

# ANTI-MONOPOLY REVIEW

## - JOINT VENTURES IN CONCENTRATION

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# Overview

- I. Which Kinds of Joint Venture Need to Notify
- II. Procedural Rules of Joint-Venture Review
- III. Substantive Rules of Joint-Venture Review
- IV. Practice of Joint-Venture Review
- V. Case Internal Management

# I. Which Kinds of Joint Venture Need to Notify?

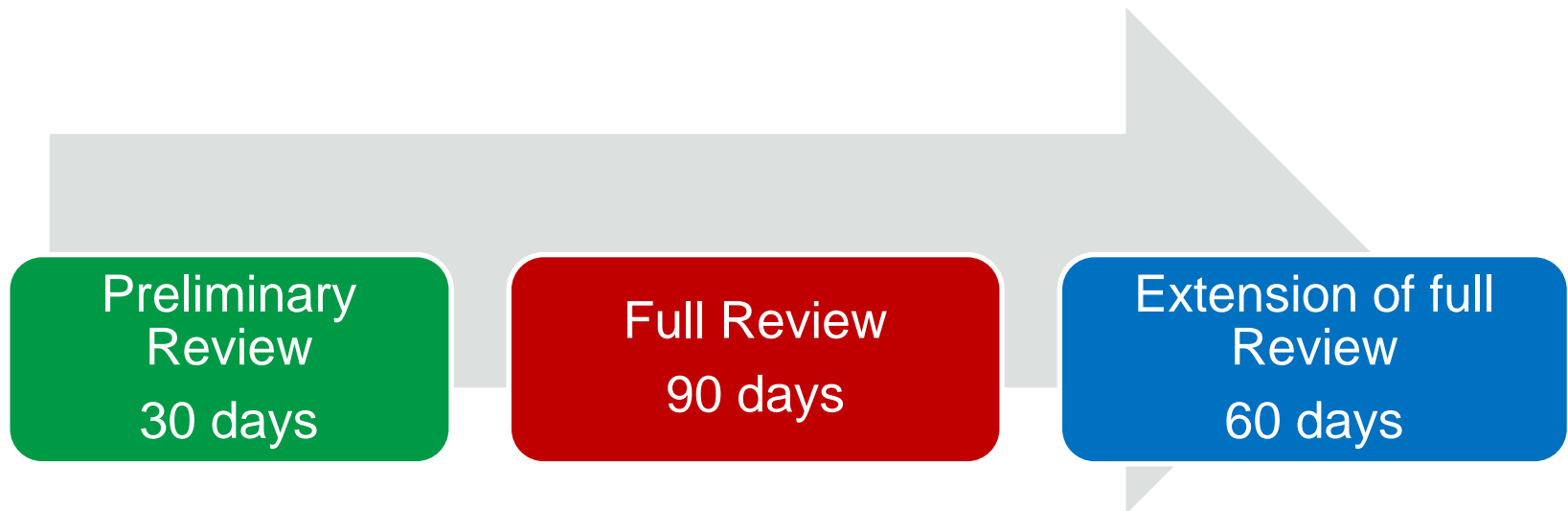
- (1) Existing Joint Ventures
  - " Anti-Monopoly Law " Article 20, Paragraph 2
- (2) Newly Established Joint Ventures
  - " Guidance on the Notification of Concentration of Business Operators " Article 4
- (3) Revenue Threshold
  - "Provisions of the State Council on Thresholds for Prior Notification of Concentrations of Undertakings "
  - "Calculation Methods of the Turnover in relation to Declaration of Concentration of Undertakings in the Financial Industry"

## II. Procedural Rules of Joint-Venture Review

- (I) Applicable Regulations
- "Anti-Monopoly Law" Article 25, 26
- "Notification Measures on of Concentration of Undertakings",  
"Measures for Review of the Concentration of Undertakings"
- "Guidance on the Notification in relate to Declaration of Concentration of Undertakings", "Guidance on the Simplified Declaration Procedure in relate to Concentration of Undertakings"。

## II. Procedural Rules of Joint-Venture Review

- (II) Review Period



## II. Procedural Rules of Joint-Venture Review

- (III) Cases with Simplified procedure
- In the “Interim Provisions on Applicable Criteria for Simplified Procedure in relate to Concentration of Undertakings”, there are specific articles on applicable criteria for simplified procedures.
- Compared to cases with non-simplified procedure:
  - Different requirements on materials
  - Different depths of investigations
  - Different review procedures

## II. Procedural Rules of Joint-Venture Review

- 1. Market Share Criteria:
  - (1) Horizontal Concentration, total market share < 15%。
  - (2) Vertical Concentration, each market share < 25%。
  - (3) Mixed Concentration, each market share < 25%。

## II. Procedural Rules of Joint-Venture Review

- 2. Newly Established Joint Ventures:
  - (4) To establish joint ventures outside China that do not engage in economic activities inside of China.  
( Specific criteria for joint ventures )



## II. Procedural Rules of Joint-Venture Review

- 3. Existing Joint Ventures:
  - (5) Acquiring equity of an overseas company that does not engage in economic activities in China
  - (6) A joint venture jointly controlled by more than two undertakings, is controlled by one or more than one of these undertakings after concentration ( **Specific criteria for joint ventures** )
  - **Note:** If multiple companies become one and the sole controlling party and the joint venture are competitors on the same market, the total market share of both parties must be <15%.

# II. Procedural Rules of Joint-Venture Review

## • 4. Procedures

- After filing, information on the case is published on the website of the Ministry of Commerce (Simplified Case Announcement), for a period of 10 days (calendar days)
  - If there are no objections from third parties, or if there are objections from third parties, however, they do not affect the affirmation of simplified procedure, the review will normally be concluded within the preliminary review period (within 30 days).
  - If there are objections from third parties and further verification is needed, then it may enter into the full review process (within 90 days)
  - After verification, if it was confirmed that the case does not meet the requirements for simplified procedure, then the original affirmation of simplified procedure shall be withdrawn.
- **Most cases with simplified procedure are reviewed and concluded in the preliminary review period. In 2016, it accounted for 98.6%.**

# III. Substantial Considerations of the review

- “Anti-Monopoly Law” Article 27
- " Interim Provisions on Assessment of Effects casted by Concentration of Undertakings on Competition”
- " Guidelines of the Anti-Monopoly Committee of the State Council on the Definition of Relevant Markets "
- In practice, different situations of different types of joint venture are taken into consideration
  - Extent of correlation to the Chinese market
  - Non full functional joint venture
  - Many down-sized to several, Many down-sized to one

# III. Substantial Considerations of the review

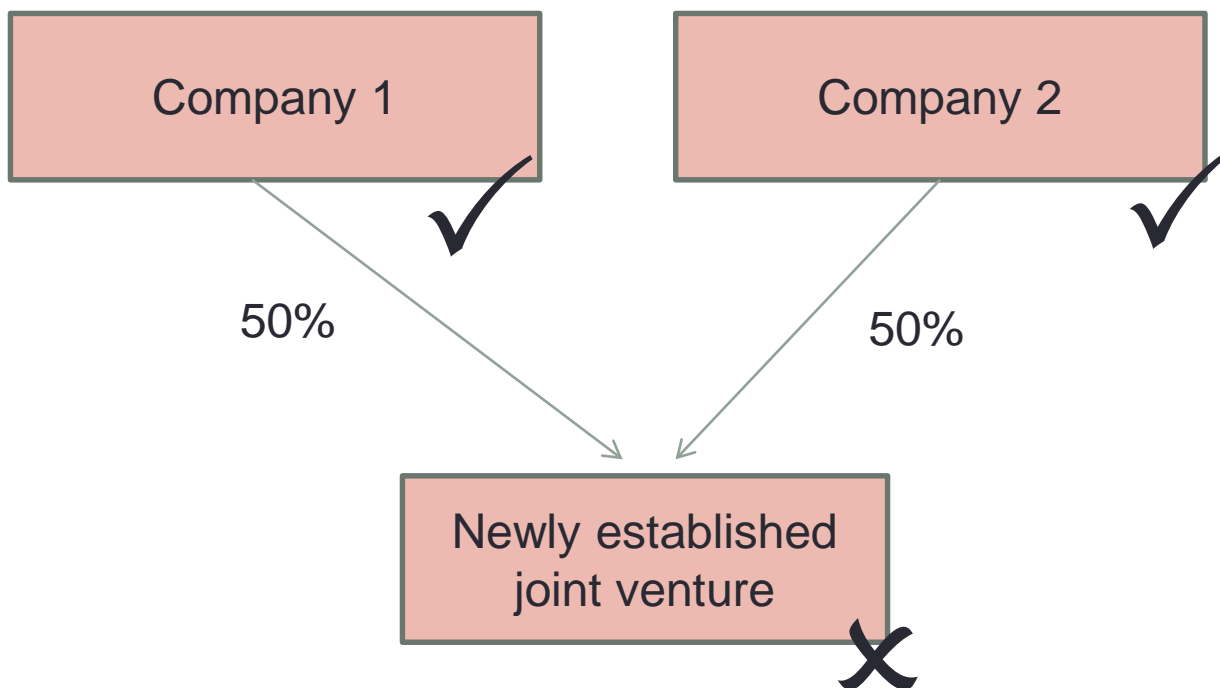
- **Case Study: Limited links with China's Market**
- Companies A, B, and C established a new joint venture in Indonesia to develop and operate a coal-fired power station.
- In this case, the coal-fired power station and its relevant geographical market is Indonesia, and the joint venture companies does not engage in businesses in China, and will not cast negative effects on the competition on the Chinese market.
- The content of the review is narrowed, and it only needs to define its relevant geographical market. Neither market share data, nor competition analysis is required.

## IV. Practice of Joint Venture Review

- (U) Newly established joint venture
- 1. Identifying the undertakings involved in concentration
- Joint controlling parties of the JV are the undertaking involved in the concentration
- The JV is not the undertaking involved in the concentration

# IV. Practice of Joint Venture Review

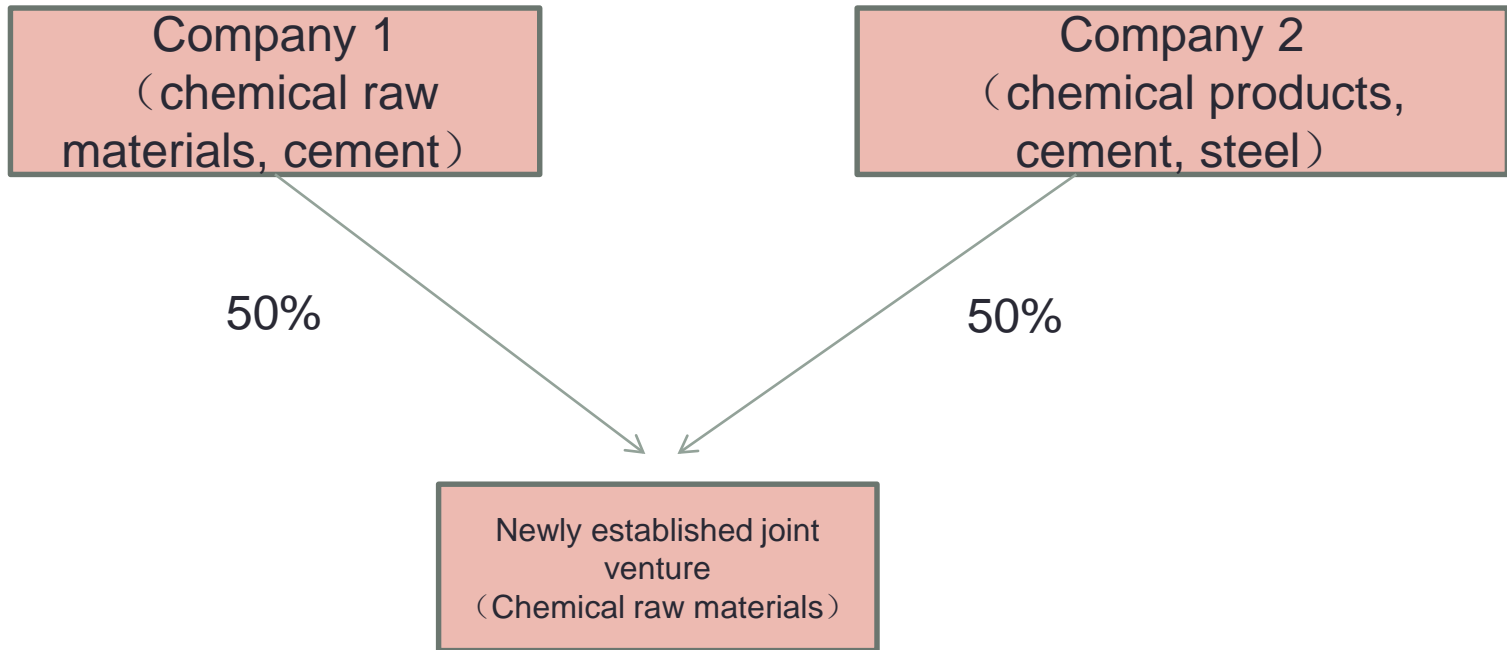
- (I) Newly established joint venture



# IV. Practice of Joint Venture Review

- (I) Newly established joint venture
- 2. Definition of relevant market
- Taking the planned businesses of the newly established joint venture (business A) as a starting point, examine the business relationship of the jointly controlling parties.
- Only examine the business of the jointly controlling parties that's relevant to business A (business A, business B)
- Do not consider businesses that are irrelevant to business A, even if there are links among these businesses.

# IV. Practice of Joint Venture Review



- Relevant markets: chemical raw materials, chemical products
- Irrelevant markets: cement, steel



## IV. Practice of Joint Venture Review

- (I) Newly established joint venture
- 3. Does it meet the requirements of a simplified procedure or not?
- To Consider: Chemical raw materials market < 25%?  
Chemical product market < 25%?
- Do not consider: Cement market > 15%? Steel market > 25%?

# IV. Practice of Joint Venture Review

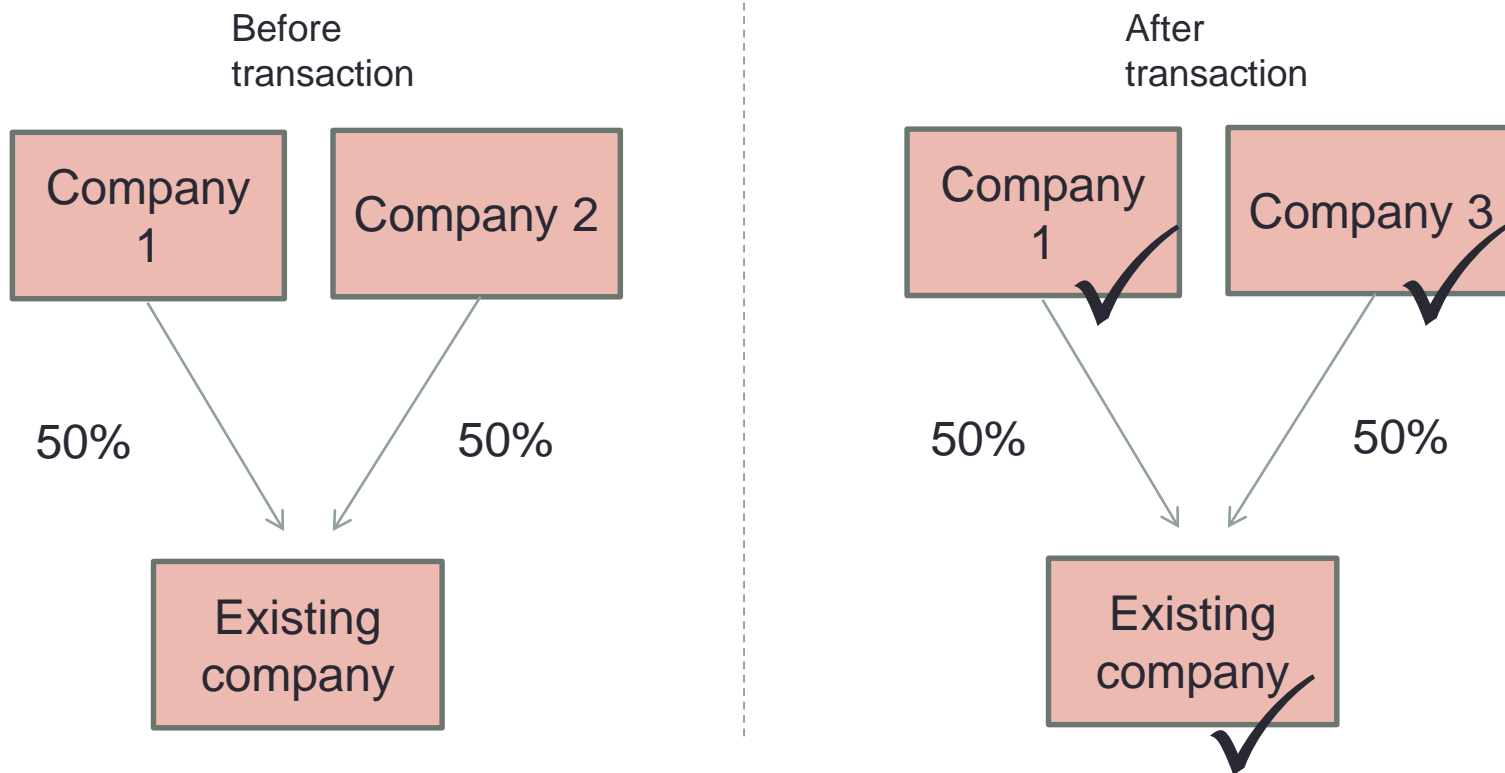
- (I) Newly established joint venture
- 4. Estimating Production Capacity
- In some cases, the future production capacity of the newly established joint ventures may be assessed

# IV. Practice of Joint Venture Review

- (II) Existing Joint Ventures
- 1. Identifying of undertaking involved in the concentration
- The existing joint venture and all parties that jointly control the existing entity after the transaction are the undertaking involved in the concentration

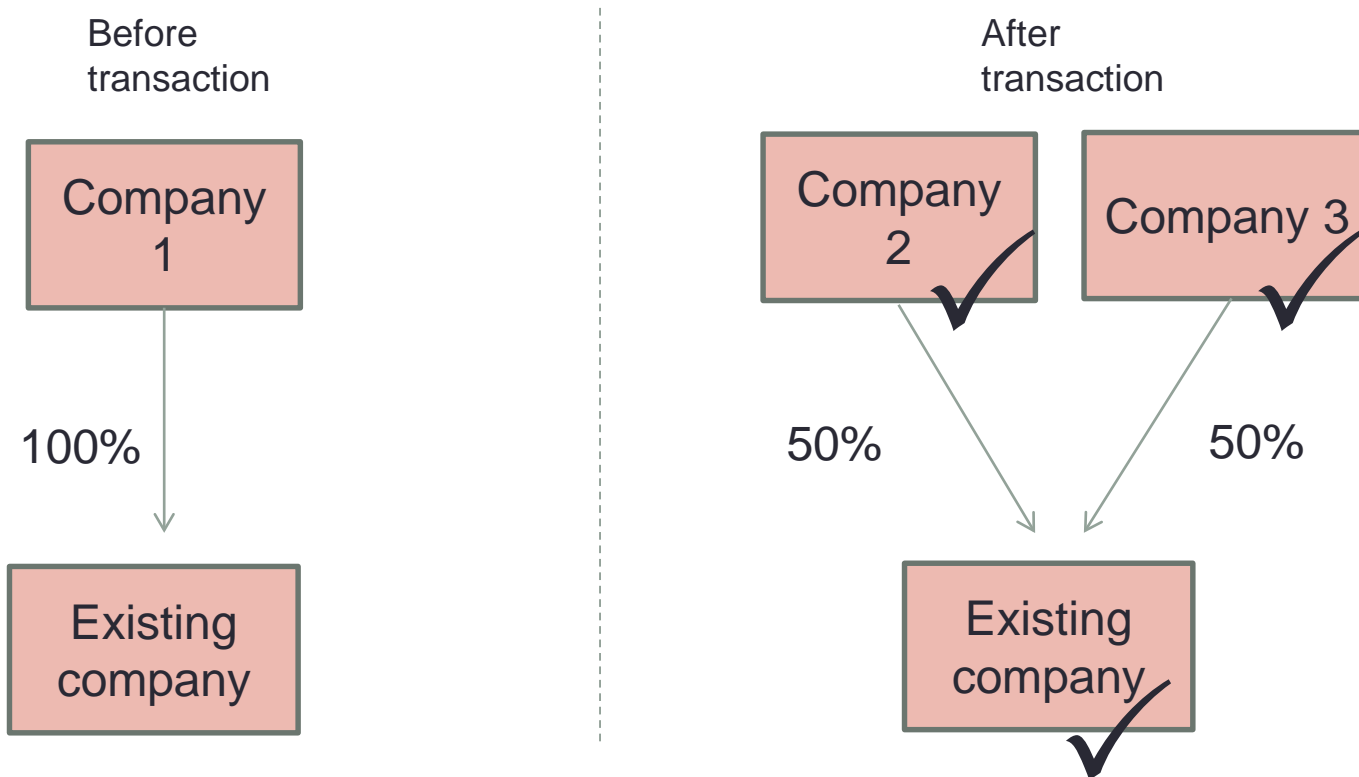
# IV. Practice of Joint Venture Review

- (二) Existing Joint Ventures



# IV. Practice of Joint Venture Review

- (二) Existing Joint Ventures

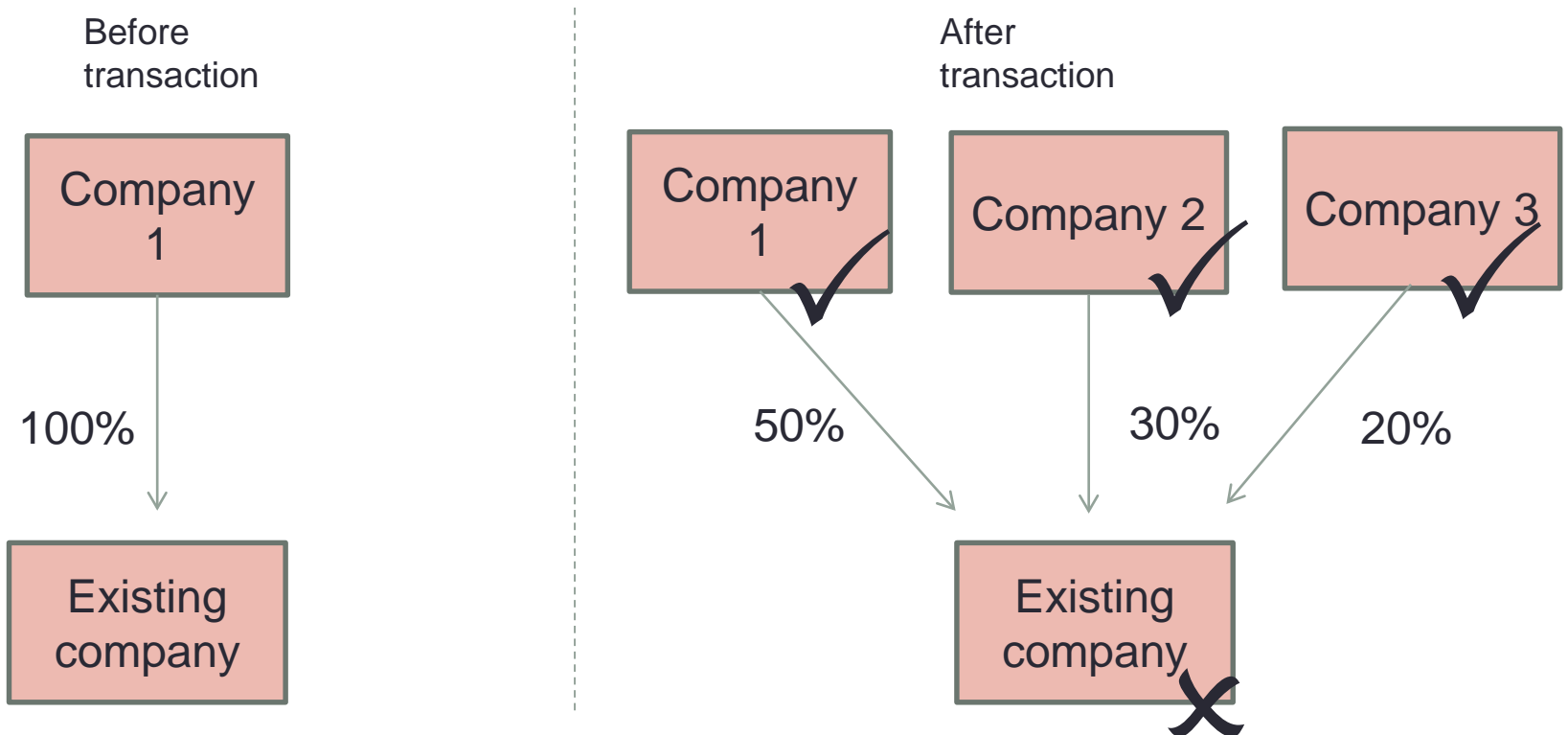


# IV. Practice of Joint Venture Review

- (II) Existing Joint Ventures
- 1. Definition of undertakings involved in the concentration
- The existing company is not an undertaking involved in the concentration, in case that the existing company was solely controlled by one entity before the transaction, and after the transaction, the existing company was jointly controlled by more than one entities.

# IV. Practice of Joint Venture Review

- (II) Existing Joint Ventures



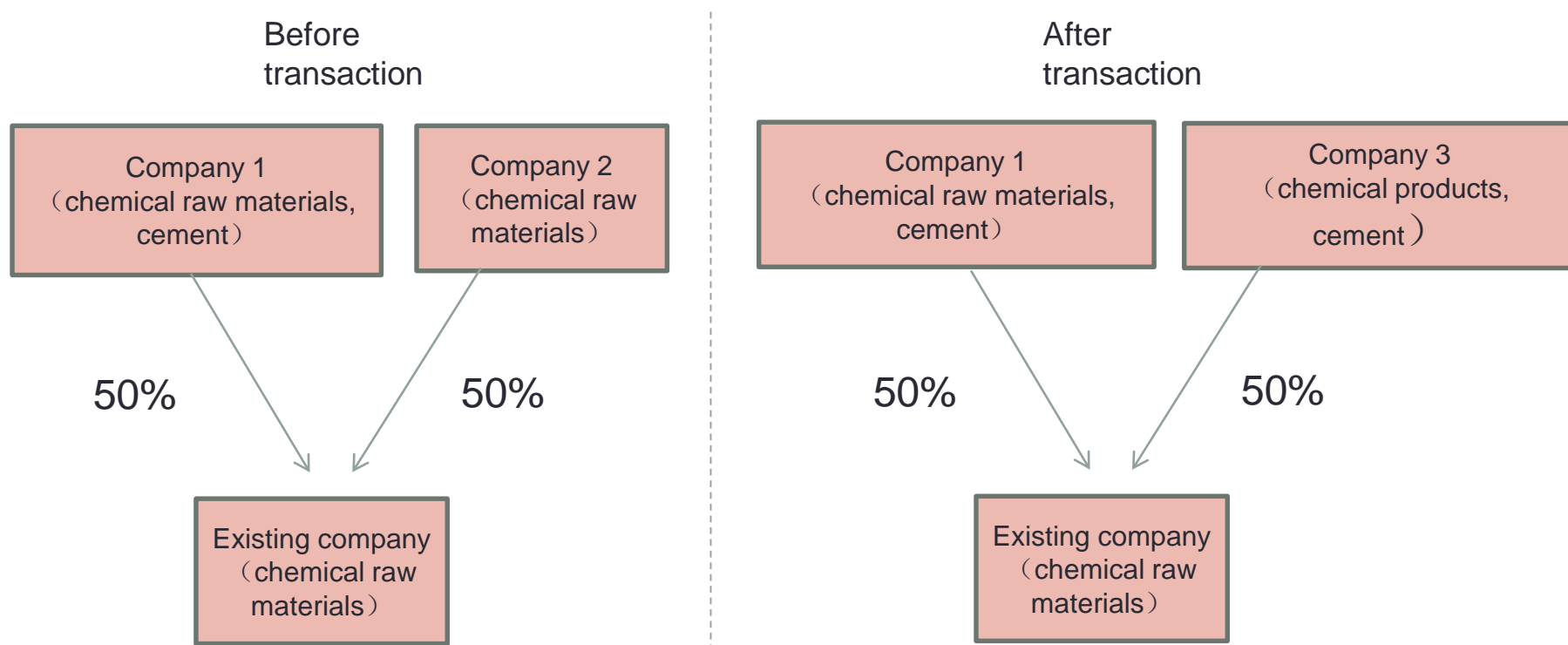
# IV. Practice of Joint Venture Review

- (II) Existing Joint Ventures
- 2. Identification of Relevant Markets
- Start from the businesses of the existing joint venture (business A)
- Study the relationship between business A and the business of the entity obtained the control
- Only identify business A and the business of the entity obtained the control (business A, business B...) that is relevant to Business A
- Do not consider any businesses that is irrelevant to business A, even though there are links among these businesses



# IV. Practice of Joint Venture Review

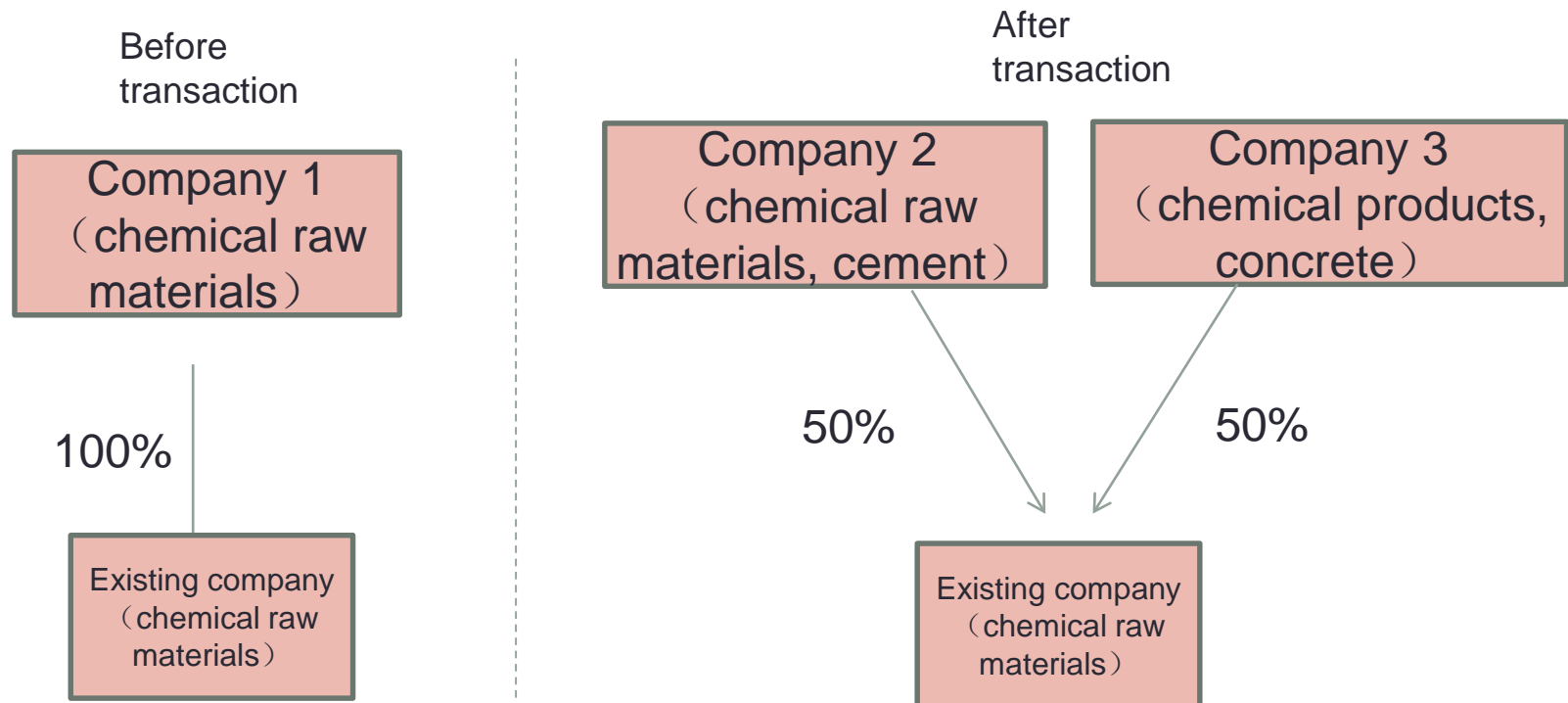
- (二) Existing Joint Ventures



- Relevant market: chemical raw materials, chemical products
- Non relevant market: cement

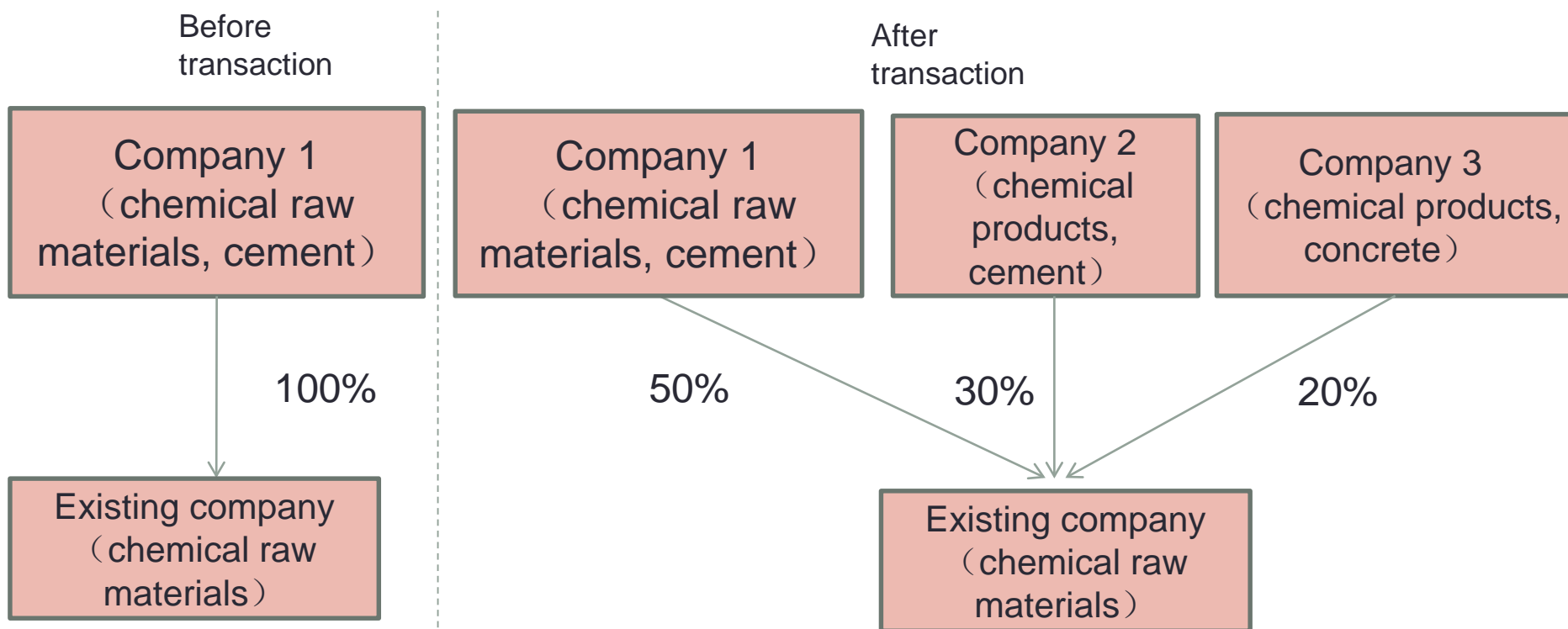
# IV. Practice of Joint Venture Review

- (二) Existing Joint Ventures



- Relevant market: chemical raw materials, chemical products
- Non relevant market: cement, concrete

# IV. Practice of Joint Venture Review



- Relevant market: chemical raw materials, chemical products
- Non relevant market: cement, concrete

# IV. Practice of Joint Venture Review

- (II) Existing Joint Ventures
- 3. Applicable to the requirements of a simplified procedure or not?
- To Consider: chemical raw materials market <15% or <25%?  
chemical product market <15% or <25%?
- Do not consider: cement market >15% or >25%? concrete market >25%?

# V. Internal Management of the Cases

- The departments of the Anti-Monopoly Bureau responsible for the handling of the cases :

- Case Review Division 1

- Case Review Division 2

- Case Review Division 3



reviewing concentration of undertakings

- Monitoring & Enforcement Division →
  1. investigating undertakings that fail to notify;
  2. Monitoring the implementation of conditionally approved concentration of undertakings
  3. investigating the concentrations that did not meet notification threshold, but may eliminate or restrain competitions

# V. Internal Management of the Cases

- Cases are allocated based on the industries
- Case Review Division 1: Agriculture, services, electronic information industries
- Case Review Division 2: Automotive, chemical, pharmaceutical industries
- Case Review Division 3: Mining, machinery, light industry, textile industries

# THE END

- The 3<sup>rd</sup> Case Review Division.
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