European Commission

SME definition
A State aid perspective

Graça da Costa
Unit A3 - State Aid Strategy
BRNO, 29- 31 May 2019

All opinions expressed are personal and do not reflect an official position of the European Commission

Competition

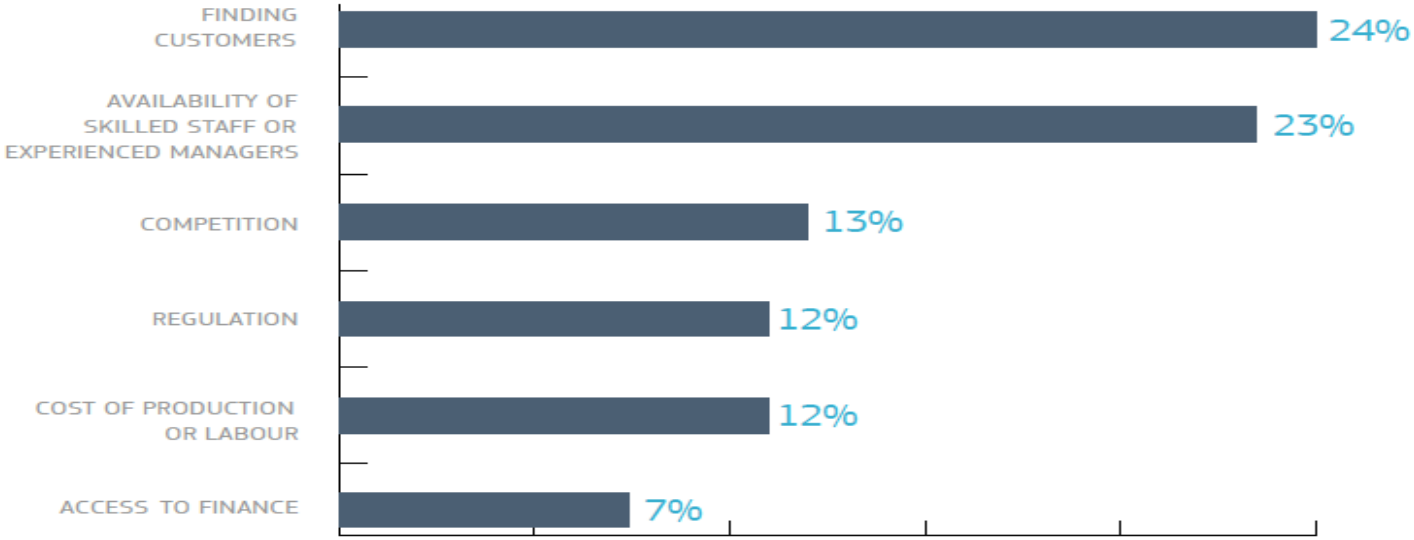
SMEs & EU Economy

EU 28:
99.8% of number of enterprises
66.4% of number of persons employed
43.2% of value added

Source: Commission 2017/2018 Annual Report on European SMEs – estimates for 2017.

SME challenges

EU-28 SMEs' most pressing problems in 2017



Source: 2017 Safe Survey

Competition

SME definition - Why?

Address particular challenges faced by companies due to their size :

Market failures, access to technology, financing …

Via preferential treatment (State aid, EU support programmes).

Only to enterprises that genuinely need it (true SMEs…).

Harmonized definition across EU/MS.

Legal basis & criteria & data

Legal basis:

Annex I of GBER/ Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises

- Criteria
- How to assess the data
- Sources of information
- Overview of particular issues

SME definition – criteria

Size :

1) Employees
2) Turnover *OR* Balance sheet total

Resources *(Independence)***:**

3) Autonomous/ Partner(s)/Link (s)

Employees+ turnover

Employees + balance sheet

SME definition : size

Enterprise category	Headcount	Annual turnover	**or**	Annual balance sheet
Medium	< 250	≤ € **50** million		≤ € **43** million
Small	< 50	≤ € **10** million		≤ € **10** million
Micro	< 10	≤ € **2** million		≤ € **2** million

SME definition: Resources

Autonomous enterprise: totally independent, i.e. it has no participation in other enterprises; and no enterprise has a participation in it – by far the majority of SME situations.

Partner enterprises: financial relationships (shareholding) without one enterprise exercising control over the other.

Linked enterprises: one enterprise controls/is controlled by the other.

Autonomus/Partner/Linked

What is an "autonomous" enterprise?

- totally independent enterprise or
- holding less than 25% of capital or voting rights in one or more other enterprises (and vice versa) – Art. 3.1
- Exceptions in case of certain investors (venture capital companies, business angels etc.) – Art. 3.2

What are "partner" enterprises?

- holding equal or greater than 25% of capital or voting rights in one or more other enterprises (and vice versa) – Art. 3.2
- not classified as linked enterprise, i.e. voting rights in other enterprise do not exceed 50%
- Special case: no SME if 25% of capital or voting rights controlled by one or more public bodies – Art. 3.4

What are "linked" enterprises? (= enterprises which form a GROUP)

- holds a majority of the shareholders' or members' voting rights
- is entitled to appoint or remove a majority of management body
- is able to exercise a dominant influence through contract/provision in the memorandum or articles of association

Which links/partnerships need to be taken into account?

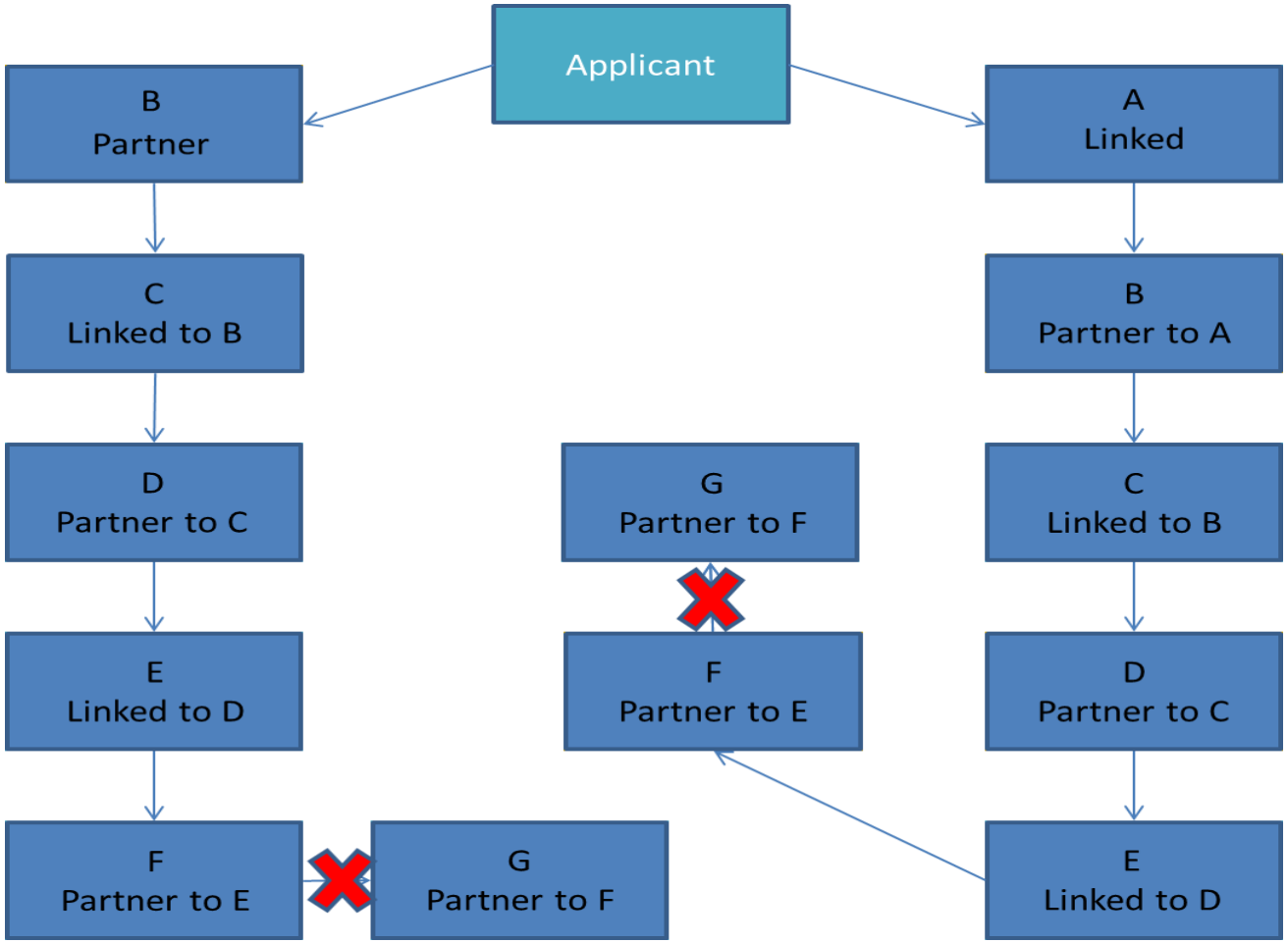
The Court rulings limit the levels to be assessed to 2:

- The applicant + a linked enterprise and its partner(s) or
- The applicant + a partner enterprise and its link(s)

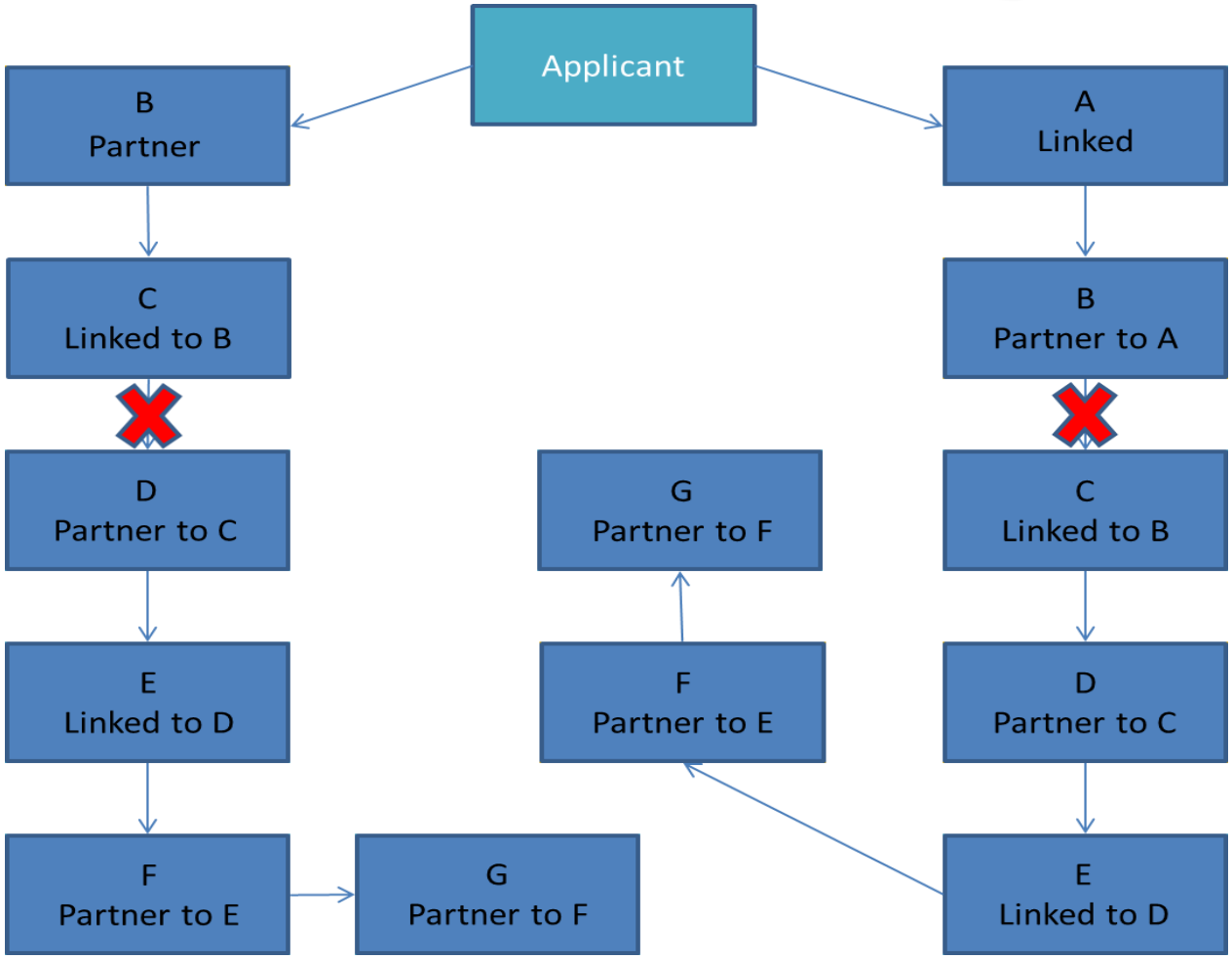
T-587/14, Crosfiedl Italia Srl, of 15 September 2016

T-675/13, K Chilica Srl, of 15 September 2016

Former interpretation:

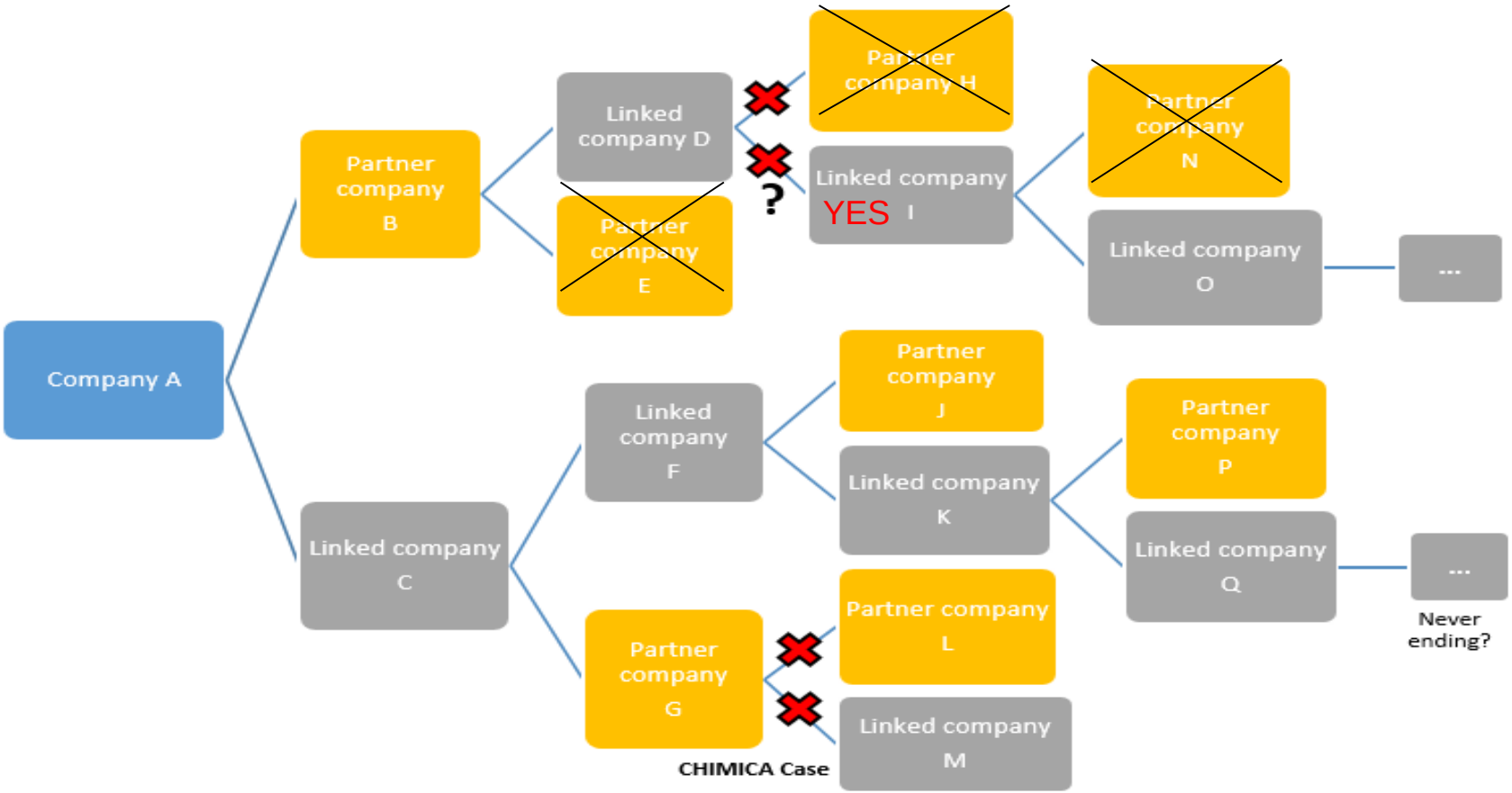


After Court rulings:

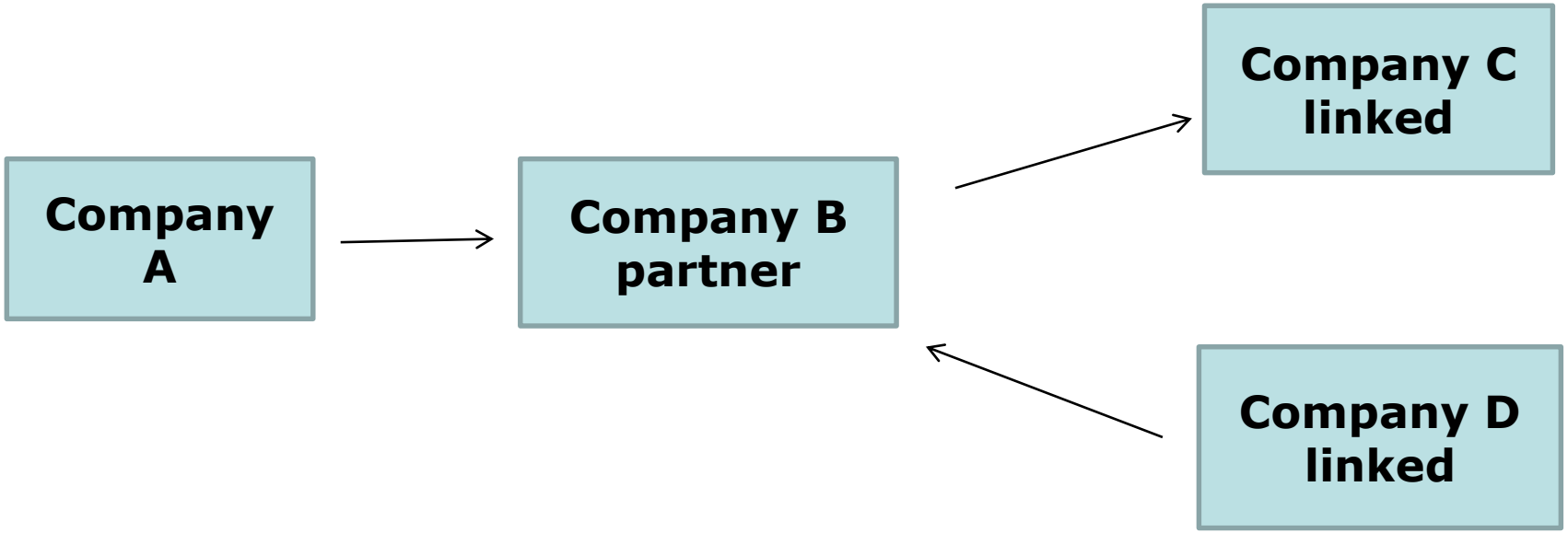


European Commission

Never ending?
Not if there are "links"...



Upstream/downstream = both valid!



"Dominant influence" through contract

Principle: Dominant influence is presumed whenever the operating and financial policies of an enterprise are influenced according to the wishes of another enterprise (*COM User Guide to SME Definition)*

Case-by-case assessment

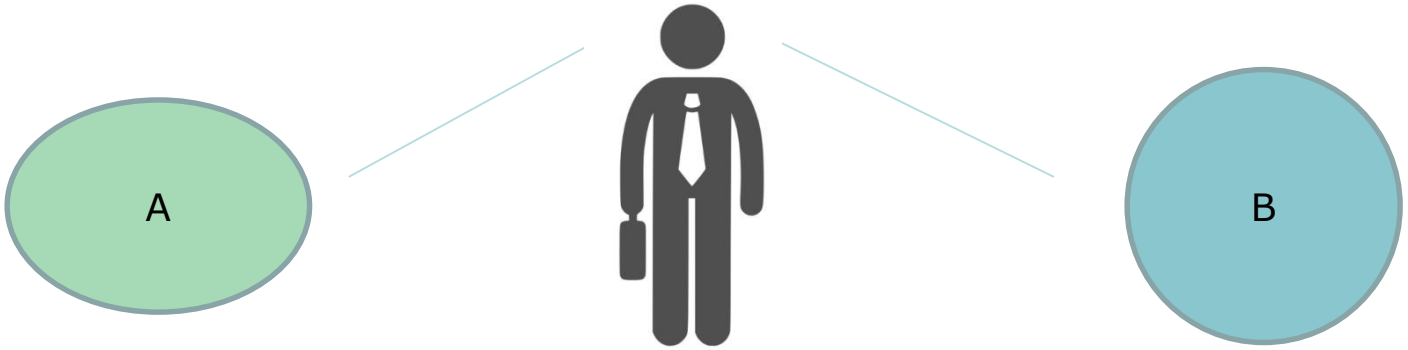
Example: blocking minority/ veto rights on strategic decisions of the enterprise; Long-term contract leading to effective control over management and resources of an enterprise.

Link via natural persons

A and B are linked via a natural person (or group of natural persons) if:

- Natural person holds > 50% of shares in each company *(or exercise equivalent "dominance")*
- A and B engage in their activity – or in part of their activity - in the same relevant or adjacent markets

Both conditions need to be met. But not possible to create "partner undertakings" via natural persons



Natural person if shareholder…

Applies only if relevant person(s) do NOT qualify as an undertaking (besides their role of shareholders)

Acting jointly

- *to exercise an influence over the commercial decisions of the enterprises concerned*
- *Even though not formally « linked »…*
- *Onus on the parties to prove otherwise…*

C-110/13 – HaTeFo GmbH

Acting jointly?

Case by-case

Ex.:

the enterprise is a contracting authority/contractor with respect to another enterprise

the enterprise uses another enterprise's services/products

the enterprise advertises another enterprise's services/products

the enterprise hands fixed assets over to another undertaking for use

the same building is occupied

enterprises have common customers

products are distributed via similar or the same distribution channels…

Sources of information

Self-Declaration
Internet website
Commercial databases
Company's Statutes
Financial statements
Management reports
Minutes from general or extraordinary shareholders' meetings
Minutes of the Board of Directors/management meetings
Invoices, internal instructions…

In doubt, do not grant State aid !!

"Adjacent/relevant market"

"Adjacent market": market for a product or sevice situated directly upstream or downstream of the relevant market". (Art.3(3))

Case-by-case assessment

Guidance under antitrust and merger control : Adjacent markets, or closely related neighbouring markets, are markets where the products are complementary to each other or when they belong to a range of products that is generally purchased by the same set of customers for the same end use.

EX.: Steel and powder coating: shoes and shoe laces

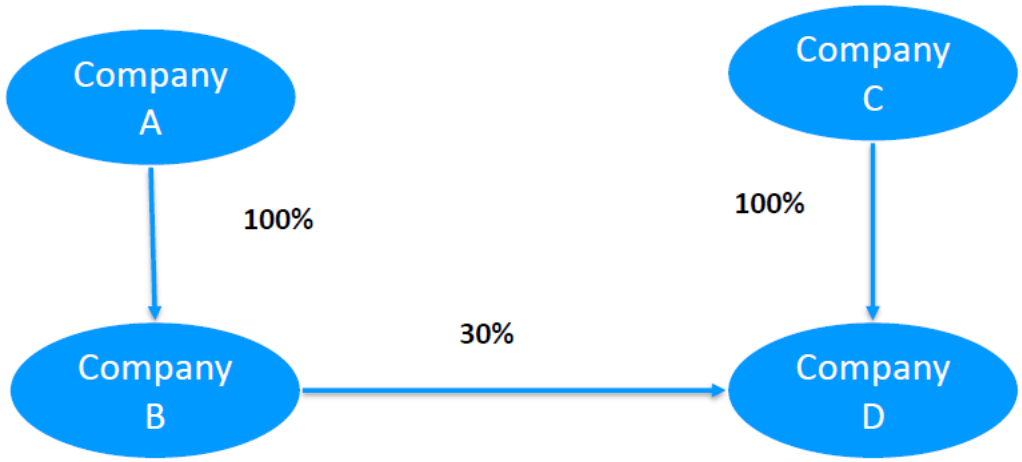
Relevant market: covers products/services which are regarded as interchangeable or substitutable by the consumer, by reason of the product's characteristics, their prices and their intended use

How to assess the data?

TYPE	TREATMENT
Autonomous Less than 25% participation by/of the enterprise	Use solely the data of the company
Partner Between 25% and 50% participation by/of the enterprise	100% of the data of the enterprise + data of the upstream/downstream aggregated proportionally to the participation
Linked More than 50% participation by/of the enterprise (or equivalent control)	Use of existing consolidated accounts or addition of 100% of the data of all linked enterprises

Disclaimer: Simplified presentation ; some specific cases are not described.

Notion of "economic unit"



Different outcome depending on the applicant?

A= A+B+D

B =B +A++D+C

Overview of particular issues

Single economic unit *(SME definition)* ≠ *« single undertaking (De Mnimis Reg.)*

Partner enterprise exemptions *: public investment corportations, business angels, universities or non-profit research centres, institutional investors …(stake up to 50%, not linked to one another)*

No exceptions for ***holding companies****!*

Not SME if 25% or more of capital/voting rights held by ***public body***

2-year rule change of ownership*: not applicable in case of acquisition by large group (immediate loss of SME status)*

More guidance available at:

e-State aid Wiki

GROW-SME-DEFINITION@ec.europa.eu

Commission User Guide to the SME definition:

http://www.innovation.public.lu/en/brochures-rapports/s/sme-definition/index.html

European Commission

Thank you!