**Question:**

On March 15th, 2018 the Commission answered to our question (under art. 21 of the GBER) concerning the definition of independent private investor defined in par. 52 xvii of Guidelines on State aid to promote risk finance investments.

We would like to thank you for the answer, but as we are not quite sure that we understand it correctly, we would like to ask the following supplementary question:

Company B is a shareholder in Company C.

Company A is a single undertaking with Company B by the meaning of art. 2, par. 2 of the COMMISSION REGULATION (EU) No 1407/2013.

Company A is not a shareholder in Company C.

When a venture capital investment fund invests in Company C, could Company A be an independent private investor by the meaning of par. 52 xvii of Guidelines on State aid to promote risk finance investments?

**Reply:**

As it is described by paragraph 11 of Commission Notice on the notion of State aid (2016/C 262/01), there is a well-established case-law, according to which, several separate legal entities may be considered to form one economic unit for the purposes of the application of State aid rules. That economic unit is then considered to be the relevant undertaking. In this respect, the Court of Justice considers the existence of a controlling share and other functional, economic and organic links to be relevant. (see, to that effect, Case C-480/09 P AceaElectrabel Produzione SpA v Commission [2010], paragraphs 47 to 55, and, by analogy, Case C-222/04 Cassa di Risparmio di Firenze SpA and Others [2006], paragraph 112).

In light of the above, since in the example provided Company A and B together form one economic unit (Company Group) that is already shareholder of Company C, therefore Company A could not be considered as a stand-alone undertaking acting as an independent private investor by the meaning of par. 52 (xvii) of the RFG.

Disclaimer: This reply does not represent a formal and definite position of the European Commission but is only an informal guidance provided by the services of DG Competition to facilitate the application of the GBER. It is therefore not binding and cannot create legal certainty or legitimate expectations.