

Chapter 8

Joint Ventures and the Competition and Consumer Act

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[8.1] Introduction

Joint ventures can be pro-competitive, anti-competitive or neutral in their effect on competition.¹ The Swanson Committee acknowledged that the treatment of joint ventures was one of the most difficult problems that it had to consider.² The Committee accurately characterised the essential question in this area as how to differentiate between useful joint ventures ‘which provide the ability to embark on a project of development which may be desirable in the public interest and which would not otherwise be undertaken’ from other joint ventures ‘which are, in substance, a substitute for agreements not to compete’.³

The *Trade Practices Amendment (Cartel Conduct and Other Measures) Act 2009* (Cth) (CC&OM Act), which took effect on 24 July 2009, brought about a fundamental change in the way that serious cartel conduct is regulated in Australia. It created four new per se prohibitions, two cartel offences and two parallel civil prohibitions for making or giving effect to contracts, arrangements or understandings that contain a *cartel provision*. This brought Australia’s competition laws into line with the OECD recommendation

1 A number of useful articles have been written on this topic. See A Harpham, D Robertson and P Williams, ‘The Competition Law Analysis of Collaborative Structures’ (2006) 34 *ABLR* 399; Tyson, ‘Joint venture regulation under Australian competition law: An update’ (2006) 34 *ABLR* 211; I Tonking, ‘Competition at risk? New forms of business co-operation’ (2002) 10 *CCLJ* 169; C Oddie and L McKeown, ‘Joint Ventures and Exclusionary Provisions: Anti-Competitive Purpose or Intended Effects?’ (2002) 10 *CCLJ* 192; S King, ‘Short of a Merger: The Competitive Effects of Horizontal Joint Ventures’ (1999) 6 *CCLJ* 227; D Williamson, ‘Trade Practices Law – Its Implications for Mining and Petroleum Joint Ventures’ (1977) 1 *AMPLA* 59 and P Rose, ‘Resources Joint Ventures and the Trade Practices Act 1974’ (1991) 9 *JENRL* 96.

2 Trade Practices Act Review Committee, *Report to the Minister for Business and Consumer Affairs* (AGPS, 1976) at para 4-79.

3 *Ibid.*

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