



Australian Government

Takeovers Panel

**Reasons for Decision
Cue Energy Resources Limited
2026 ATP 5**

Catchwords:

Decline to conduct proceedings – bidder’s statement – intention statements – pre-bid stake – association – relevant interest – effect on control – efficient, competitive and informed market

Corporations Act 2001 (Cth), sections 602, 606, 624, 671B

Guidance Note 19: Insider Participation in Control Transactions; Guidance Note 23: Shareholder Intention Statements

Keybridge Capital Limited 04, 05 & 06 [2020] ATP 6, Ambassador Oil and Gas Limited 01 [2014] ATP 14, MYOB Limited [2008] ATP 27, Mount Gibson Iron Limited [2008] ATP 4

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

INTRODUCTION

1. The Panel, Constantine Boulougouris, Tonianne Dwyer AM, and Marissa Freund (sitting President), declined to conduct proceedings on an application by Cue in relation to its own affairs. The application concerned an off-market takeover bid announced by Horizon on 2 March 2026, and related arrangements involving Echelon, a substantial shareholder of Cue. The Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable.

2. In these reasons, the following definitions apply.

- Consultancy Agreements** has the meaning given in paragraph 42
- Cue** Cue Energy Resources Limited
- Echelon** Echelon Resources Limited
- Echelon Nominees** has the meaning given in paragraph 6
- Horizon** Horizon Oil Limited
- IBC** has the meaning given in paragraph 10
- Independent Directors** has the meaning given in paragraph 6
- Intention Statement** has the meaning given in paragraph 9
- Pre-Bid Agreement** has the meaning given in paragraph 8(b)
- Pre-Bid Sale Securities** has the meaning given in paragraph 8(b)
- Target Statement** the target statement announced by Cue in response to the Offer dated 7 April 2026

Takeovers Panel

Reasons - Cue Energy Resources Limited [2026] ATP 5

FACTS

3. Cue is an oil and gas exploration and production company listed on the ASX (ASX code: CUE), with a portfolio of assets in Australia, New Zealand, and Indonesia.
4. Horizon is a petroleum production, development and exploration company listed on the ASX (ASX Code: HZN).
5. Echelon is a limited liability company incorporated and domiciled in New Zealand that is engaged in oil and gas exploration and production. It is listed on the ASX (ASX Code: ECH) and is the largest shareholder in Cue, holding a 49.93% interest.
6. Five of Cue's eight directors are directors of Echelon, being Mr Andrew Jefferies, Mr Samuel Kellner, Mr Alastair McGregor, Mr Roderick Ritchie, and Mr Marco Argentieri (the **Echelon Nominees**¹). The three directors who are not associated with Echelon are Mr Peter Hood AO, Mr Ric Malcolm, and Mr Greg Bishop (the **Independent Directors**).
7. Cue, Horizon, and Echelon hold common interests in various oil and gas joint ventures, including interests in the:
 - (a) Mereenie oil and gas field in the Northern Territory (Echelon: 42.5%; Horizon 25%; Cue 7.5%)
 - (b) Palm Valley gas field in the Northern Territory (Echelon: 35%; Cue: 15%)
 - (c) Dingo gas field in the Northern Territory (Echelon: 35%; Cue: 15%) and
 - (d) Maari and Manaia oil fields off the coast of New Zealand (Horizon 26%, Cue 5%).
8. On 2 March 2026, Horizon announced:
 - (a) an off-market takeover bid for all of Cue's fully paid ordinary shares for consideration of 0.5625 Horizon shares and \$0.008 cash per Cue share (the **Offer**), implying an offer price of \$0.143 per Cue share,² and conditional upon minimum acceptances of at least 50.1%, among other conditions and
 - (b) that it had entered into a pre-bid agreement with Echelon (the **Pre-Bid Agreement**) pursuant to which Echelon agreed to sell 139,885,879 Cue shares (equal to approximately 19.99% of Cue's shares) (**Pre-Bid Sale Securities**) to Horizon for consideration of \$0.115 per share. The Pre-Bid Agreement is conditional upon any required Ministerial consent under the *Petroleum (Prospecting and Mining) Act 1980* (NT) being obtained prior to the end of the offer period and is scheduled to occur five business days after the offer period (provided the Offer is declared unconditional).

¹ Who make up five out of the six directors of Echelon

² Based on Horizon's closing price on 27 February 2026 (being the last trading day prior to the announcement of the bid) of \$0.24

Takeovers Panel

Reasons - Cue Energy Resources Limited [2026] ATP 5

9. Also on 2 March 2026, Echelon announced that it intended to accept all Cue shares held or controlled by Echelon other than those the subject of the Pre-Bid Agreement into the Offer 21 days from the opening of the offer period, in the absence of a superior proposal (the **Intention Statement**).
10. On 4 March 2026, Cue announced that the Independent Directors had formed an independent board committee (**IBC**) to consider the Horizon bid and announced that shareholders take no action pending the IBC's consideration of the Offer.

APPLICATION

Declaration sought

11. By application dated 30 March 2026, Cue sought a declaration of unacceptable circumstances. Cue submitted that (among other things):
 - (a) there was an undisclosed association between Horizon and Echelon
 - (b) through its agreement, arrangement or understanding with Echelon and the acquisition of the Pre-Bid Sale Securities, Horizon had reduced the prospect of a potential auction for control developing
 - (c) the Pre-Bid Agreement and the Intention Statement had had a further chilling effect on the auction for control of Cue
 - (d) the conduct of the Nominee Directors in failing to notify the Independent Directors of Horizon's control proposal prior to its announcement magnified the anti-competitive impact of the alleged association between Horizon and Echelon, the Pre-Bid Agreement, and the Intention Statement and
 - (e) there were contraventions of sections 606 and 671B³ by Horizon.
12. Cue submitted that the effect of the circumstances was that the proposed acquisition of control over Cue Shares by Horizon was not taking place in an efficient, competitive and informed market.

Interim orders sought

13. Cue sought interim orders to the effect that Echelon be restrained from accepting the Offer and that Horizon be restrained from processing any acceptances of the Offer.

³ 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)

Takeovers Panel

Reasons - Cue Energy Resources Limited [2026] ATP 5

Final orders sought

14. Cue sought final orders to the effect that (amongst other things):
 - (a) Echelon be released from the Intention Statement
 - (b) Echelon be prevented from accepting the Offer or committing to do so prior to the earlier of:
 - (i) 10 business days after Horizon announces all regulatory conditions under the Offer are satisfied and
 - (ii) 5 business days after the IBC recommends that Cue shareholders accept the offer by Horizon under its takeover bid for Cue
 - (c) Horizon and Echelon be required to amend the Pre-Bid Agreement to the effect that completion cannot occur until the date specified in order 14(b)
 - (d) Echelon be required to accept into (or, in the case of a scheme, vote in favour of) a superior proposal (to the extent one is received prior to the date specified in order 14(b))
 - (e) all Cue shareholders who have accepted the Offer on or before the date of the Panel's orders have a right to withdraw their acceptances
 - (f) Horizon be required to lodge with ASIC, ASX and dispatch to Cue shareholders a supplementary bidder's statement in the form approved by the Panel and
 - (g) Horizon and Echelon provide corrective substantial shareholder disclosure in a form acceptable to the Panel.

DISCUSSION

Initial Undertaking

15. On 7 April 2026, the Panel executive asked Echelon whether it would be willing to undertake to extend the date from which it intends to accept the Offer until 13 April 2026, noting that under the Intention Statement, Echelon could accept the Offer from 9 April 2026. At this time, we were still considering the materials and deciding whether to conduct proceedings.
16. On 8 April 2026, we accepted an undertaking from Echelon (see Annexure A) not to accept the Offer (other than in respect of Cue shares held or controlled by Echelon subject to the Pre-Bid Agreement) before 13 April 2026.

Effect of the Pre-Bid Agreement and Intention Statement

17. Cue submitted that the Pre-Bid Agreement and Intention Statement together have the effect of deterring potential rival bidders and impeding an efficient, competitive and informed market for the acquisition of control over Cue shares. Cue submitted that the Intention Statement does not allow reasonable time for a superior proposal to emerge and that, given the Pre-Bid Agreement is scheduled to complete after the Offer closes, the timing of Echelon's acceptance of the Offer under the Intention

Takeovers Panel

Reasons - Cue Energy Resources Limited [2026] ATP 5

Statement was uncommercial because it is likely to register and become unconditional before the Pre-Bid Securities are transferred.

18. We received preliminary submissions from Horizon and Echelon.
19. Echelon submitted that the commercial context in which it entered into the Pre-Bid Agreement and provided the Intention Statement had been misrepresented by Cue. Echelon submitted it has been a major shareholder of Cue for over 11 years and in that time, it *“had not been approached in relation to any credible control transaction”*. Echelon submitted that its investment in Cue is illiquid and, if the Offer was to be successful, its acceptance *“would enable it to continue to maintain its exposure to the Cue assets in a larger group, at a premium to where Cue’s shares have been trading and with a higher degree of confidence in the liquidity of those shares.”*
20. Echelon further submitted that (among other things):
 - (a) the Intention Statement fully complied with Guidance Note 23 and provided a meaningful opportunity for an alternative bidder to come forward and
 - (b) the timing of completion of the Pre-Bid Agreement was commercial and consistent with the principles in section 602, noting that it is conditional on the Offer being declared unconditional (including satisfaction or waiver of the 50.1% minimum acceptance condition).
21. Horizon submitted that *“[t]he 21-day period adheres to the Panel-endorsed approach to timing and qualification of intention statements and is proportionate to the bid structure and timetable in this case”*. Horizon also noted that Cue’s Target Statement included the following disclosure:

“As at the date of this Target’s Statement, Cue has not received any competing proposal from a third party, nor have any discussions occurred that the Independent Board Committee believes are likely to lead to any superior proposal being made.”
22. We formed the preliminary view that the Intention Statement was consistent with Guidance Note 23 and that, on the available information, there were no serious concerns with the commerciality of the arrangements between Horizon and Echelon in the context of the Offer. However, we were mindful that Guidance Note 23 acknowledges that the amount of time that is considered reasonable for a superior proposal to emerge will depend on the circumstances, and that there may be circumstances that mean a period of longer than 21 days is appropriate. We therefore asked the parties whether there were any extenuating circumstances that might cause the Panel to consider that the 21-day period here is not a reasonable time.
23. Horizon and Echelon each submitted that there were no extenuating circumstances, including because:
 - (a) any alternative bidder for Cue has been aware of the Intention Statement since 2 March 2026 (a period of approximately 5 weeks to when the acceptance takes effect), which is sufficient time for a superior proposal to emerge and

Takeovers Panel

Reasons - Cue Energy Resources Limited [2026] ATP 5

- (b) the 21-day period is well understood by the market and there are no cases where the Panel has required a period of greater than 21 days, only that Guidance Note 23 outlines circumstances where a shorter period may be appropriate.⁴
24. Cue submitted that there were extenuating circumstances, including because:
- (a) the Pre-Bid Agreement and Intention Statement evidenced a high degree of coordination and cooperation between Horizon and Echelon, which together had the effect of locking up Echelon's interest in Cue
 - (b) there is a clear link between the 21-day period referred to in Guidance Note 23 and the minimum bid period of 1 month set out in section 624 and, because the offer period in this case was greater than 1 month, a longer acceptance period would be reasonable
 - (c) there was no rational explanation for Echelon's early acceptance of the Offer in circumstances where the Offer remains highly conditional and
 - (d) the offer structure and conduct of participants (specifically, the Echelon Nominees) further supports the view that the 21-day period is unreasonable.
25. We were not satisfied that, on the materials provided, there were any extenuating circumstances that might cause the 21-day period to be unreasonable. We consider that Horizon and Echelon provided adequate commercial rationale for the Pre-Bid Agreement and Intention Statement (see further below at paragraph 38) and we were not convinced that any nexus between Guidance Note 23 and section 624 required Echelon to wait longer than 21 days before accepting into the Offer. In addition, as Echelon and Horizon submitted (see paragraph 23(a)), the fact that any potential alternative bidder for Cue had been aware of the Offer since approximately 2 March 2026 and that Cue had (as at the date of the Target Statement) not received any competing proposal, nor was having any discussions that were likely to lead to any superior proposal being made, further supported our view that there were no extenuating circumstances.

Notification by Echelon Nominees

26. Guidance Note 19 provides at [11]–[12] that (footnotes omitted):

The Panel considers that insiders should promptly inform the board or any relevant sub-committee of the target of any approaches that might lead to a control proposal, taking into account the likelihood of the underlying control proposal being made. The Panel considers that insiders should take reasonable steps to ensure that any conflict (real or perceived) is avoided until appropriate disclosure to the board or relevant sub-committee has been made.

In any event, the Panel expects insiders to inform the board or any relevant sub-committee of any approaches that might lead to a control proposal being made prior to entering or proposing to enter into any agreement, arrangement or understanding with the proponent of the potential control proposal, where such agreement, arrangement or understanding might

⁴ See Guidance Note 23: Shareholder Intention Statements at footnote 12

Takeovers Panel

Reasons - Cue Energy Resources Limited [2026] ATP 5

curtail the board's or any relevant sub-committee's opportunity to consider the proposal or any competing proposal.

27. Cue submitted that the Echelon Nominees are “plainly ‘insiders’ for the purposes of [Guidance Note 19]” and failed to notify the Independent Directors of Horizon’s approach prior to announcement of the Offer. Cue submitted this prevented it from (among other things):
- (a) engaging with Horizon with knowledge of its control proposal with a view to agreeing a transaction that the Independent Directors were minded to recommend
 - (b) being able to test the market for control of Cue prior to the Offer being announced or
 - (c) forming an IBC prior to the Offer being announced.
28. Echelon submitted that, at all times, the Echelon Nominees discharged their duties as directors of Cue and fully complied with Guidance Note 19. Echelon submitted that:
- (a) where a director of a major shareholder is approached by a bidder, it owes a duty of confidence to the shareholder and to the extent a conflict arises, this situation “can be managed, including where appropriate through the nominee director being excluded from consideration of the control transaction” and
 - (b) as part of the public consultation process on Guidance Note 19 in 2022–2023, the proposed definition of “insider” was revised to exclude capturing a shareholder receiving material non-public information “through that person’s nominee on the board of a target”.
29. Guidance Note 19 acknowledges the topic of insider participation is complex and context-specific, and that the Panel’s approach to the principles set out in the guidance note is one of substance over form.⁵ As the Panel explained in *Keybridge Capital Limited 04, 05 & 06*,⁶ conflict management is a matter for a company’s board at first instance, and our role is to assess the arrangements put in place and whether they give rise to unacceptable circumstances.
30. Applying our commercial judgment, the timing of the notification by the Echelon Nominees did not appear to us to be unreasonable in the circumstances for the following reasons:
- (a) the Echelon Nominees were placed in the difficult position of weighing potentially conflicting duties of confidentiality owed to Echelon (as a major shareholder) and of care and diligence to Cue (as a potential target in a control transaction)
 - (b) there was no indication that the Echelon Nominees’ actual or potential conflicts of interest have influenced any decisions made by Cue in relation to the

⁵ See *Guidance Note 19: Insider Participation in Control Transactions* at [6]

⁶ [2020] ATP 6 at [103]

Takeovers Panel

Reasons - Cue Energy Resources Limited [2026] ATP 5

Horizon bid after the bid was announced, noting that an IBC was formed on the same day and the Echelon Nominees have not participated in any of the IBC's deliberations in relation to the Offer

- (c) there was no material to suggest that the Echelon Nominees disclosed any confidential material non-public information in relation to Cue and
- (d) an earlier notification by the Echelon Nominees (e.g. prior to the announcement of the bid) was unlikely to have a material impact on the Offer in the circumstances.

Association

31. Cue submitted that there is an undisclosed association between Horizon and Echelon as a result of acting in concert or otherwise entering into an agreement, arrangement or understanding in respect of Cue. The association was alleged to have arisen because (in summary):
- (a) there had been a high degree of coordination between Horizon and Echelon in relation to the conduct of the Offer and that the circumstances were analogous to *MYOB Limited*⁷ and *Ambassador Oil*⁸
 - (b) there were serious concerns with the commerciality of the Pre-Bid Agreement and the details of the Intention Statement and
 - (c) there were a number of common investments between Cue, Horizon and Echelon relating to various participating interests in oil and gas joint ventures, which (whilst common in the oil and gas sector) demonstrates close business links and, together with the Pre-Bid Agreement and the Intention Statement, provides a strong basis to infer "*the ability to insert greater collective control over the joint assets in which they currently maintain an interest*".
32. In relation to the commerciality of the Pre-Bid Agreement and Intention Statement, Cue submitted that:
- (a) the consideration under the Pre-Bid Agreement represented a material discount to the implied Offer value
 - (b) there was no commercially rational reason for the Intention Statements to be released approximately 13 minutes after the announcement of the Offer and
 - (c) the timing of the Intention Statement relative to the scheduled completion of the Pre-Bid Agreement was uncommercial.
33. As noted in paragraph 22, we formed the preliminary view that there were no serious concerns with the commerciality of the arrangements between Horizon and Echelon in the context of the Offer. Echelon submitted that, in relation to the timing of the Intention Statement relative to the Pre-Bid Agreement, it was in Echelon's

⁷ [2008] ATP 27

⁸ [2014] ATP 14

Takeovers Panel

Reasons - Cue Energy Resources Limited [2026] ATP 5

interests for the Offer to complete promptly and that it otherwise had no awareness as to when the conditions to the Offer will be satisfied.

34. Horizon submitted that the Pre-Bid Agreement was negotiated at arm's length and that the consideration of the Pre-Bid Agreement was consistent with the longer-term volume-weighted average price of Cue shares. It also submitted that the Offer consideration was structured to comply with the minimum bid price rule, and that it did not follow that the pricing of the Pre-Bid Agreement was uncommercial.
35. Echelon and Horizon also made submissions to the effect that if Echelon disposes all of its holdings in Cue under the Pre-Bid Agreement and the Offer, the relevant joint venture interests held by Echelon, Horizon and Cue do not change. Echelon would move from holding 49% of Cue to holding 6% of Horizon (assuming Horizon acquires 100% of Cue under the bid) which cannot be characterised as giving rise to "greater collective control".
36. The Panel's starting point for an association matter is that it is 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.⁹
37. Here, based on the materials before us, we do not consider that the application provided a sufficient body of material to justify us making further inquiries. Aside from the Pre-Bid Agreement and Intention Statement, there is limited material to support an inference of Echelon and Horizon acting in concert or otherwise entering into an agreement, arrangement or understanding in respect of Cue.
38. We consider that Horizon and Echelon provided an adequate commercial rationale for the Pre-Bid Agreement and Intention Statement. Similar structures are not uncommon in the market and do not, of themselves, support an inference of association. The fact that the Pre-Bid Agreement was priced at a discount to the Offer did not raise serious concerns in this case. There was no evidence to suggest that the Pre-Bid Agreement was not negotiated on arm's length terms or to suggest that Echelon was acting inconsistent with its interests as a long-term major shareholder in Cue.
39. We were also not persuaded that the circumstances in *MYOB Limited* or *Ambassador Oil* were sufficiently analogous to support Cue's case on association. *MYOB Limited* involved an unqualified acceptance statement to accept into a bid as soon as the offer was open, and *Ambassador Oil* involved an intention to accept "within" 14 days of the offer opening with evidence also of "board, family and employment links" between the relevant parties. We did not consider the facts here share the same features of unacceptability that may give rise to an inference of association.
40. Whilst structural links or common investments may be relevant in determining whether an association is likely to exist, we were not satisfied that, on the materials provided, the arrangements go beyond ordinary business relationships or links that are common in the oil and gas sector. The materials did not demonstrate that

⁹ See *Mount Gibson Iron Limited* [2008] ATP 4 at [15]

Takeovers Panel

Reasons - Cue Energy Resources Limited [2026] ATP 5

Echelon would have an ability to “insert greater collective control over the joint assets” by virtue of its common investments with Horizon.

41. Accordingly, we concluded that there was not a sufficient body of material to warrant us making further enquiries on the allegation of association.

Standstill

42. Cue alleged Echelon had breached a “no trading or tipping” provision in consultancy agreements dated 1 July 2019 and 5 August 2020 to which Echelon and Cue are parties (the **Consultancy Agreements**). The Consultancy Agreements contained the following clause:

"If, and for so long as, information held by [the Consultant] is "inside information" of the Company in terms of the Financial Markets Conduct Act 2013 or "Material Information" of the Company in terms of the listing rules of the New Zealand Exchange Limited or the ASX Limited, the Consultant undertakes that it will not directly or indirectly, purchase or otherwise trade in any securities of the Company or advise any other person to purchase or otherwise trade in such securities, and it will immediately notify the Company that it holds "inside information" or "Material Information"."

(the **Standstills**)

43. Cue submitted that while the agreements expired on 30 June 2025, there had been correspondence between the parties about extending the arrangements to 30 June 2027 (but no express confirmation of the extension date had yet been made). Cue also submitted that Echelon has continued, and is continuing, to provide services to Cue and regularly invoices them.
44. Echelon submitted that the Standstills have no relevance in this matter, and that at the time that Echelon entered into the Pre-Bid Agreement, it satisfied itself that it did not hold any material non-public information (other than the transactions which Horizon were clearly aware of and which is an exception to the insider trading prohibition). While Echelon’s submissions relied on the premise that the Consultancy Agreements are on foot and contain all of the terms that are in the expired agreement from 5 August 2020, Echelon did not consider this to be the case.
45. We do not consider that there was a reasonable prospect that the alleged contravention of the Standstills would amount to unacceptable circumstances. It is unclear to us whether the Consultancy Agreements are enforceable on their face, but even if they were, we do not consider the application provided a sufficient body of material to justify us making further inquiries, noting that the terms of the Standstills are in effect a contractual commitment to comply with insider trading provisions.

Takeovers Panel

Reasons - Cue Energy Resources Limited
[2026] ATP 5

DECISION

46. 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).
47. Given that we have decided not to conduct proceedings, we do not (and do not need to) consider whether to make any interim or final orders.

Marissa Freund

President of the sitting Panel

Decision dated 10 April 2026

Reasons given to parties 19 May 2026

Reasons published 2 June 2026

Takeovers Panel

Reasons - Cue Energy Resources Limited
[2026] ATP 5

Advisers

Party	Advisers
Cue Energy Resources Limited	Gilbert + Tobin
Echelon Resources Limited	Herbert Smith Freehills Kramer
Horizon Oil Limited	Mallesons



Australian Government

Takeovers Panel

Annexure A

**AUSTRALIAN SECURITIES AND
INVESTMENTS COMMISSION ACT 2001 (CTH) SECTION 201A
UNDERTAKING**

CUE ENERGY RESOURCES LIMITED

Echelon Resources Limited (**Echelon**) undertakes to the Panel that, without the Panel's consent, it will not accept the off-market takeover bid made by Horizon Oil Limited (**Horizon**) for all of the ordinary shares in Cue Energy Resources Limited (**Cue**) in which Horizon does not have an interest, in respect of any Cue shares held or controlled by Echelon (other than those the subject of the pre-bid agreement between Echelon and Horizon dated 2 March 2026), before Monday, 13 April 2026.

**Signed by Andrew Jefferies of Echelon Resources Limited
with the authority, and on behalf, of
Echelon Resources Limited
Dated 8 April 2026**