulations have been in vogue for quite sometime in India. Several amendments have been made for the past one decade to fine-tune and make them more investor friendly. Some rethinking and further fine-tuning may be required. Therefore, the following recommendations are made on the basis of analysis and interpretation of the data.
- When existing shareholders/promoters have greater than fifty per cent stake in voting stock, then they should not have the option of creeping acquisition facility irrespective of the percentage level.
- Greater than fifty per cent gives management control and there is no threat of takeover. Some arguments are put forward in order to extend creeping acquisition upto seventy five per cent of the voting stock, with a view to providing facility on special resolution. This is not good economics because if the resolutions are in the interest of shareholders then there is every possibility that other shareholders will also vote for them. Therefore, any acquisition beyond fifty per cent should result in open offer. Otherwise if the existing promoters are allowed to acquire till they reach seventy-five per cent, it may reduce liquidity in the market and role of retail investor also.
- In the initial stages, it was argued that prospective acquiring companies/persons do not have sufficient money and /or availability

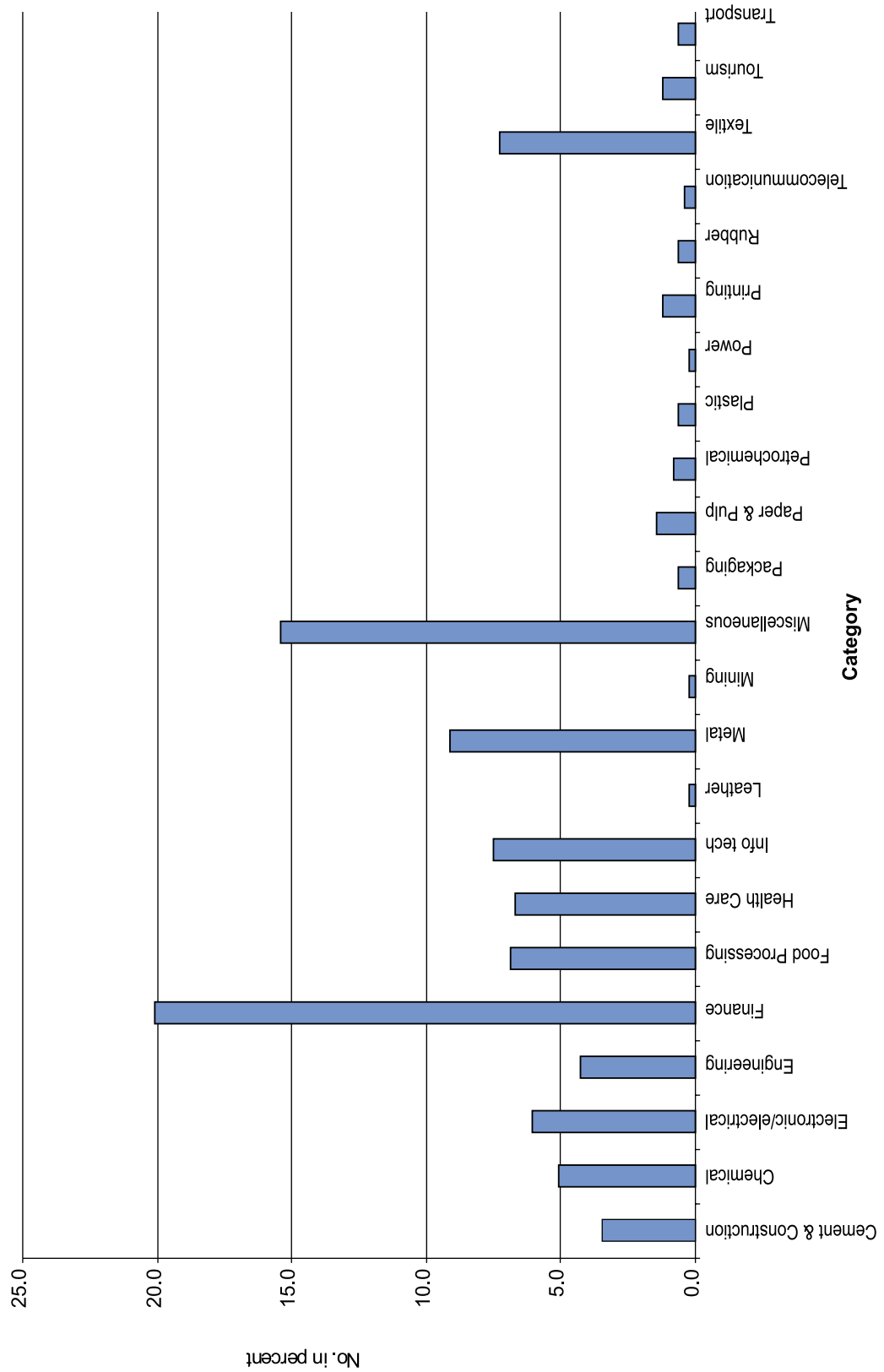
of credit finance was constrained. Therefore a lower limit of twenty per cent was put on the open offer. The analysis of data for the past seven years reveals that the amount involved is very small compared to size of the companies, market capitalization and bank credit. About thirty-five per cent of the total controlling stake in acquired companies is supposed to change hands. Argument for the open offer is to provide exit route to the current shareholders. Therefore, the twenty per cent limit will only give partial exit and not full exit. The argument of non-availability of credit finance may not hold good any longer. In the recent past, if one analyses, companies with good and credible record have access to large resources. Acquiring the companies is equivalent to, sometimes better than, setting up of new enterprises. Therefore, credit institutions should not have much problem in financing acquisitions.

- The delisting guidelines may be synchronized and made part of Takeover Regulations. Inconsistencies need to be eliminated.

**Table 1: Industry wise Break up of Open Offers (1997-2004)**

	1997-98		1998-99		1999-00		2000-01		2001-02		2002-03		2003-04		TOTAL	
	No.	Per cent	No.	Per cent	No.	Per cent	No.	Per cent	No.	Per cent	No.	Per cent	No.	Per cent	No.	Per cent
<b>Cement &amp; construction</b>	0	0	4	6.1	5	6.7	1	1.3	4	4.9	2	2.3	1	1.5	17	3.4
<b>Chemical</b>	0	0	3	4.5	6	8	3	3.9	6	7.3	3	3.4	4	6.2	25	5.1
<b>Electronic/electrical</b>	4	10	5	7.6	4	5.3	4	5.2	4	4.9	5	5.7	4	6.2	30	6.1
<b>Engineering</b>	3	7.5	3	4.5	4	5.3	3	3.9	4	4.9	3	3.4	1	1.5	21	4.3
<b>Finance</b>	6	15	12	18.2	15	20	29	37.7	11	13.4	16	18.2	10	15.4	99	20.1
<b>Food Processing</b>	4	10	6	9.1	5	6.7	8	10.4	4	4.9	5	5.7	2	3.1	34	6.9
<b>Health care</b>	4	10	5	7.6	4	5.3	3	3.9	5	6.1	8	9.1	4	6.2	33	6.7
<b>Info tech</b>	2	5	6	9.1	11	14.7	5	6.5	5	6.1	4	4.5	4	6.2	37	7.5
<b>Leather</b>	0	0	0	0	0	0		0		0		0	1	1.5	1	0.2
<b>Metal</b>	2	5	4	6.1	6	8	4	5.2	11	13.4	9	10.2	9	13.8	45	9.1
<b>Mining</b>	0	0	0	0	1	1.3	0	0	0	0	0	0	0	0	1	0.2
<b>Miscellaneous</b>	2	5	10	15.2	8	10.7	7	9.1	15	18.3	18	20.5	16	24.6	76	15.4
<b>Packaging</b>	2	5	0	0	0	0	0	0	1	1.2	0	0	0	0	3	0.6
<b>Paper &amp; pulp</b>	0	0	1	1.5	1	1.3	1	1.3	1	1.2	2	2.3	1	1.5	7	1.4
<b>Petrochemical</b>	0	0	1	1.5	0	0	0	0	1	1.2	2	2.3	0	0	4	0.8
<b>Plastic</b>	2	5	0	0	0	0	1	1.3	0	0	0	0	0	0	3	0.6
<b>Power</b>	1	2.5	0	0	0	0	0	0	0	0	0	0	0	0	1	0.2
<b>Printing</b>	2	5	1	1.5	0	0	0	0	1	1.2	0	0	2	3.1	6	1.2
<b>Rubber</b>	1	2.5	0	0	0	0	0	0	1	1.2	1	1.1	0	0	3	0.6
<b>Telecommunication</b>	0	0	0	0	0	0	0	0	0	0	2	2.3	0	0	2	0.4
<b>Textile</b>	5	12.5	3	4.5	4	5.3	8	10.4	4	4.9	6	6.8	6	9.2	36	7.3
<b>Tourism</b>	0	0	1	1.5	1	1.3	0	0	3	3.7	1	1.1	0	0	6	1.2
<b>Transport</b>	0	0	1	1.5	0	0	0	0	1	1.2	1	1.1	0	0	3	0.6
<b>Total</b>	<b>40</b>	<b>100</b>	<b>66</b>	<b>100</b>	<b>75</b>	<b>100</b>	<b>77</b>	<b>100</b>	<b>82</b>	<b>100</b>	<b>88</b>	<b>100</b>	<b>65</b>	<b>100</b>	<b>493</b>	<b>100</b>

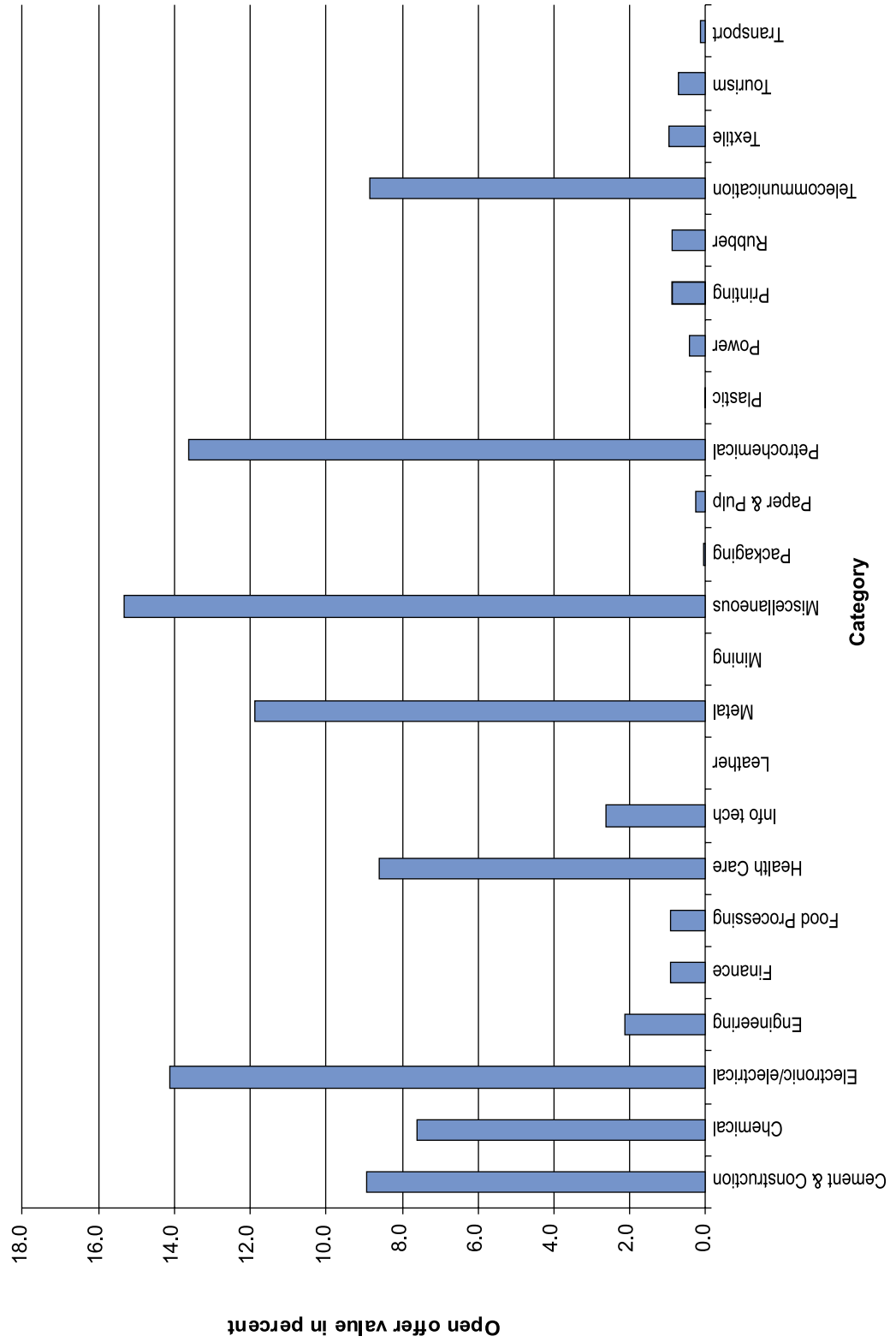
**Chart 1: Industrywise distribution of target companies (1997-2004)**



**Table 2: Industry wise break up of Open Offer value (1997-2004)****(Rs. lakh)**

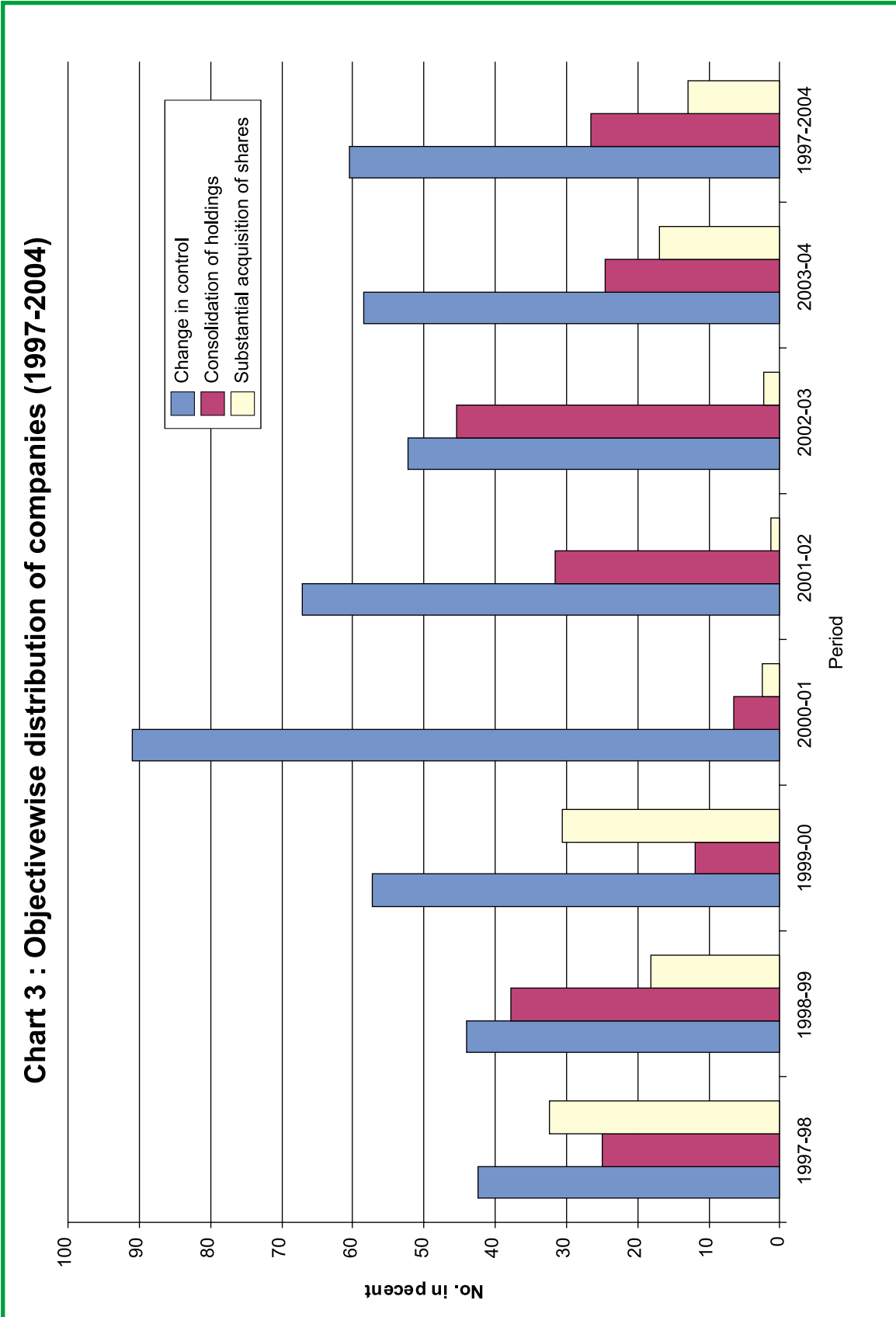
	1997-98		1998-99		1999-00		2000-01		2001-02		2002-03		2003-04		TOTAL	
	Offer value	Per cent	Offer value	Per cent	Offer value	Per cent	Offer value	Per cent	Offer value	Per cent	Offer value	Per cent	Offer value	Per cent	Offer value	Per cent
<b>Cement &amp; construction</b>	0	0	21502	21.2	13380	29.0	92	0.07	4482	1.2	1072	0.2	96486	52.2	137014	9.0
<b>Chemical</b>	0	0	558	0.6	2658	5.8	539	0.39	90232	24.8	14512	2.3	8152	4.4	117590	7.7
<b>Electronic/electrical</b>	1638.3	28.3	10077	9.9	963	2.1	77828	56.73	28264	7.8	81379	12.7	1392	0.8	216291	14.1
<b>Engineering</b>	3477.7	6.0	677	0.7	9110	19.7	1495	1.09	9848	2.7	6431	1.0	1843	1.0	32881	2.1
<b>Finance</b>	4105.6	7.1	3526	3.5	752	1.6	1558	1.14	471	0.1	1665	0.3	1971	1.1	14050	0.9
<b>Food Processing</b>	371.5	0.6	1040	1.0	6514	14.1	2885	2.10	2198	0.6	1162	0.2	106	0.1	14277	0.9
<b>Health care</b>	7075.1	12.2	6746	6.7	2057	4.5	8045	5.86	28464	7.8	73330	11.5	6156	3.3	131872	8.6
<b>Info tech</b>	5081	8.8	5454	5.4	888	1.9	285	0.21	10137	2.8	624	0.1	17501	9.5	39969	2.6
<b>Leather</b>	0	0.0	0	0.0	0	0.0	0	0.00		0.0	0	0.0	8.05	0.0	8	0.0
<b>Metal</b>	6862.7	11.9	36003	35.5	1954	4.2	32578	23.75	33634	9.3	70124	11.0	865	0.5	182021	11.9
<b>Mining</b>	0	0.0	0	0.0	16	0.0	0	0.00		0.0	0	0.0	0	0.0	16	0.0
<b>Miscellaneous</b>	2243.8	3.9	2951	2.9	4455	9.7	10048	7.32	116963	32.2	55405	8.7	42068	22.7	234134	15.3
<b>Packaging</b>	115.8	0.2	0	0.0	0	0.0	0	0.00	456	0.1	0	0.0	0	0.0	572	0.0
<b>Paper &amp; pulp</b>	0	0.0	373	0.4	1434	3.1	720	0.52	1077	0.3	230	0.0	51.453	0.0	3885	0.3
<b>Petrochemical</b>	0	0.0	10366	10.2	0	0.0	0	0.00	14516	4.0	183385	28.7	0	0.0	208267	13.6
<b>Plastic</b>	241.5	0.4	0	0.0	0	0.0	39	0.03	0	0.0	0	0.0	0	0.0	281	0.0
<b>Power</b>	6925.5	12.0	0	0.0	0	0.0	0	0.00	0	0.0	0	0.0	0	0.0	6926	0.5
<b>Printing</b>	886.8	1.5	1241	1.2	0	0.0	0	0.00	3495	1.0	0	0.0	7810	4.2	13434	0.9
<b>Rubber</b>	3896.4	6.7	0	0.0	0	0.0	0	0.00	7888	2.2	2017	0.3	0	0.0	13801	0.9
<b>Telecomm</b>	0.0	0.0	0	0.0	0	0.0	0	0.00	0	0.0	135124	21.1	0	0.0	135124	8.8
<b>Textile</b>	165.6	0.3	287	0.3	1893	4.1	1080	0.79	65	0.0	10637	1.7	532	0.3	14659	1.0
<b>Tourism</b>	0.0	0.0	42	0.0	59	0.1	0	0.00	10606	2.9	601	0.1	0	0.0	11307	0.7
<b>Transport</b>	0.0	0.0	524	0.5	0	0.0	0	0.00	744	0.2	1214.2	0.2	0	0.0	2483	0.2
<b>Total</b>	<b>57831.5</b>	<b>100</b>	<b>101368</b>	<b>100.0</b>	<b>46133</b>	<b>100.0</b>	<b>137190</b>	<b>100.00</b>	<b>363538</b>	<b>100.0</b>	<b>638911</b>	<b>100.0</b>	<b>184943</b>	<b>100</b>	<b>1530861</b>	<b>100.0</b>

**Chart 2 : Industry wise break up of open offer value (1997-2004)**



**Table 3: Objective wise break up of Open Offers (1997-2004)**

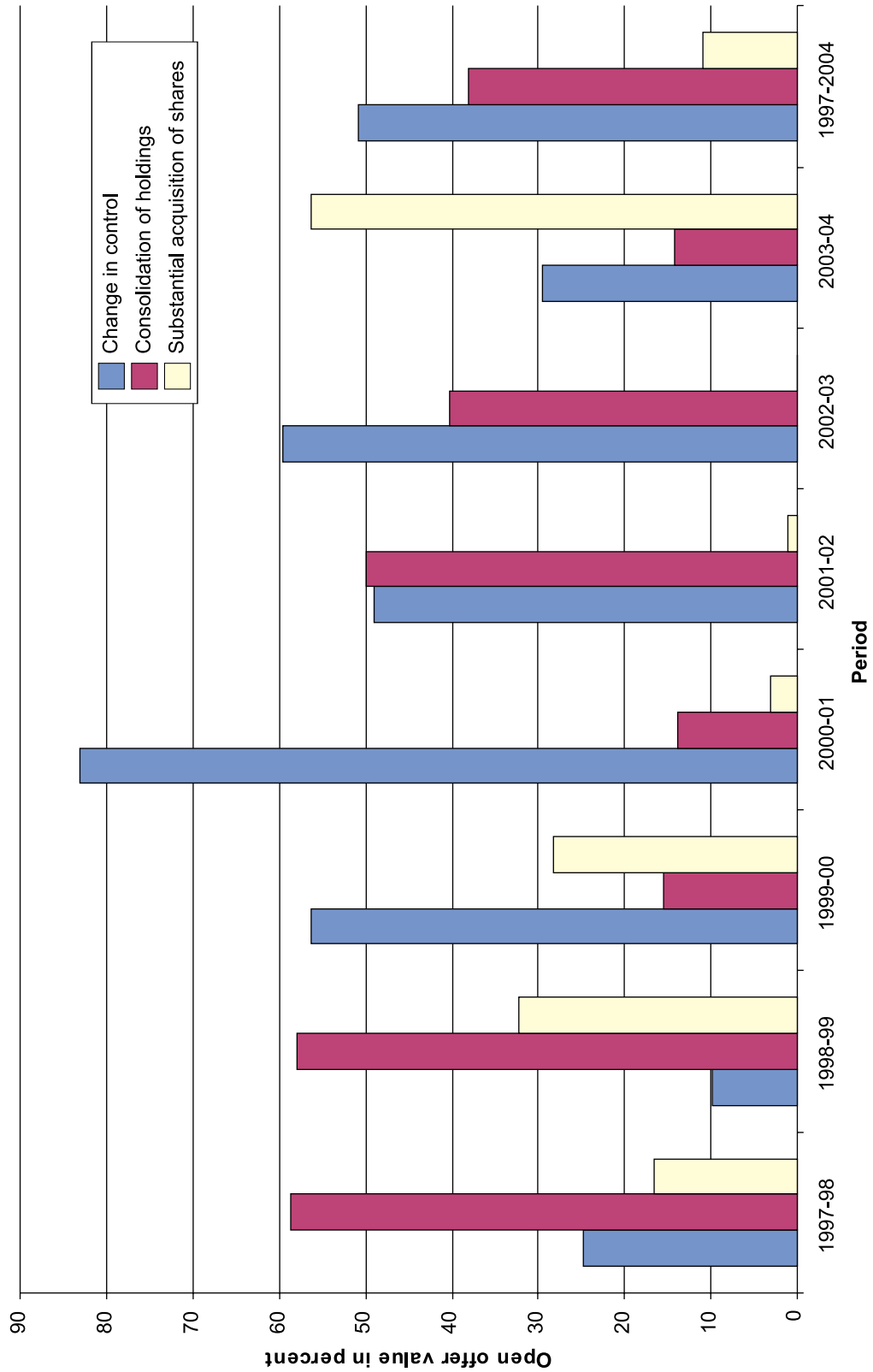
Objective	1997-98		1998-99		1999-00		2000-01		2001-02		2002-03		2003-04		TOTAL	
	No.	Per cent	No.	Per cent	No.	Per cent	No.	Per cent	No.	Per cent	No.	Per cent	No.	Per cent	No.	Per cent
<b>Change in control</b>	17	42.5	29	43.9	43	57.3	70	90.9	55	67.1	46	52.3	38	58.5	<b>298</b>	<b>60.4</b>
<b>Consolidation of holdings</b>	10	25	25	37.9	9	12	5	6.5	26	31.7	40	45.5	16	24.6	<b>131</b>	<b>26.6</b>
<b>Substantial acquisition of shares</b>	13	32.5	12	18.2	23	30.7	2	2.6	1	1.2	2	2.3	11	16.9	<b>64</b>	<b>13</b>
<b>TOTAL</b>	<b>40</b>	<b>100</b>	<b>66</b>	<b>100</b>	<b>75</b>	<b>100</b>	<b>77</b>	<b>100</b>	<b>82</b>	<b>100</b>	<b>88</b>	<b>100</b>	<b>65</b>	<b>100</b>	<b>493</b>	<b>100</b>



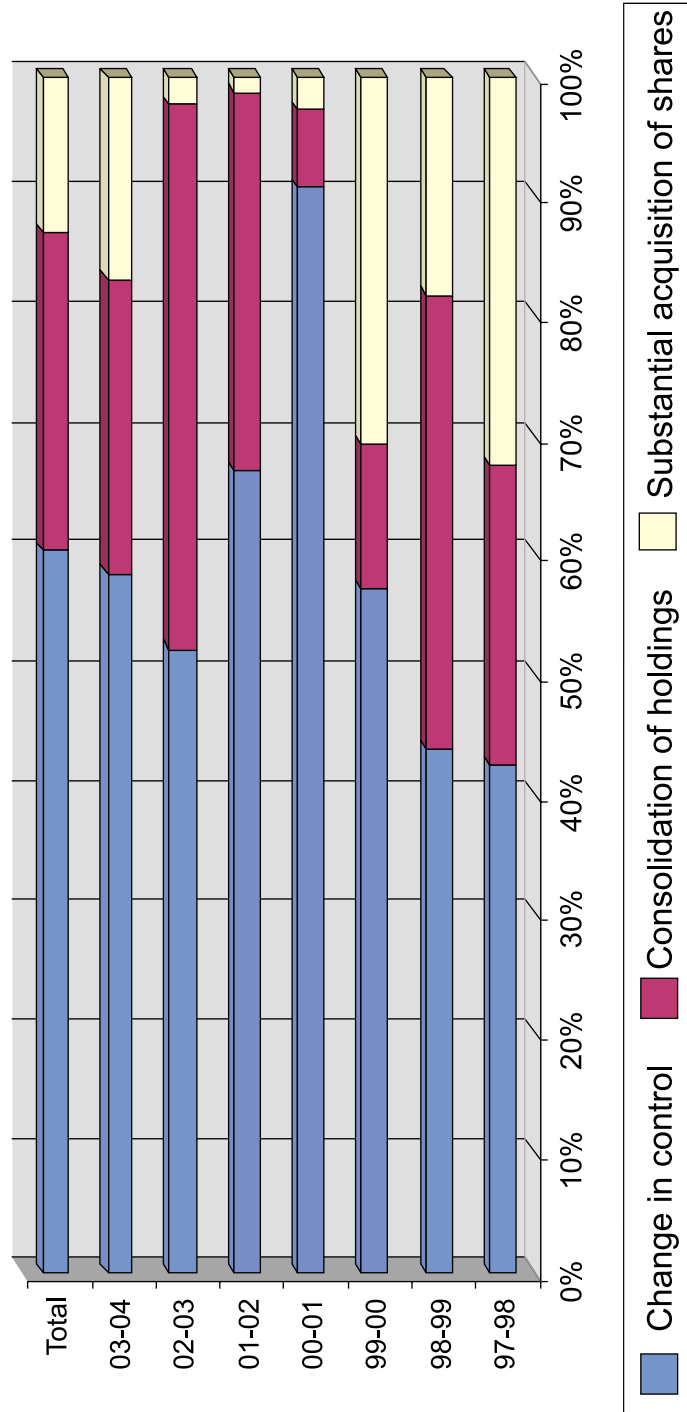
**Table 4: Objective wise break up of open offer value (1997 - 2004)****(Rs. lakh)**

Objective	1997-98		1998-99		1999-00		2000-01		2001-02		2002-03		2003-04		TOTAL	
	Value	Per cent	Value	Per cent	Value	Per cent	Value	Per cent	Value	Per cent	Value	Per cent	Value	Per cent	Value	Per cent
<b>Change in control</b>	14285	24.7	9968	9.8	26026	56.4	114042	83.1	178160	49.0	381442	59.7	54843	29.5	778766	50.9
<b>Consolidation of holdings</b>	33983	58.8	58694	57.9	7107	15.4	18900.0	13.8	181518	49.9	257326	40.3	26226	14.1	583754	38.1
<b>Substantial acquisition of shares</b>	9563	16.5	32706	32.3	13000	28.2	4248	3.1	3860	1.1	142	0.0	104820	56.4	168340	11.0
<b>TOTAL</b>	<b>57832</b>	<b>100.0</b>	<b>101368</b>	<b>100.0</b>	<b>46133</b>	<b>100.0</b>	<b>137190</b>	<b>100.0</b>	<b>363538</b>	<b>100.0</b>	<b>638911</b>	<b>100.0</b>	<b>185889</b>	<b>100.0</b>	<b>1530861</b>	<b>100.0</b>

**Chart 4: Objectivewise open offer value (1997-2004)**

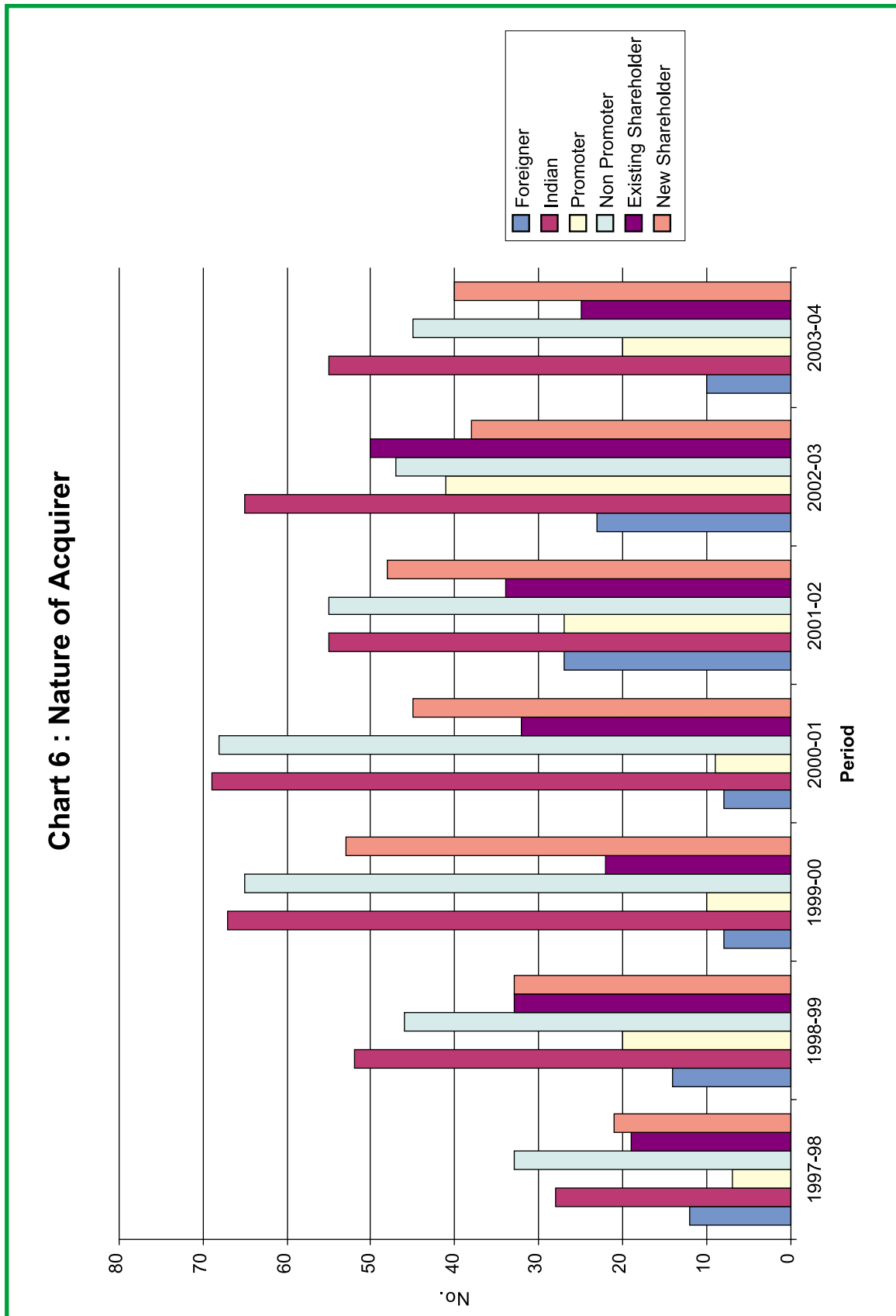


**Chart 5: Objective wise break up of Open Offers Amount**



**Table 5: Nature of the Acquirer (1997-2004)**

	1997-98		1998-99		1999-00		2000-01		2001-02		2002-03		2003-04		Total	
	No.	Per cent	No.	Per cent	No.	Per cent	No.	Per cent	No.	Per cent	No.	Per cent	No.	Per cent	No.	Per cent
<b>Panel A</b>																
Foreigner	12	30	14	21.2	8	10.7	8	10.4	27	32.9	23	26.1	10	15.4	102	20.7
Indian	28	70	52	78.8	67	89.3	69	89.6	55	67.1	65	73.9	55	84.6	391	79.3
<b>Panel B</b>																
Promoter	7	17.5	20	30.3	10	13.3	9	11.7	27	32.9	41	46.6	20	30.8	134	27.2
Non Promoter	33	82.5	46	69.7	65	86.7	68	88.3	55	67.1	47	53.4	45	69.2	359	72.8
<b>Panel C</b>																
Existing Shareholder	19	47.5	33	50.0	22	29.3	32	41.6	34	41.5	50	56.8	25	38.5	215	43.6
New Shareholder	21	52.5	33	50.0	53	70.7	45	58.4	48	58.5	38	43.2	40	61.5	278	56.4



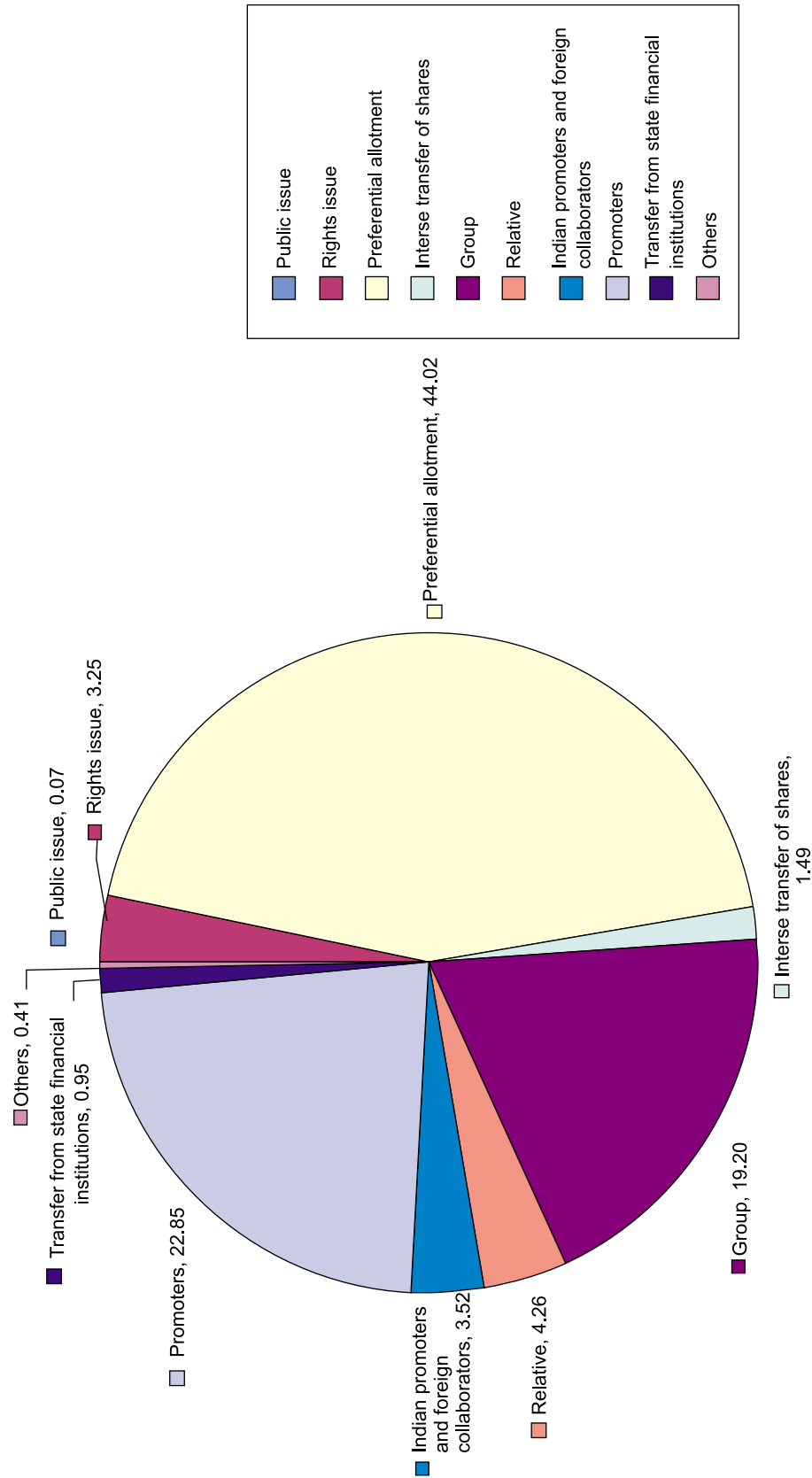
**Table 6: Statistics on Exemptions (1997-2004)**

Regulatory Provision	Type of exemption	1997-98			1998-99			1999-00			2000-01		
		No.	No. of shares acquired (Rs. crore)	Value (Rs. crore)	No.	No. of shares acquired (Rs. crore)	Value (Rs. crore)	No.	No. of shares acquired (Rs. crore)	Value (Rs. crore)	No.	No. of shares acquired (Rs. crore)	Value (Rs. crore)
Reg.3(1)a	<i>Public issue</i>	0	0	0	0	0	0	0	0	0	0	0	0
Reg.3(1)b	<i>Rights issue</i>	0	0	0	4	3.01	30.1	8	8	147	8	4.95	64.13
Reg.3(1)c	<i>Preferential allotment</i>	34	153	3264	95	41.1	1006	141	108.1	3062	155	87.2	4202.2
Reg.3(1)e	<i>Interse transfer of shares</i>	0	0	0	1	0.08	1.9	0	0	0	1	0.07	0.7
Reg.3(1)e (i)	<i>Group</i>	24	4.9	110	37	12	288.7	39	31.7	967	43	14.6	393.23
Reg.3(1)e (ii)	<i>Relative</i>	7	0.3	0.68	7	0.2	4.1	5	0.24	5.6	10	0.35	5.2
Reg.3(1)e(iii)a	<i>Indian promoters and foreign collaborators</i>	3	0.8	29.1	10	5.5	260.6	14	7.02	250	2	1.2	33.9
Reg.3(1)e(iii)b	<i>Promoters</i>	24	4.9	97.8	44	39.5	262.1	43	3.7	236	27	7.3	160.3
Reg.3(1)i	<i>Transfer from state financial institutions</i>	1		0.31	1	0.1	34.6	1	0.3	9.1	2	0.2	13.6
	<i>Others</i>	0		0	2	2.4		1	0.2		0	0	
<b>TOTAL</b>		<b>93</b>	<b>163.9</b>	<b>3502</b>	<b>201</b>	<b>103.8</b>	<b>1888</b>	<b>252</b>	<b>159.3</b>	<b>4677</b>	<b>248</b>	<b>115.8</b>	<b>4873.2</b>

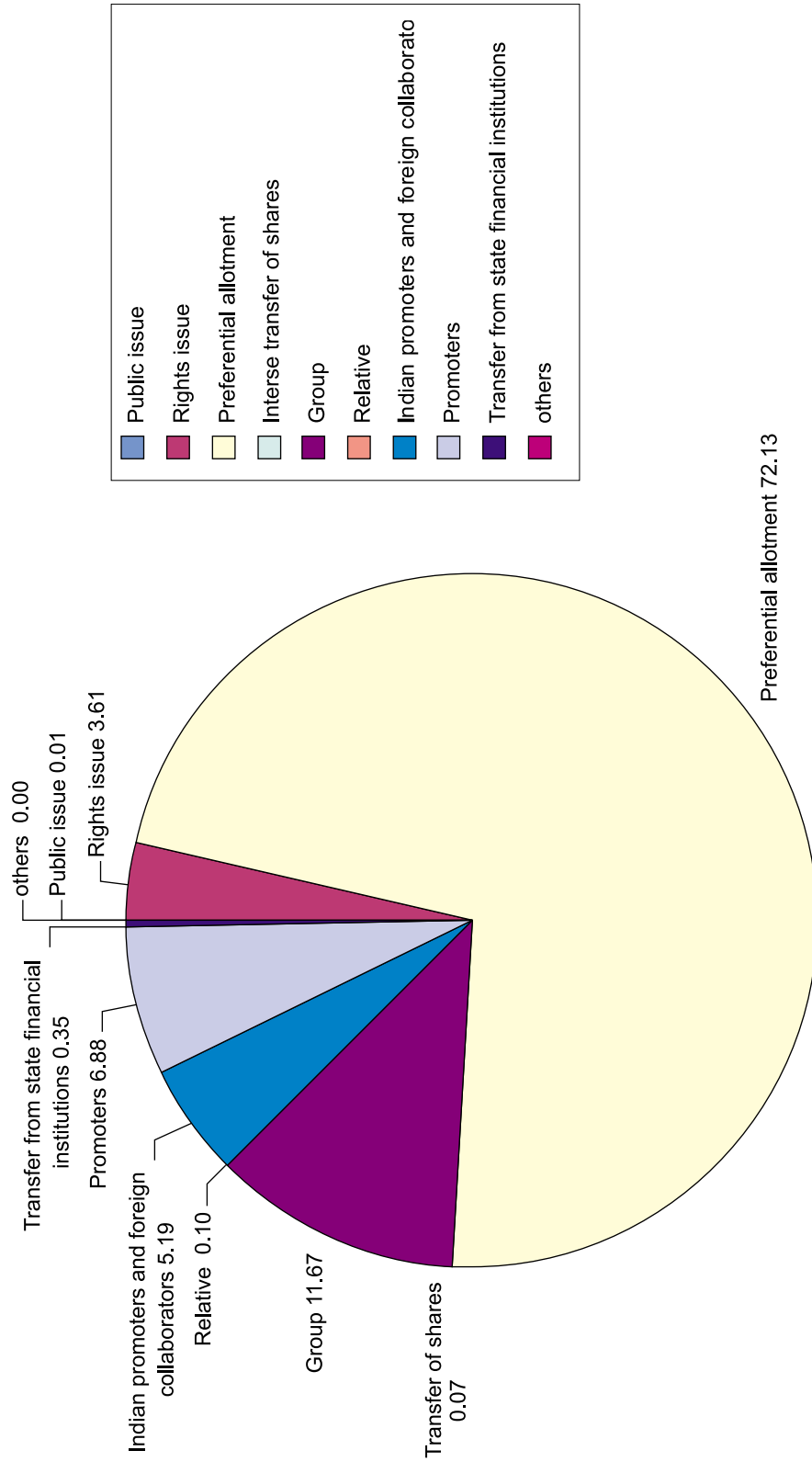
**Table 6: Contd.**

Regulatory Provision	Type of exemption	2001-02			2002-03			2003-04			Total		
		No.	No. of shares acquired (Rs. crore)	Value (Rs. crore)	No.	No. of shares acquired (Rs. crore)	Value (Rs. crore)	No.	No. of shares acquired (Rs. crore)	Value (Rs. crore)	No.	No. of shares acquired (Rs. crore)	Value (Rs. crore)
<b>Reg.3(1)a</b>	<b>Public issue</b>	1	0.1	1.2	0	0	0	0	0	0	1	0.1	1.2
<b>Reg.3(1)b</b>	<b>Rights issue</b>	7	17.9	194.3	10	13.96	283.2	11	10.2	320.7	48	58.02	719.13
<b>Reg.3(1)c</b>	<b>Preferential allotment</b>	121	70.99	1564	91	51.4	1263	14	18.04	569.3	651	529.8	14360
<b>Reg.3(1)e</b>	<b>Interse transfer of shares</b>	10	2.3	4.9	6	0.43	6.7	4	0.21	2.71	22	3.09	14.2
<b>Reg.3(1)e (i)</b>	<b>Group</b>	56	15.1	265.4	51	24.9	297.7	34	10.6	380.4	284	113.76	2322.33
<b>Reg.3(1)e (ii)</b>	<b>Relative</b>	16	1.32	2.6	8	0.33	1.4	10	0.4	4.43	63	3.14	19.58
<b>Reg.3(1)e(iii)a</b>	<b>Indian promoters and foreign collaborators</b>	8	3.7	45.1	7	2.54	414.5	8	4.5	90.5	52	25.26	1033.5
<b>Reg.3(1)e(iii)b</b>	<b>Promoters</b>	53	16.3	462.1	61	9.4	150.7	86	14.1	296.9	338	95.2	1369.3
<b>Reg.3(1)i</b>	<b>Transfer from state financial institutions</b>	1			4	0.7	11.3	4	0.6	11.2	14	1.9	68.91
	<b>Others</b>	3	1.7		0	0					6	4.3	0
<b>TOTAL</b>		<b>276</b>	<b>129.3</b>	<b>2539</b>	<b>238</b>	<b>103.6</b>	<b>2428</b>	<b>171</b>	<b>58.59</b>	<b>1172</b>	<b>1479</b>	<b>834.29</b>	<b>19908.34</b>

**Chart 7 - Automatic Exemption: Categorized Share in Percent (1997-2004)**



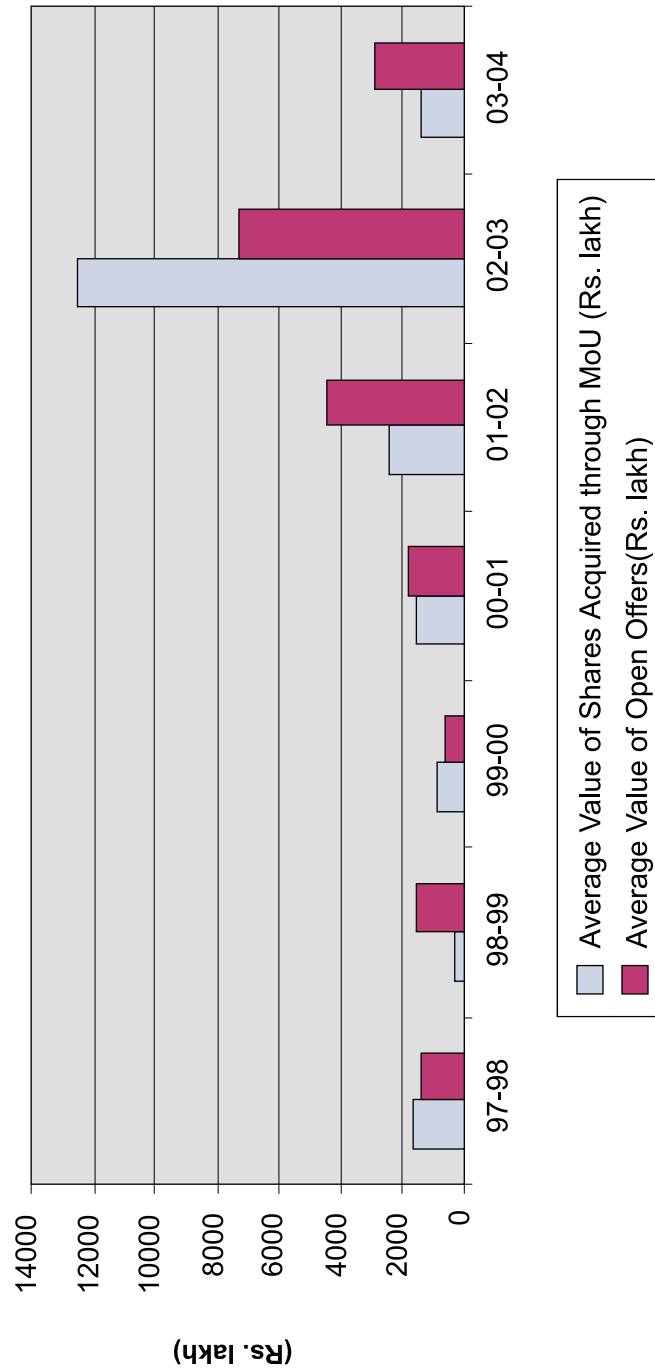
**Chart 8 - Automatic Exemption: Categorized share of value in percent (1997-2004)**



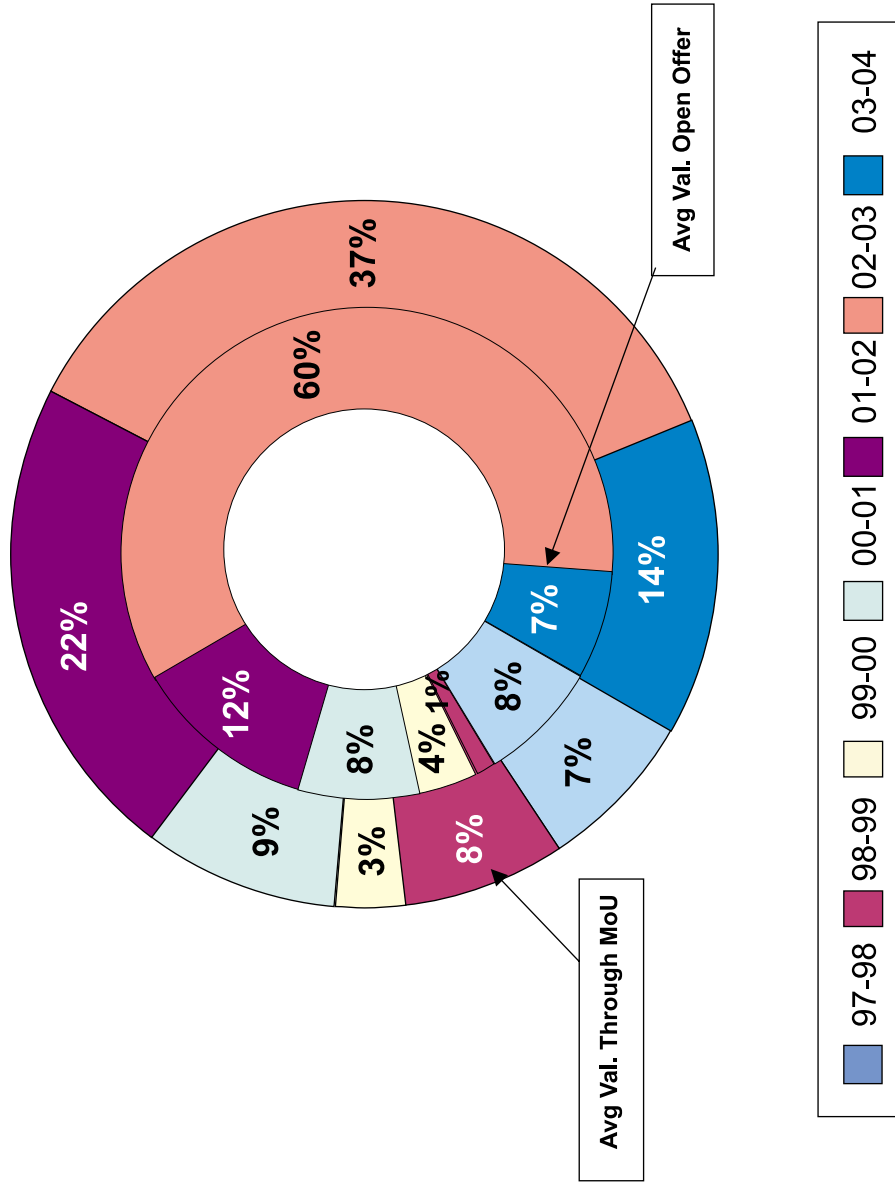
**Table 7: Particulars of open offers and offers through MoU (1997-2004)**

Particulars	1997-98		1998-99		1999-00		2000-01		2001-02		2002-03		2003-04		Total	
		Per cent		Per cent		Per cent		Per cent		Per cent		Per cent		Per cent		Per cent
<b>Number of offers thru MoU</b>	29		44		62		67		48		43		41		334	
<b>No. of shares acquired thru MoU (Rs. lakh)</b>	1079	5	1118	5	2158	10	2060	10	2050	10	10597	50	2112	10	21175	100
<b>Average no. of shares acquired thru MoU</b>	37		25		35		31		43		246		52		469	
<b>Value of shares acquired thru MoU (Rs. lakh)</b>	48473	5	13419	1	51836	6	107076	11	114806	12	539485	58	58166	6	933260	100
<b>Average value of shares acquired thru MoU (Rs. lakh)</b>	1671		305		836		1598		2392		12546		1419		20767	
<b>Total no. of offers</b>	<b>40</b>		<b>66</b>		<b>75</b>		<b>77</b>		<b>82</b>		<b>88</b>		<b>65</b>		<b>493</b>	
<b>No. of shares offered (Rs. lakh)</b>	967	5	1448	8	1580	9	1807	10	2698	15	7445	41	2182	12	18127	100
<b>Average number of shares offered</b>	24		22		21		23		33		85		34		242	
<b>Value of shares offered (Rs. lakh)</b>	57832	4	101368	7	46133	3	137190	9	363538	24	638911	42	185889	12	1530861	100
<b>Average value of shares offered (Rs. lakh)</b>	1446		1536		615		1782		4433		7260		2860		19932	

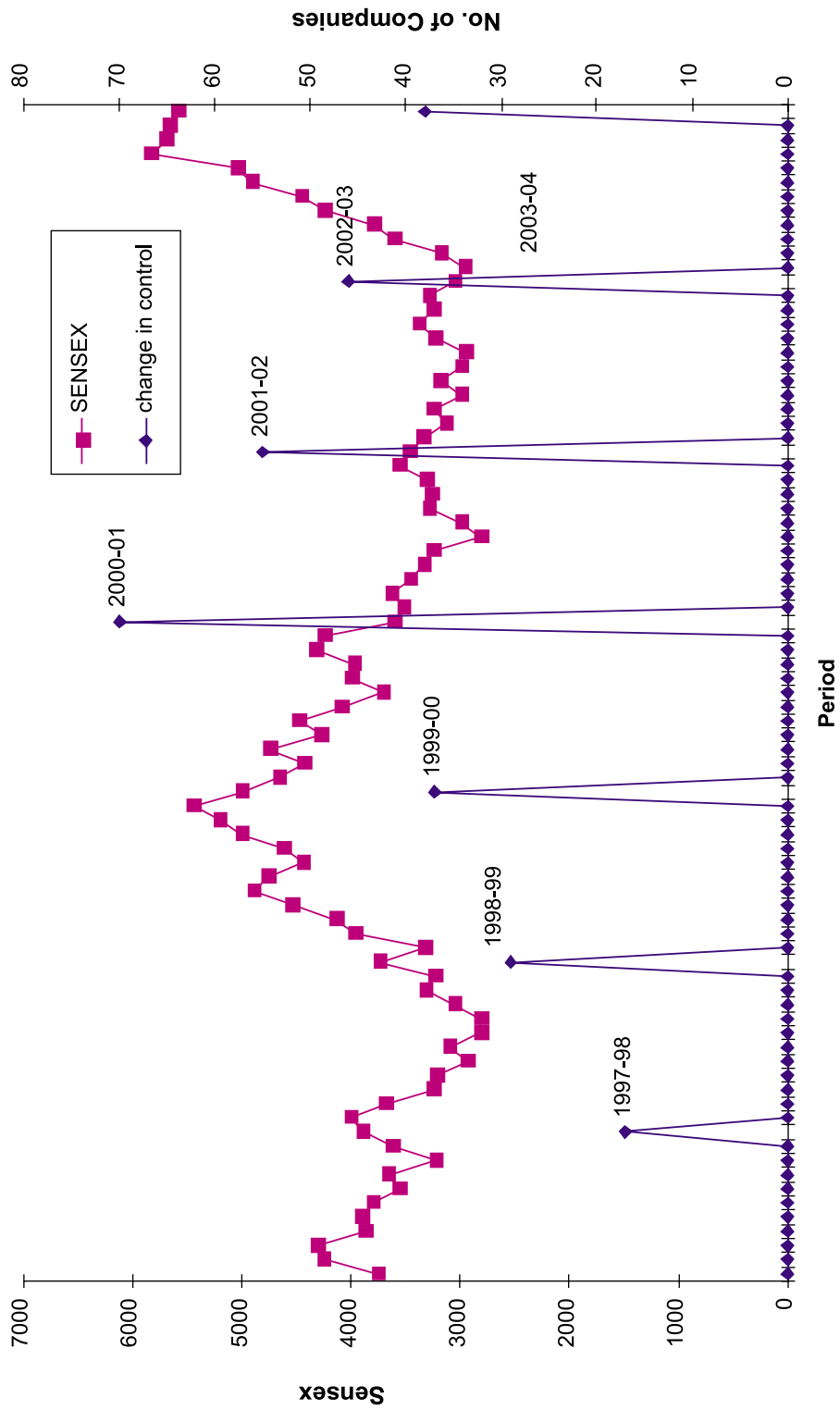
**Chart 9: Average Value of Shares Offered: Through MoU and Open Offers**



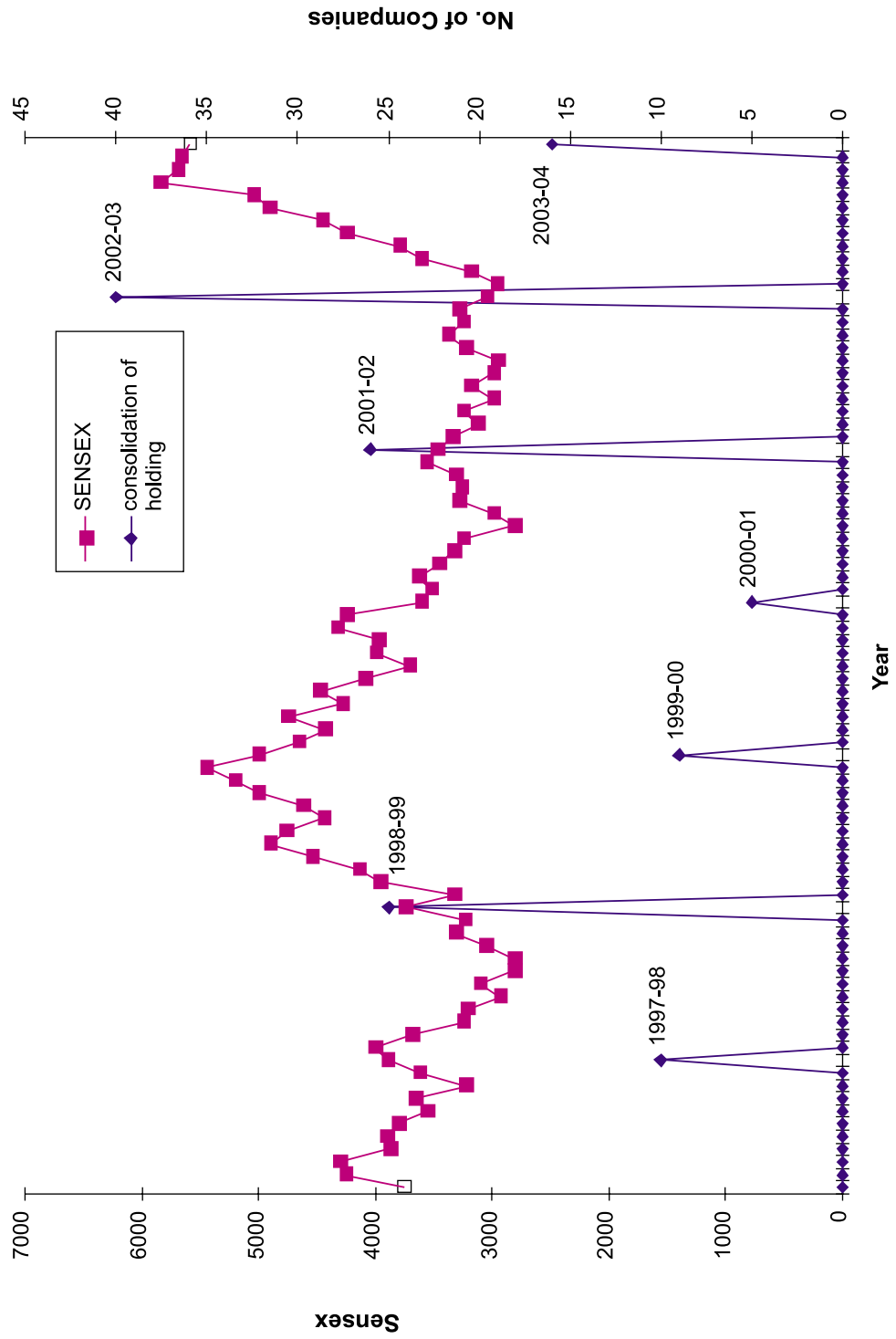
**Chart 10: Average Value of Shares Acquired Through MoU and Average Value Offered**



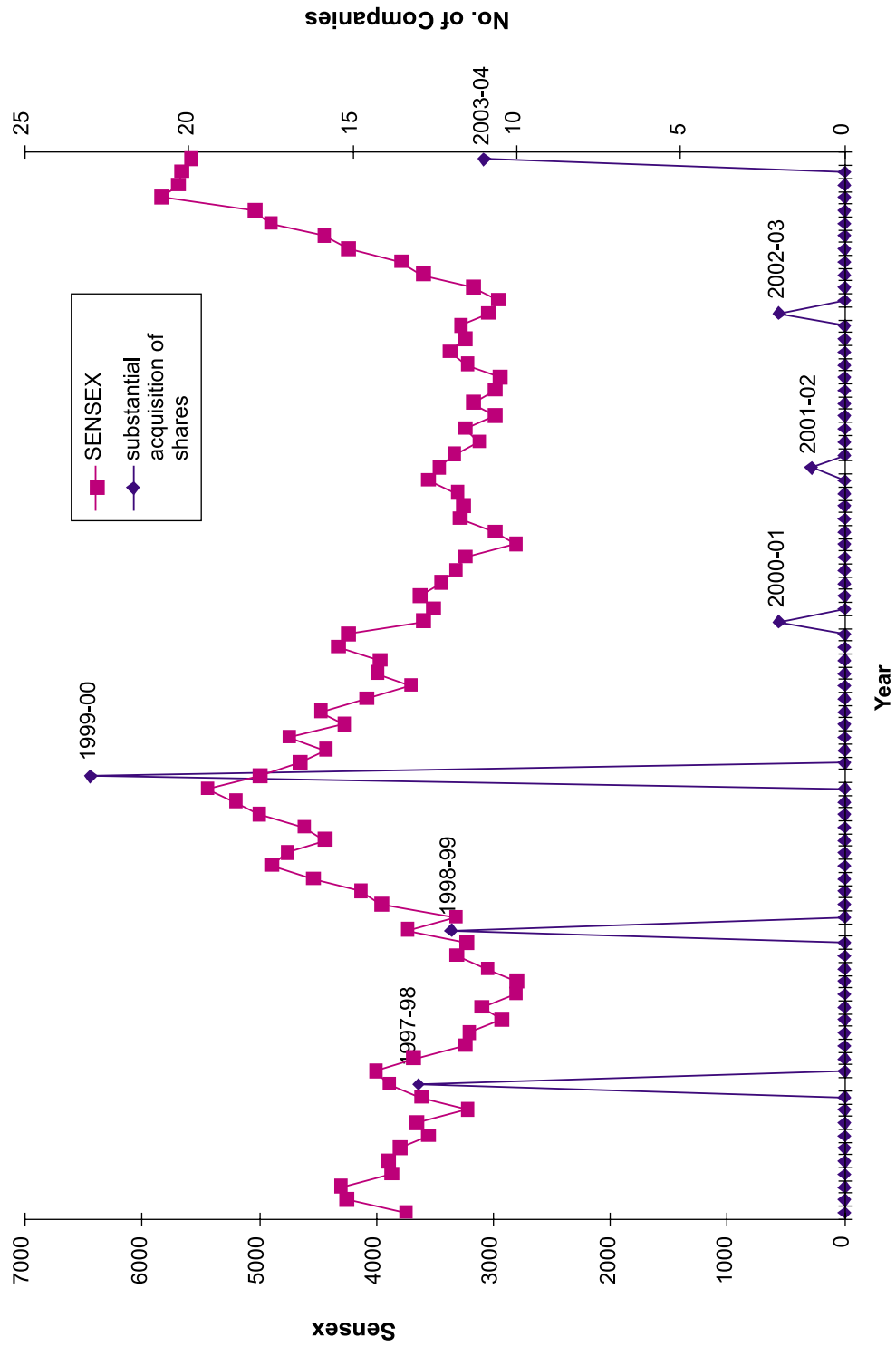
**Chart 11 : Comparison of takeover activity with Sensex - Change in control**



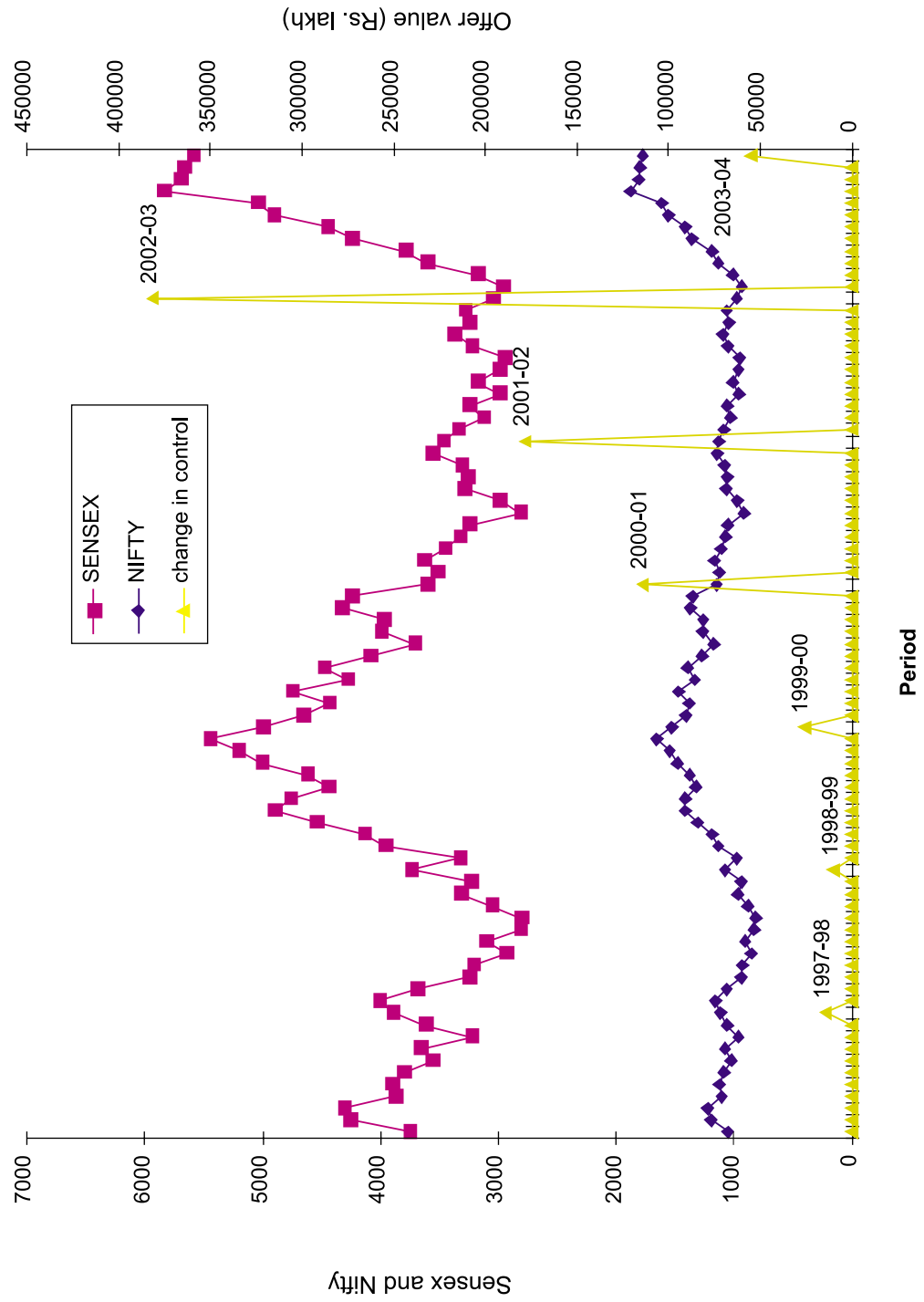
**Chart 12 : Comparison of takeover activity with Sensex - Consolidation of holdings**



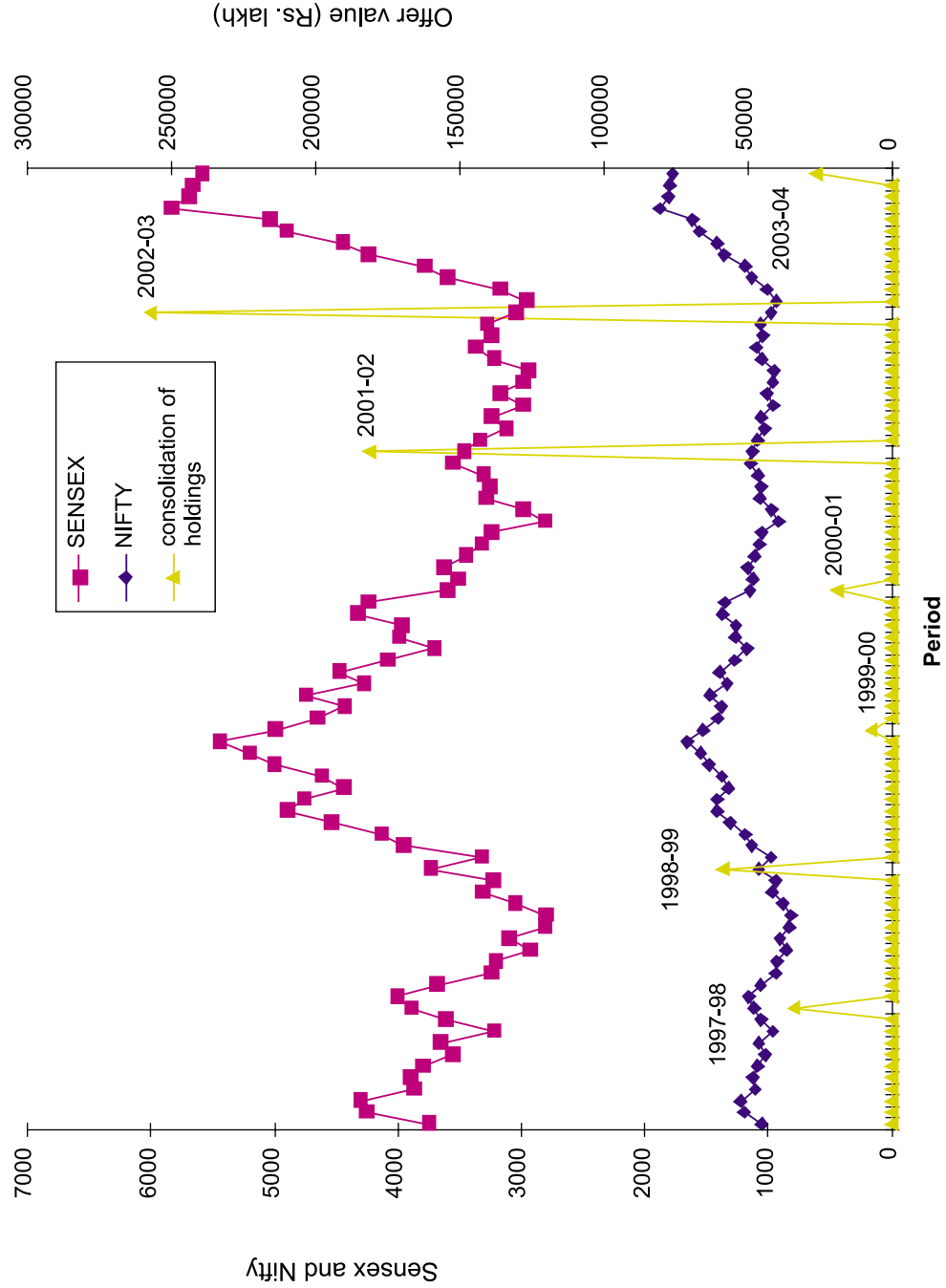
**Chart 13 : Comparison of takeover activity with Sensex - Substantial acquisition of shares**



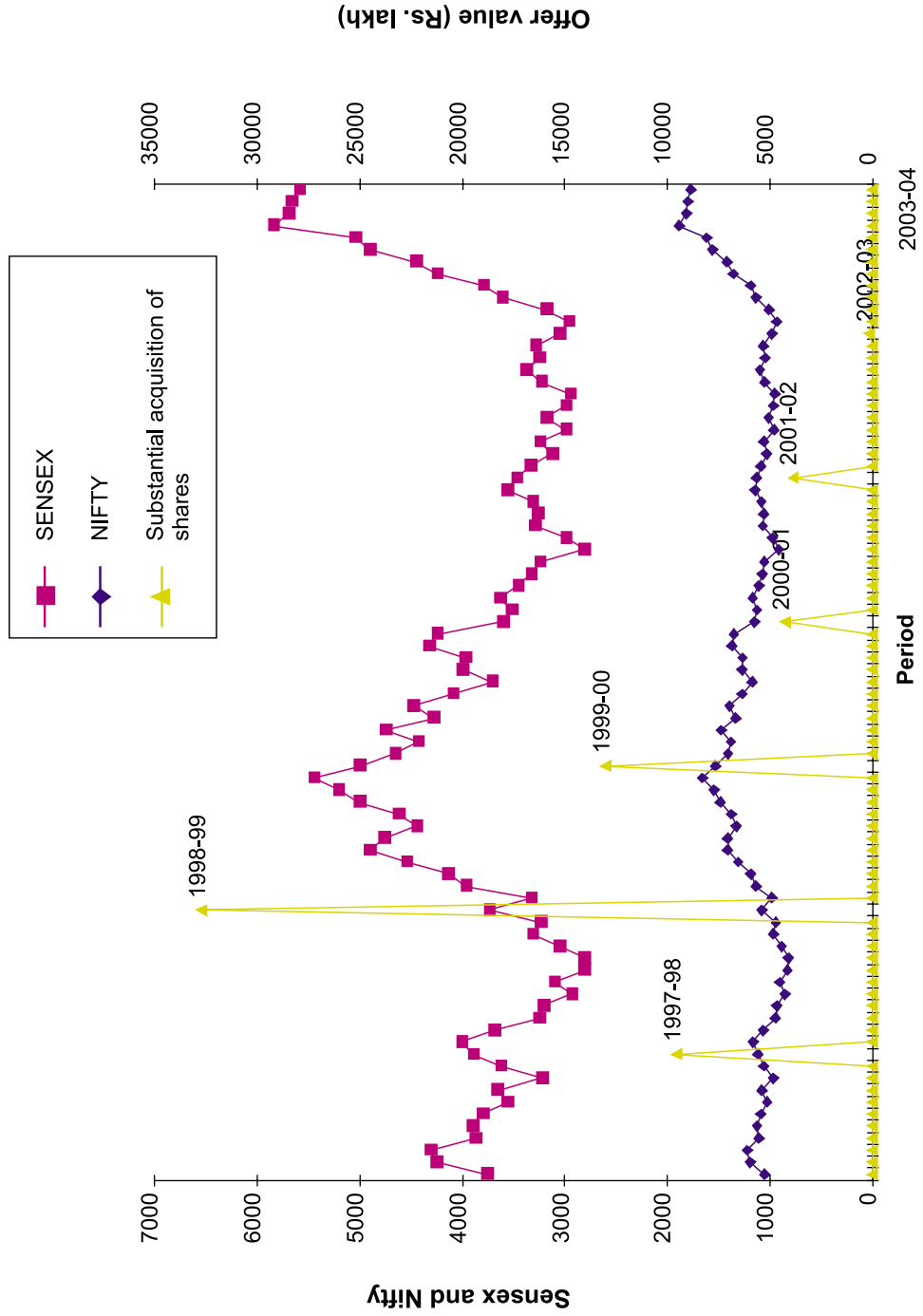
**Chart 14 : Comparison of offer values with Nifty and Sensex**



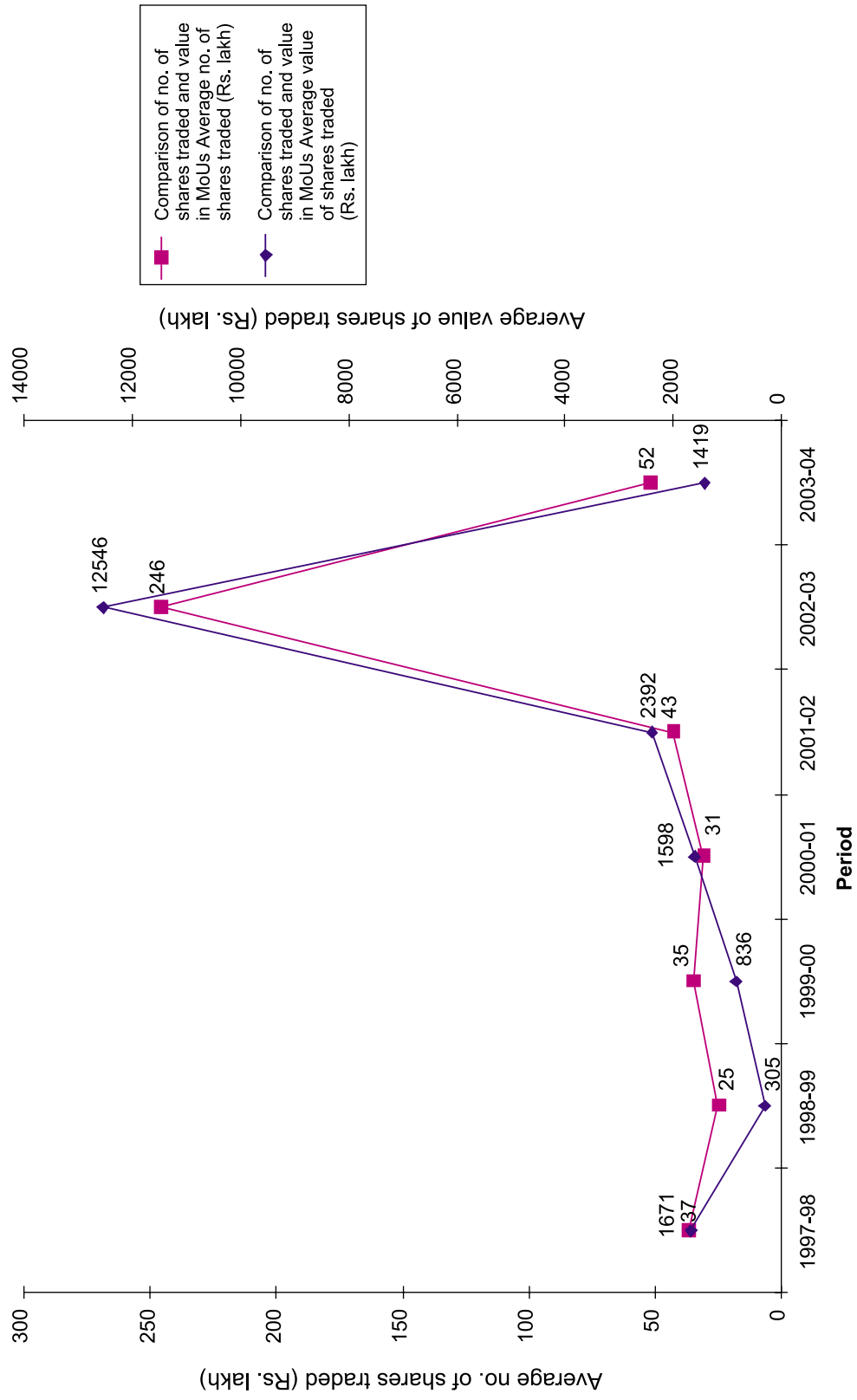
**Chart 15 : Comparison of offer values with Nifty and Sensex**



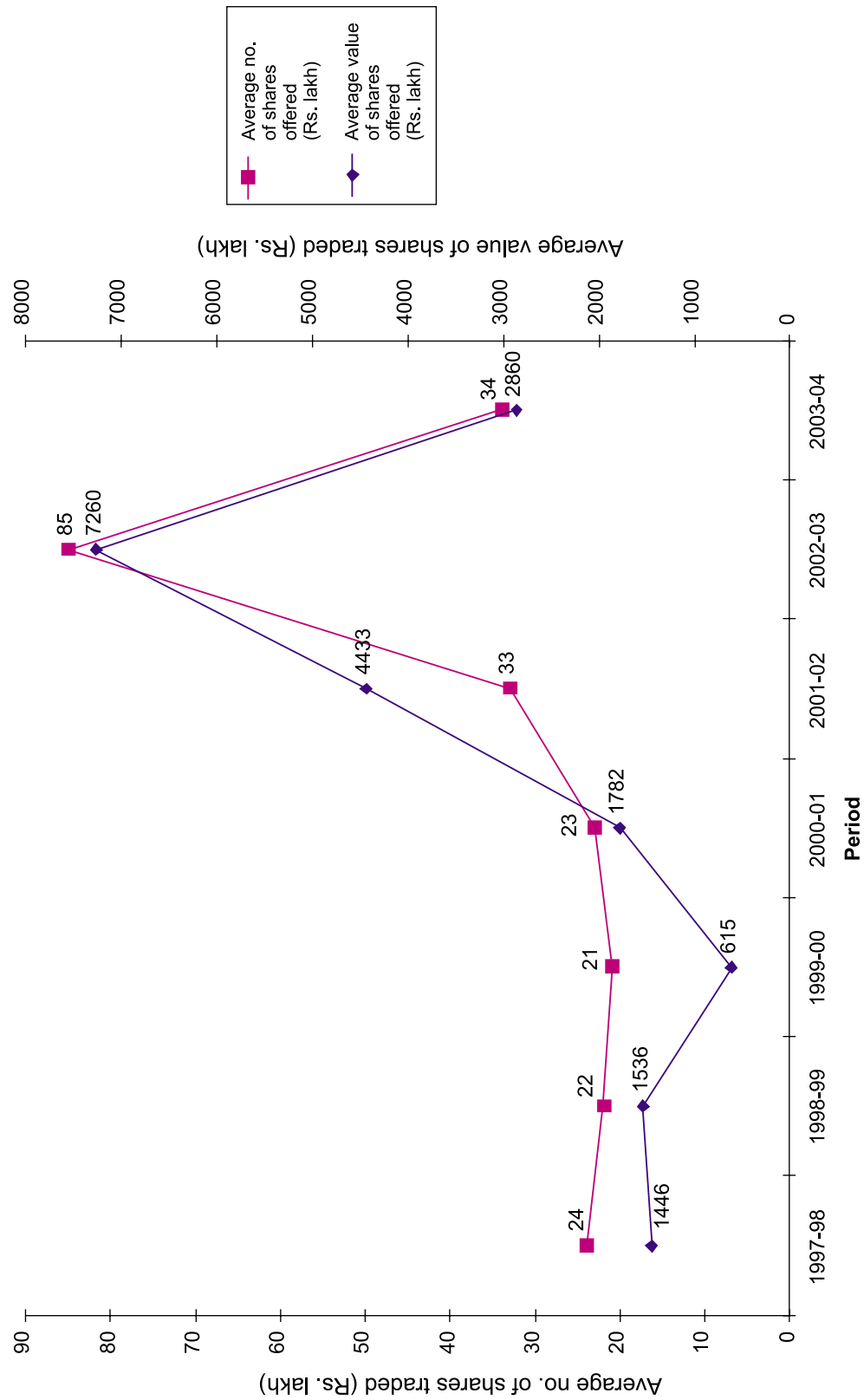
**Chart 16 : Comparison of offer values with Sensex and Nifty  
- Substantial acquisition of shares**



**Chart 17 : Comparison of average no. of shares traded and value in MoU**



**Chart 18 : Comparison of average values in open offers and MoU**



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