

CHAPTER 11

CARTEL EXCEPTIONS

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(M Marquis (ed), *Australian Competition Law in a Changing Context: A Handbook for Research and Teaching* (LawBook, 2026))

Summary

[11.10] This chapter examines the cartel exceptions under Part IV, Division 1, Subdivision D of the Competition and Consumer Act 2010 (Cth) (the Act). The cartel exceptions significantly limit the scope of the cartel prohibitions, which are defined broadly and strictly (they are not subject to a test of substantial lessening of competition). The exceptions suffer from underreach, overreach, uncertainty and impracticality in some significant respects. Those limitations invite statutory reform.

The current legislative framework for these exceptions is a patchwork developed over five decades, suffering from significant limitations including underreach, overreach, uncertainty, and impracticality. This analysis focuses on four key exceptions—Joint Ventures, Related Corporations, Exclusive Dealing, and Acquisition of Shares or Assets—detailing their legal rationale, core elements, notable case law, and defects in need of legislative reform.

The joint venture exception is based on an elusive concept and an impractical legal test. The related corporations exception is too narrow, failing to cover common commercial arrangements. The exclusive dealing exception fails to protect many legitimate vertical supply agreements, a gap of increasing importance in the digital economy. The acquisition of shares exception is both too lax, failing to require reasonable necessity, and creates a loophole for avoiding cartel liability through strategic drafting. The chapter advances straightforward legislative amendments to address these defects.

The cartel exceptions discussed may come more into focus as a result of the power, influence and impact of big tech corporations. Big tech corporations depend on collaborations with competitors for their growth and survival.¹ The risk of cartel liability is managed by liability control measures and adroit boundary-riding.² It is inevitable that the cartel exceptions will be tested and that their loopholes and chinks will be exploited. Eventually that may lead law makers to take more interest in the cartel exceptions.

¹ See ACCC, 'Recent developments in artificial intelligence: Industry Snapshot', December 2025, 24-36, at: <https://www.accc.gov.au/about-us/publications/recent-developments-in-ai-industry-snapshot>; US, FTC, 'Partnerships Between Cloud Service Providers and Ai Developers - FTC staff Report on AI Partnerships & Investments 6 (b) Study' (2025) at: https://www.ftc.gov/system/files/ftc_gov/pdf/p246201_aipartnerships6breport_redacted_0.pdf; M Pagani and TH Davenport, 'How AI Changes Partner Collaboration', MIT Sloan Management Review, November 20, 2024; N Gupta, F Urmetzer1 & S Ansari, 'Big-tech Strategic Partnerships in Artificial Intelligence' (2025) 20(3) International Journal of Business and Management 57; T Groza and A Wierzbicka, 'Mergers by Other Means? AI Partnerships and the Frontiers of (Post-)Industrial Organization' (2024) at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4967357; L Blanquez, 'Mergers & Acquisitions, AI and Antitrust: The New Creative Ways for Big Tech to Enter the AI Market and Avoid HSR Rules', The Antitrust Attorney Blog, July 21, 2024, at: <https://www.theantitrustattorney.com/mergers-acquisitions-ai-and-antitrust-the-new-creative-ways-for-big-tech-to-enter-the-ai-market-and-avoid-hsr-rules/>.

² On liability control and boundary-riding see *Australian Cartel Regulation*, ch 12.