



Australian Government

Takeovers Panel

Reasons for Decision

Wiluna Mining Corporation Limited

[2026] ATP 1

Catchwords:

Decline to conduct proceedings – company under administration – association – effect on control – jurisdiction –convertible notes

Corporations Act 2001 (Cth), sections 436A, 606, 611 items 9 and 19, 671B

ASX Listing Rule 17.12

Virgin Australia Holdings Limited (Administrators Appointed) 02 [2020] ATP 12, Quantum Graphite Limited (subject to Deed of Company Arrangement) [2018] ATP 1, Mount Gibson Iron Limited [2008] ATP 4, Kaefer Technologies Limited 02 [2004] ATP 16, Pasminco Ltd (Administrators Appointed) [2002] ATP 6

Interim order	IO undertaking	Conduct	Declaration	Final order	Undertaking
NO	NO	NO	NO	NO	NO

INTRODUCTION

1. The Panel, Sylvia Falzon, Jon Gidney and Michael Lishman (sitting President) declined to conduct proceedings on an application by AIM Mining Corporation Limited in relation to the affairs of Wiluna Mining Corporation Limited. The application concerned an alleged undisclosed association between certain Wiluna shareholders who collectively held approximately 44.05% of Wiluna shares and were said to be acting in concert in relation to its affairs. The Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable because (among other things) the materials provided fell short of meeting the *Mount Gibson* hurdle (and hence did not warrant the drawing of an inference of association or the aggregation of the voting power of the alleged associates) and did not otherwise justify the Panel making further enquiries.

2. In these reasons, the following definitions apply.

- 2023 Convertible Loan Facilities** has the meaning given in paragraph 7
- 2025 Convertible Notes** has the meaning given in paragraph 11
- Applicant** AIM Mining Corporation Limited
- AIM Offers** has the meaning given in paragraph 10
- Balaton Entities** Deutsche, Sparta Invest AG and 2Invest AG
- ByrneCut** ByrneCut Australia Pty Ltd
- ByrneCut Offshore** ByrneCut Offshore Pty Ltd

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Common Terms Deed	has the meaning given in paragraph 7
Deed Administrators	has the meaning given in paragraph 4
Delphi Parties	Balaton Entities and Patronus Invest Pty Ltd
Deutsche	Deutsche Balaton AG
DOCA	has the meaning given in paragraph 5
Mercuria Loan	has the meaning given in paragraph 8
Scheme Proposal	has the meaning given in paragraph 13
Wiluna	Wiluna Mining Corporation Limited
Wiluna Buy-Back	has the meaning given in paragraph 15

FACTS

3. Wiluna is an unlisted gold mining company based in Western Australia. It was previously listed on the ASX but was delisted on 5 April 2024 due to its failure to lodge its half year report (for the six-month period ended 31 December 2022) for a continuous period of 1 year after the deadline for lodgement.¹
4. On 20 July 2022, Michael Ryan, Ian Francis, Kate Warwick and Daniel Woodhouse (**Deed Administrators**) were appointed as joint and several voluntary administrators of Wiluna pursuant to section 436A.²
5. On 28 July 2023, the Deed Administrators entered into a deed of company arrangement (**DOCA**) in respect of Wiluna.
6. The Applicant, Byrncut and the Delphi Parties are all shareholders of Wiluna. As at 8 December 2025, their respective voting power in Wiluna was 7.42%, 24.26% and 19.79%.
7. On 14 August 2023, Wiluna entered into separate convertible facility agreements with Byrncut and Deutsche (together, the **2023 Convertible Loan Facilities**) and also executed general security agreements granting an ALLPAAP³ security interest in favour of each financier. On the same date, Byrncut and Deutsche signed a common terms deed (**Common Terms Deed**) in relation to their arrangements with Wiluna regarding the 2023 Convertible Loan Facilities.
8. According to the Applicant, in early 2024, Wiluna was in imminent default under its facility with another financier Mercuria Energy Trading Pte Ltd (**Mercuria Loan**), which was a first-ranking secured creditor and held a secured debt of approximately USD \$37 million over Wiluna.

¹ In accordance with ASX Listing Rule 17.12

² Unless otherwise indicated, all statutory references are to the *Corporations Act 2001* (Cth) and all terms used in Chapter 6, 6A or 6C have the meaning given in the relevant Chapter (as modified by ASIC)

³ Meaning “all present and after acquired property”; a collateral class under the Personal Property Securities Register that generally describes all of the current and future personal property of a grantor

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9. Byrnegut, through its related entity Byrnegut Offshore, agreed to refinance the Mercuria Loan and, on 23 April 2024, entered into a facility agreement with Wiluna. Consequently, Byrnegut Offshore became a first-ranking secured creditor over Wiluna.
10. Between August to October 2025, the Applicant made a number of offers to the Deed Administrators to restructure and recapitalise Wiluna (**AIM Offers**). The Applicant submitted that each of the AIM Offers were presented to Byrnegut and the Delphi Parties but not to Wiluna shareholders generally. None of the AIM Offers were accepted by the Deed Administrators.
11. On 20 October 2025, Wiluna entered into convertible note deeds with Byrnegut and Deutsche⁴, each agreeing to provide a facility of \$18.6 million for the issue of convertible notes (together, the **2025 Convertible Notes**).
12. On 28 October 2025, the Applicant made a further funding offer to the Deed Administrators on similar terms to the 2025 Convertible Notes.
13. On 13 November 2025, the Applicant submitted another proposal to acquire Wiluna for \$350 million via a scheme of arrangement (**Scheme Proposal**). These proposals were not accepted by the Deed Administrators.
14. On 27 November 2025, Byrnegut acquired 10,708,490 shares from another shareholder for \$0.725 a share.
15. On 28 November 2025, Wiluna shareholders approved a selective buy-back of 18,750,000 Wiluna shares whereby Wiluna would buy back, and then cancel, shares from two shareholders for a total of \$1 and nil value respectively (**Wiluna Buy-Back**). Following the Wiluna Buy-Back, Byrnegut's shareholding increased from 19.99% to 24.26% and the Delphi Parties' shareholding increased from 18.75% to 19.79%.
16. On 31 December 2025, the Deed Administrators exercised their powers under the DOCA to waive the remaining outstanding conditions precedent (to undertake and obtain necessary relief to perform a capital raising) to effectuation of the DOCA. As a result, the DOCA was fully effectuated on that date, and control of Wiluna transitioned to a newly-appointed board.

APPLICATION

Declaration sought

17. By application dated 17 December 2025, the Applicant sought a declaration of unacceptable circumstances and submitted that (among other things):
 - (a) Byrnegut and the Delphi Parties were “*acting in concert in relation to the affairs of Wiluna*” and have “*since around mid-2022, engaged in conduct to obtain a controlling stake in Wiluna in the absence of an efficient, competitive or informed market and to lock in a controlling position in advance of an intended relisting, capital raising and IPO by Wiluna*”

⁴ And its related entity, Sparta Invest AG

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- (b) the Applicant⁵ executed a term sheet for the acquisition of the debt under the Mercuria Loan but before the transaction proceeded, the Deed Administrators *“caused Wiluna to redeem the Mercuria [Loan] with Byrnegut Offshore”*
 - (c) the AIM Offers and Scheme Proposal put forward by the Applicant were *“in the interests of Wiluna and the general body of shareholders”* but shareholders were *“deprived of the opportunity to consider AIM’s proposals by virtue of the controlling stake obtained by Byrnegut and the Delphi Parties”*, further alleging that Byrnegut and the Delphi Parties instructed the Deed Administrators not to present AIM’s proposals to Wiluna shareholders
 - (d) Byrnegut’s acquisition of shares (see paragraph 14) *“may have resulted in a contravention of section 606”* and
 - (e) there were several contraventions of section 671B by Byrnegut.
18. The Applicant also submitted that the issue of the 2025 Convertible Notes was unacceptable because:
- (a) it was made in circumstances that involved the non-disclosure of substantial shareholdings
 - (b) the 2025 Convertible Notes *“provide for conversion at a significant discount⁶ to the value of any capital raising and thereby protect Byrnegut and the Delphi Parties from dilution regardless of participation in any future capital raising, and further enhance their control over Wiluna”* and
 - (c) it was made after the Applicant made a number of offers to the Deed Administrators to restructure and recapitalise Wiluna which would have been *“less dilutionary to Wiluna shareholders”*.

Interim orders sought

19. The Applicant sought interim orders prohibiting Byrnegut and the Delphi Parties from:
- (a) converting the 2023 Convertible Loan Facilities or 2025 Convertible Notes provided under the DOCA
 - (b) making a takeover offer in relation to Wiluna
 - (c) exercising any voting rights in respect of the shares they hold
 - (d) acquiring any further Wiluna shares and
 - (e) participating in further convertible loan facilities, convertible notes or secured lending to Wiluna.

⁵ Through its related entity, West Coal Pty Ltd

⁶ The Applicant separately submitted that the *“2025 Convertible Notes have conversion rights equivalent to those of the Creditors’ Trust – i.e. conversion on a future capital raising at a 10% discount to the issue price of the capital raising”* and that in October 2025 it had *“put forward to the Deed Administrators a proposal whereby the Applicant would provide to the Deed Administrators a facility of an amount required to fund the Creditors’ Trust on the same terms as those provided in relation to the 2025 Convertible Notes ... [except that] the conversion rights would not be discounted (and will be at the same price as the issue price in the next significant equity capital raising)”*

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Final orders sought

20. The Applicant sought final orders, including that:
- (a) Byrnegut and the Delphi Parties divest such number of Wiluna shares as is necessary to ensure that their collective voting power does not exceed 19.99%
 - (b) the enforcement of any security in relation to the 2023 Convertible Loan Facilities not be permitted
 - (c) convertible notes issued by Wiluna, including the 2025 Convertible Notes, be set aside or, alternatively:
 - (i) the noteholders be restrained from exercising the conversion rights attaching to the convertible notes or
 - (ii) any conversion of the convertible notes be made subject to shareholder approval
 - (d) the interests of Byrnegut and the Delphi Parties, as they relate to Wiluna, be aggregated at all times and
 - (e) Byrnegut and the Delphi Parties be prohibited from voting on any scheme of arrangement proposed by the Applicant.

DISCUSSION

21. We have considered all the material before us but address specifically only the material we consider necessary to explain our reasoning.

Interim orders

22. The Acting President of the Panel considered the interim orders sought by the Applicant on an urgent basis and the parties were invited to make submissions.
23. We received submissions from the Deed Administrators and Wiluna (jointly), Byrnegut and the Balaton Entities.
24. The Deed Administrators and Wiluna submitted that (among other things):
- (a) *“AIM is interested in acquiring Wiluna and has made various AIM Offers in order to acquire or obtain control of Wiluna” and that “any interim orders, if made, should preserve the status quo [and] should also apply to dealing in shares by AIM”, noting that “AIM should not be able to take actions in relation to its objective to acquire control of Wiluna while Byrnegut and the Delphi Parties are restricted from exercising their rights as shareholders”*
 - (b) if the Panel made the proposed interim order relating to prohibiting Byrnegut and the Delphi Parties from exercising their voting power, AIM, as a substantial holder who can requisition section 249D shareholder meetings, would *“be able to cause resolutions allowing it to obtain control of Wiluna (or at least resolutions in its favour) to be passed, for example, resolutions to change the board [of] Wiluna”* and
 - (c) *“Byrnegut and the Delphi Parties do not have a present right to convert the debt they are each owed into shares under their convertible notes” as “the conversion rights*

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under the convertible notes are only triggered if Wiluna undertakes a capital raising of not less than \$40 million”.

25. Byrnegut similarly submitted that (among other things):
- (a) the proposed interim orders in paragraph 19(a)-(c), (e) have “no basis or address hypothetical matters” and that “the terms of the convertible notes do not allow them to be presently exercised, nor exercisable until a \$40 million capital raise is completed, and these would require shareholder approvals in any event” and as such “no relevant interest in any Wiluna shares exist unless and until the Byrnegut notes are converted”
 - (b) it is “not presently aware of any proposed corporate actions by Wiluna” and therefore there is no need for the Panel to make interim orders to restrict voting rights and
 - (c) it is willing to provide an undertaking not to acquire any further Wiluna shares until the end of the Panel proceedings in lieu of the proposed interim order in paragraph 19(d).
26. The Balaton Entities submitted that since there is “no basis for any declaration of unacceptable circumstances to be made, there is no need for any interim orders to be granted”.
27. Having considered the submissions and materials, the Acting President was not satisfied that the circumstances required urgent intervention and therefore decided not to make any interim orders, noting that:
- (a) there was no indication that the convertible notes would be exercised imminently and, in the absence of any realistic prospect of conversion occurring before the Panel determined the matter (particularly given the preconditions to conversion), a restraint on conversion was not necessary
 - (b) proposed interim orders sought restraining a takeover offer or participation in future convertible loan facilities or convertible notes by Byrnegut and the Delphi Parties do not correspond to any existing proposal or intention on the materials presented and are purely hypothetical
 - (c) interim orders restraining the exercise of voting rights are unnecessary where there are no current proposals or corporate actions requiring shareholder approval and
 - (d) any person acquiring Wiluna shares while the matter is before the Panel should be aware that the Panel has broad powers to make final orders if unacceptable circumstances are found, including the ability to vest shares in ASIC for sale.

Preliminary submissions

28. We received submissions from the Deed Administrators and Wiluna (jointly), Byrnegut and the Balaton Entities contending that the Panel should decline to conduct proceedings.
29. The Deed Administrators and Wiluna submitted that (among other things):
- (a) “there is no credible evidence of association or control effects as claimed in the Application” and “the Application is frivolous and vexatious”

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- (b) on the alleged association between Byrnegut and the Delphi Parties:
- (i) *it “rejects assertions by AIM that either or both of them have been ‘directing’ or otherwise controlling the Deed Administrators”*
 - (ii) *“each of Byrnegut and the Balaton Entities [have] been engaging with Wiluna separately at Wiluna’s request in their capacity as a major creditor and/or substantial shareholder, including when negotiating the terms of the various financing arrangements” and that “no joint proposal was made by Byrnegut and the Balaton Entities to Wiluna”*
 - (iii) *the 2023 Convertible Loan Facilities “were separately negotiated and entered into by Byrnegut and the Balaton Entities [and] are not on the same terms and reflect the distinct commercial positions of each counterparty” and that “it is usual to have a common terms deed when a company [is] issuing convertible notes to various parties around the same time and there is no basis to assert that a common terms deed indicates any association”*
- (c) on the issuing of the 2025 Convertible Notes:
- (i) *“the 2025 Convertible Notes were negotiated separately with each of Byrnegut and the Batalon Entities by Wiluna and were issued to obtain financing to pay off the Creditors’ Trust and to better position Wiluna for [a] proposed IPO”*
 - (ii) *“the 2025 Convertible Notes (as well as the 2023 Convertible Notes) can only be converted if there is a capital raising of \$40 million or more, meaning Byrnegut and the Delphi Parties’ existing interests will be materially diluted before they can occur” and*
 - (iii) *“there was no requirement for shareholder approval nor a public process for Wiluna to issue the 2025 Convertible Notes [and it] was within the Deed Administrators’ business judgement to issue those notes”*
- (d) on financing offers made by the Applicant:
- (i) *AIM’s financing offer that substantially mirrored the 2025 Convertible Notes (see paragraph 12) was made “after the 2025 Convertible Notes funding had been obtained” and as such Wiluna “did not require any funding when those offers were made”*
 - (ii) *most of the Applicant’s financing offers were “incomplete proposals” and “by way of debt which were matters for the Deed Administrators to assess rather than proposals requiring presentation to Wiluna shareholders”*
 - (iii) *most of the Applicant’s “incomplete proposals provided nil or minimal value to Wiluna shareholders following repayment of Wiluna’s existing debt, which the Deed Administrators considered to be unfair and not in the best interests of Wiluna’s existing shareholders”.*

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30. Byrnegut submitted that (among other things):
- (a) it did not contravene section 606 because:
 - (i) the acquisition of shares on 27 November 2025 (see paragraph 14) took its shareholding from 19.9% to 22.9% and was within the permissible 3% creep⁷
 - (ii) the increase in its shareholdings from 22.9% to 24.26% on 28 November 2025 was a result of the Wiluna Buy-Back and therefore was a permissible increase⁸
 - (b) *“the Deed Administrator’s efforts to bring the company back to solvent operation and create value for all shareholders should not be obstructed”*
 - (c) *“AIM’s Application lacks proof of its assertions, is speculative and mischaracterizes events and circumstances”* and the loose allegation of ‘acting in concert’ is *“unsustained by any evidential reference or detail”* and
 - (d) *“AIM seeks orders that are not needed, but have the effect of giving AIM an unfair advantage for its intended takeover”*.
31. The Balaton Entities submitted that (among other things):
- (a) the Applicant *“failed to provide any evidence that the Delphi Parties and Byrnegut are acting in concert in relation to the affairs of Wiluna”* and
 - (b) *“the fact that the Delphi Parties and Byrnegut have provided funding on similar terms in 2023 and 2025 is in no way suggestive that the parties are acting in concert”* and that *“the provision of funding by separate stakeholders of a distressed entity on similar terms is common practice”*.

Jurisdiction

32. In considering whether to conduct proceedings, we first considered whether we had jurisdiction given that Wiluna was (at the time of the application) subject to a deed of company arrangement.⁹
33. In *Virgin Australia Holdings Limited (Administrators Appointed) 02*,¹⁰ the Panel said:
- “In our view, there is nothing in the Corporations Act that prohibits [us] from conducting proceedings in relation to the affairs of a company in administration. That said, proceedings will generally be unlikely to be conducted where a company is in administration, and no equity value remains in its shares”*.
34. That approach is consistent with earlier matters such as *Pasminco Ltd (Administrators Appointed)* where the majority accepted the administrators’ submissions that no

⁷ Section 611, item 9

⁸ Section 611, item 19

⁹ On 31 December 2025, the Deed Administrators exercised their powers under the DOCA to waive the remaining outstanding conditions precedent (to undertake and obtain necessary relief to perform a capital raising) to effectuation of the DOCA. As a result, the DOCA was fully effectuated on that date, and control of Wiluna transitioned to a newly-appointed board

¹⁰ [2020] ATP 12 at [39]

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equity value remained and considered that control had effectively passed to creditors, such that the takeovers provisions had little practical work to do.¹¹

35. Similarly, in *Quantum Graphite Limited (subject to Deed of Company Arrangement)*, the Panel noted that the purposes of Chapter 6 may have limited relevance and it may be reluctant to conduct proceedings under a deed of company arrangement where a company is insolvent and no equity value remains in the shares.¹² However, the Panel also said that there is no exception from section 606 for deeds of company arrangement and that the requirements of Chapter 6 must not be ignored as the position is dependent on the facts of the matter.¹³
36. The materials before us places Wiluna in a distinctly different position from the matters referred to above. Unlike *Pasminco* and the uncertainty present in *Quantum Graphite*, there is evidence here that Wiluna shares retain equity value given Byrncut's acquisition of shares on 27 November 2025 for \$0.725 per share, which is significantly above Wiluna's last traded price prior to delisting. That transaction is an indication that Wiluna's shares retain value notwithstanding the DOCA (which is likely to be, among other things, the result of the recent material increase in the price for gold) and that the rights associated with those shares remain economically meaningful. Further evidence of the equity value is the fact that the Deed Administrators were preparing the company for a proposed IPO. The Deed Administrators did not dispute any conclusion that there was equity value in the Wiluna shares. We consider that the Panel has jurisdiction in the relatively rare circumstances when there is equity value remaining in a company still subject to a DOCA.
37. However, we also remain mindful of the limitation expressed in *Kaefer Technologies Limited 02*, namely that we do not regulate the conduct of administrators as such, nor do we assume the role of a court supervising an administration.¹⁴ However, as *Kaefer* also recognises, we may properly intervene where an administration or DOCA structure is being used in a way that affects control of a company or voting power in a manner inconsistent with the purposes of Chapter 6.¹⁵ The allegations before us concerning undisclosed associations, acquisitions potentially in breach of section 606 and the effect of the 2023 and 2025 convertible funding arrangements relate directly to control transactions rather than the administration process itself.
38. The relevant question for us to consider is whether there is a reasonable prospect that the circumstances alleged by the Applicant could constitute unacceptable circumstances, taking into account the continued existence of shareholder value. Given that the materials indicate that Wiluna shares retain meaningful economic value and the nature of the alleged control effects, we were satisfied that the purposes of Chapter 6 continue to be enlivened.

¹¹ [2002] ATP 6 at [130] and [132]

¹² [2018] ATP 1 at [14]

¹³ [2018] ATP 1 at [14]–[15]

¹⁴ [2004] ATP 16 at [8(b)]

¹⁵ [2004] ATP 16 at [8(c)]

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39. Accordingly, the existence of the DOCA did not preclude our jurisdiction in this matter.

Association

40. The Applicant submitted that there was an undisclosed association between Byrncut and the Delphi Parties, which was said to arise from a series of funding arrangements, changes in shareholdings and the handling of the AIM Offers during Wiluna’s administration.
41. Having reviewed the materials, we were not satisfied that there was sufficient evidence to support an inference that Byrncut and the Delphi Parties were acting, or proposing to act, in concert in relation to the affairs of Wiluna.
42. The Applicant’s submission that Byrncut and the Delphi Parties shared a “common goal” of establishing or maintaining collective control was not supported by any communications or agreements demonstrating coordinated decision-making or conduct pointing to a consensus between them, and depended heavily on implied or assumed motivations rather than demonstrable acts showing a shared common purpose.
43. We did not consider that the entry by Byrncut and Deutsche into funding arrangements on similar terms (including the 2023 Convertible Loan Facilities and the 2025 Convertible Notes) supported an inference of association. It is a judgement for the Deed Administrators as to how they seek funding and how they engage with existing stakeholders. In our view, similarity of commercial terms, without more, does not establish association. Nor did we consider the entry into the Common Terms Deed to be an indication of an association. The materials before us did not demonstrate that the funding terms were the product of joint negotiation or mutual commitment.
44. The Applicant submitted that between the date of a 20 June 2022 substantial holder notice by the Delphi Parties and 5 April 2024 (being the date of Wiluna’s delisting), the Delphi Parties appeared to have sold approximately 10.59% of Wiluna to Byrncut.¹⁶ The Balaton Entities submitted that:

“Byrncut agreed to provide the Byrncut Term Loan at a time when Wiluna was in imminent default under the Mercuria [Loan]. The Balaton Entities were not prepared at that time to advance any further funding to Wiluna of such a magnitude. In order to protect its existing investment, the Balaton Entities were prepared to support any reasonable funding proposition for Wiluna. The Balaton Entities supported the funding proposition put forward by Byrncut and, as part of this proposition, agreed to the grant of the additional security in favour of Byrncut, in priority to the Balaton Entities’ own security position, and to sell 37,854,289 Wiluna shares to Byrncut for nominal consideration of 4.00 AUD. The commercial rationale for this agreement was to ensure that any risk of default under the Mercuria [Loan] was removed, provide more favourable terms for Wiluna with respect to the duration of the facility, and ensure that the remaining shares held by the Balaton Entities,

¹⁶ Wiluna and the Deed Administrators submitted that the transfer occurred in two tranches, on 24 April 2024 and 31 March 2025, after Wiluna was delisted

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being 13%, had a better chance of recreating some value. Accordingly, far from this constituting a transaction with no commercial rationale, as asserted by the Applicant, it was a transaction undertaken with a view to preserving the viability of Wiluna for all shareholders and protect whatever value remained in the Balaton Entities' investment. The transaction did not give the Balaton Entities any rights or powers in relation to controlling the affairs of Wiluna or require the Balaton Entities and Byrnegut to act in concert in relation to the affairs of Wiluna."

45. We consider that the Balaton Entities have provided an adequate commercial rationale for this transaction.
46. In *Mount Gibson Iron Limited*,¹⁷ the Panel stated that it was for the applicant "to demonstrate a sufficient body of evidence of association and to convince the Panel as to that association, albeit with proper inferences being drawn" (commonly referred to as the *Mount Gibson* hurdle).
47. We considered whether the cumulative effect of the Applicant's allegations could collectively satisfy the *Mount Gibson* hurdle. Even when viewed together, the conduct relied upon did not form a coherent pattern indicative of coordinated action. Much of the alleged conduct was consistent with reasonable commercial responses to Wiluna's financial distress and the Deed Administrators' requests for support. In the absence of stronger evidence linking the actions of Byrnegut and the Delphi Parties, we were not prepared to infer association and concluded that the materials did not overcome the *Mount Gibson* hurdle.
48. In coming to this conclusion, we placed weight on the submissions that Byrnegut and the Delphi Parties engaged with Wiluna separately and had been approached independently by the Deed Administrators at different times. The Applicant did not produce evidence that contradicted those accounts or showed that either party subordinated its own interest to those of the other.
49. Furthermore, we did not consider that the Deed Administrators' engagement with Byrnegut and the Delphi Parties, as major stakeholders, provided any basis for a finding of association. The Applicant did not provide evidence showing that either Byrnegut or the Delphi Parties directed or influenced the Deed Administrators' decision in a manner demonstrating collective control.
50. Ultimately, we considered that the Applicant did not provide a sufficient body of material to justify us making further enquiries on the question of an association between Byrnegut and the Delphi Parties. We therefore concluded that there was no reasonable basis to infer an association for the purposes of Chapter 6, and accordingly no basis to aggregate their voting power when assessing control effects under the application.

No effect on the market for control by Deed Administrators

51. Although our role in matters involving external administrators is limited, we considered that it is appropriate to make a few observations about the Deed

¹⁷ [2008] ATP 4 at [15]

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Administrators given the way their conduct was raised in the application. As noted earlier (see paragraph 37), we do not supervise administrators or assess whether they have properly carried out their duties – those are matters for the courts. Our concern is only whether any actions taken during an administration had an effect on control or voting power that engages the purposes of Chapter 6. For example, it is conceivable that, in a situation when there is still value in the equity of a company under administration or a DOCA and the company is subject to competing control proposals, the actions of administrators could act as a form of lock up that may be unacceptable.

52. On the materials before us, however, there was nothing to suggest that the Deed Administrators acted with any purpose other than to progress the administration, secure funding and move Wiluna towards a solvent exit. Their decisions appear to have been driven by Wiluna’s financial needs rather than any preference for a particular stakeholder. The involvement of Byrncut and Deutsche under the 2023 Convertible Loan Facilities and the 2025 Convertible Notes reflected their status as major creditors and shareholders and does not evidence an improper relationship with the Deed Administrators. The funding provided ensured that Wiluna remained operational and allowed existing shareholders to retain the prospect of value through a proposed relisting.
53. We also considered the Applicant’s submission that the Deed Administrators did not present the Applicant’s funding proposals to Wiluna shareholders. Ultimately it is a matter for the Deed Administrators to assess the merits of any such proposals and our role is limited to considering whether or not the fact that proposals were not put, contributes to a body of evidence relevant to the *Mount Gibson* hurdle. From the materials, the AIM Offers were incomplete and lacked the support of Byrncut and the Delphi Parties, the two major shareholders and creditors whose consent or cooperation would have been essential for implementation. In that context, we considered that the Deed Administrators’ decision not to advance the AIM Offers, that had no realistic prospect of securing the necessary stakeholder backing, was a commercial judgement and not conduct affecting control.
54. Taking all of these matters together, we were not satisfied that the conduct of the Deed Administrators had any material effect on the market for control of Wiluna or operated in a way that undermined an efficient, competitive and informed market. Their actions appear to have been directed to the practical needs of the administration rather than to any change in control.

Alleged contraventions of the Corporations Act

Section 606

55. For completeness, we considered that Byrncut did not contravene section 606 in relation to its recent acquisition. We agreed with Byrncut’s submission (see paragraph 30) that the initial increase in its voting power occurred within the 3% creep exception, and the subsequent increase the following day resulted from the Wiluna Buy-Back.

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56. Taken together, the changes in Byrnegut's voting power occurred through mechanisms permitted under section 611 and therefore did not give rise to a breach of section 606.

Section 671B – Substantial holding notice

57. The Applicant submitted that Byrnegut contravened section 671B by not lodging a substantial holding notice in relation to:
- (a) shares acquired under an entitlement offer conducted by Wiluna in May 2022 and
 - (b) the transfer of shares from the Delphi Parties to Byrnegut before the date of Wiluna's delisting from the ASX (5 April 2024).¹⁸
58. Given that Wiluna is no longer listed and any non-disclosure would relate solely to past events, we do not consider it appropriate to require Byrnegut to lodge a corrective substantial holding notice or make a declaration of unacceptable circumstances in relation to any historical contraventions of the substantial holding provisions by Byrnegut.

DECISION

59. For the reasons above, we do not consider that there is any reasonable prospect that we would make a declaration of unacceptable circumstances. Accordingly, we have decided not to conduct proceedings in relation to the application under regulation 20 of the *Australian Securities and Investments Commission Regulations 2001* (Cth).

Michael Lishman

President of the sitting Panel

Decision dated 5 January 2025

Reasons given to parties 16 February 2026

Reasons published 26 February 2026

¹⁸ See footnote 16 above

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Advisers

Party	Advisers
AIM Mining Corporation Limited	Lavan
ByrneCut	HWLE Lawyers
Balaton Entities	Hamilton Locke
Wiluna and Deed Administrators	King & Wood Mallesons
Patronus Invest Pty Ltd	Peloton Legal