



Australian Government

Takeovers Panel

Reasons for Decision Cygnus Metals Limited [2026] ATP 13

Catchwords:

Decline to conduct proceedings – scheme of arrangement – intention statements – no disposal statements – pre-bid stake – call option – deal protection – disclosure – efficient, competitive and informed market

Corporations Act 2001 (Cth), sections 191(2)(a)(i), 195(1A)(b), 608(1)(2)

Guidance Note 7: Deal protection, Guidance Note 19: Insider Participation in Control Transactions, Guidance Note 23: Shareholder Intention Statements, ASIC Regulatory Guide 25 Takeovers: False and misleading statements

Cue Energy Resources Limited [2026] ATP 5, Humm Group Limited [2026] ATP 4, Dropsuite Limited [2025] ATP 10, RHG Limited [2013] ATP 10, MYOB Limited [2008] ATP 27, Vision Systems Limited 01 [2006] ATP 32

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

INTRODUCTION

- The Panel, Chelsey Drake, Sylvia Falzon AM and Bruce McLennan (sitting President), declined to conduct proceedings on an application by Foboce Pty Ltd and Natalie Obrart in relation to the affairs of Cygnus Metals Limited. The application concerned the proposed acquisition of all ordinary shares in Cygnus by Central Asia Metals PLC under a scheme of arrangement and allegations of undisclosed insider participation, anticompetitive deal protection, and material market information deficiency. The Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable.
- In these reasons, the following definitions apply.

Announcement	the announcement regarding the Scheme dated 2 June 2026
Applicants	Foboce Pty Ltd (ACN 003 538 707) and Natalie Obrart
Call Option	has the meaning given in paragraph 12(c)
CAML	Central Asia Metals PLC
Cygnus	Cygnus Metals Limited
Equinox Partners	Equinox Partners Investment Management LLC
Intention Statements	statements described in the Announcement that shareholders (including OP Holdings, Equinox Partners and their respective associates) which together currently own and/or control votes in relation to 29% of Cygnus shares intend to vote all Cygnus shares they hold directly or indirectly in favour of the Scheme in the absence of a superior proposal and subject to an

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	independent expert concluding the Scheme is in the best interests of Cygnus shareholders
No Disposal Statements	has the meaning given in paragraph 12(b)
Ocean Partners	OP Holdings and OP UK
OP Holdings	Ocean Partners Holdings Limited
OP UK	Ocean Partners UK Limited
Pre-Committed Block	as described by the Applicants, the shareholders who provided the Intention Statements referred to in paragraph 12(a)
Scheme	the proposed scheme of arrangement described in the SID
Scheme Booklet	the explanatory statement required under s412(1) ¹ to accompany the notice of meeting to approve the Scheme
Scheme Consideration	has the meaning given in paragraph 10
SID	has the meaning given in paragraph 10
UPEA	has the meaning given in paragraph 5

FACTS

3. Cygnus is a diversified critical minerals exploration and development company listed on ASX (ASX code: CY5) and dual-listed on the Toronto Securities Venture Exchange (TSX-V code: CYG).
4. CAML is a base metals producer quoted on the AIM market of the London Stock Exchange (AIM: CAML).
5. On 17 September 2025, Cygnus announced a 78% increase in measured and indicated mineral resources at its Chibougamau Copper-Gold Project which Cygnus said would underpin an updated Preliminary Economic Assessment (**UPEA**).
6. On 27 October 2025, Cygnus announced that it expected to complete the UPEA in the March 2026 quarter.
7. On 13 March 2026, Cygnus carried out a \$25 million placement at \$0.16 per share.
8. As at 27 March 2026, Cygnus' substantial holders were Ocean Partners, with voting power of 12.8%, and Equinox Partners, with voting power of 12.4%.
9. On 15 May 2026, Cygnus announced that the UPEA was in progress and expected to be completed "*this year*".

¹ Unless otherwise indicated, all statutory references are to the *Corporations Act 2001* (Cth), and all terms used in Chapter 6 or 6C have the meaning given in the relevant Chapter (as modified by ASIC)

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10. On 2 June 2026, Cygnus and CAML announced that they had entered into a Scheme Implementation Deed (**SID**) under which CAML agreed to acquire 100% of Cygnus shares for 0.06 new CAML shares per Cygnus share (**Scheme Consideration**), giving an implied value of \$0.176 per share based on CAML's 1 June 2026 closing price and an exchange rate of 1 AUD = 0.53 GBP. The Announcement stated that the UPEA would be completed by CAML.
11. The SID contained deal protection measures including:
 - (a) reciprocal break fees of approximately A\$2.3 million (1% of Cygnus' implied equity value)
 - (b) no-shop, no-talk, no-due-diligence, notification and matching right provisions.
12. The Announcement also indicated that:
 - (a) four shareholders (including Ocean Partners and Equinox Partners) with combined voting power of approximately 29% in Cygnus, had indicated their intention to vote in favour of the Scheme "*in the absence of a superior proposal emerging (as determined and announced by the Cygnus Board in accordance with the SID)*" and subject to the independent expert concluding, and continuing to conclude, that the Scheme is in shareholders' best interests (**Intention Statements**).
 - (b) OP Holdings and Equinox Partners (with combined voting power of approximately 25.1% in Cygnus) had confirmed that they would not dispose of their shares until the earlier of the date on which Cygnus shareholders are asked to approve the Scheme and the date four months from their intention statements (**No-Disposal Statements**).
 - (c) CAML had entered into a call option deed with Ocean Partners in respect of 9.9% of their Cygnus Shares giving CAML the right to acquire those shares for 0.06 CAML Shares per Cygnus Share (**Call Option**) if:
 - (i) Cygnus has received a competing proposal or any person (including Cygnus) publicly announces a competing proposal and
 - (ii) the Cygnus Board has announced that a competing proposal is a superior proposal (together with (i), **Call Option Conditions**).

On satisfaction of the Call Option Conditions, CAML may exercise the Call Option at any time until the earlier of: (1) 6 months after 2 June 2026, (2) the date of implementation of the Scheme, (3) the date 10 business days after the date the SID is validly terminated, provided that no new scheme implementation deed or takeover bid or other control proposal is announced by CAML or any other CAML group member within that 10 business day period and (4) such other date and time agreed in writing between Ocean Partners and CAML before that date.
13. On 4 June 2026, CAML gave a notice of initial substantial holder disclosing a relevant interest in 9.9% of Cygnus shares under the Call Option, a copy of which was attached.

APPLICATION

Declaration sought

14. By application dated 22 July 2026, the Applicants sought a declaration of unacceptable circumstances. The Applicants submitted that unacceptable circumstances arose from:
 - (a) undisclosed insider participation in respect of the SID as a result of a director of Cygnus, Mr Omland, also being a director of Ocean Partners, which granted CAML the Call Option
 - (b) anti-competitive deal protection mechanisms, including the Intention Statements, No Disposal Statements and the Call Option and
 - (c) material market information deficiency due to Cygnus "*withholding from the market*" the UPEA.
15. The Applicants submitted that the effect of the circumstances was to:
 - (a) render their vote as minority shareholders ineffective
 - (b) remove their right to receive a superior or alternative control premium
 - (c) coerce them into voting on a transaction where competitive bids have been structurally excluded
 - (d) artificially suppress Cygnus' shares price by failure to release the UPEA and
 - (e) force transformation of their investment from an ASX-listed growth asset into foreign-domiciled scrip.

Orders sought

16. The Applicants do not seek any interim orders. The Applicants sought final orders to the effect that (among other things):
 - (a) Cygnus disclose to the market:
 - (i) Mr Omland's roles within Ocean Partners and relationship with the Call Option and Pre-Committed Block and
 - (ii) its conflict management protocols and independent board committee arrangements
 - (b) Cygnus release the UPEA or the material technical and economic information underlying it (to the extent permitted), and the scheme meeting not be held until a time determined by the Panel after release
 - (c) Cygnus directors who made Intention Statements and Ocean Partners must vote in the same proportions as votes cast by independent Cygnus shareholders and
 - (d) CAML be restrained from exercising the Call Option.

DISCUSSION

Insider participation

17. The Applicants submitted that a benefit flowing to Ocean Partners (whether the Scheme completes or the Call Option is exercised) is a benefit to Mr Omland within Guidance Note 19.² The Applicants submitted that this should be considered in the context of:
 - (a) lack of any indication that Cygnus conducted any auction, tender or go-shop before accepting CAML's proposal and
 - (b) the Call Option only being exercisable on a unanimous declaration by the Cygnus board (which Mr Omland could veto) of a superior proposal that would trigger the Call Option "*and defeat the very proposal just declared superior*".
18. We received preliminary submissions from CAML and Cygnus.
19. CAML submitted that:
 - (a) Cygnus' ASX disclosures indicated that Cygnus considered Mr Omland to be independent of Ocean Partners
 - (b) ASIC and the Court would consider any actual or potential conflicts, and the adequacy of disclosure, when reviewing the Scheme Booklet and
 - (c) given Mr Omland's statutory and fiduciary duties, it was not correct that he had a "*veto*" over the determination of a superior proposal.
20. Cygnus submitted that:
 - (a) The Applicants' complaints were all within the purview of the Court's scrutiny of the Scheme and the Court was the appropriate forum for any issues to be addressed.
 - (b) Mr Omland's role at Ocean Partners had been disclosed to Cygnus shareholders.
 - (c) Cygnus is not a party to the Call Option and Ocean Partners entering into the Call Option did not make Mr Omland a "participating insider" under Guidance Note 19 unless there was a competing or superior proposal (in which case Cygnus would manage any participation by Mr Omland in the consideration of the competing proposal in accordance with Guidance Note 19).
21. We agree with Cygnus that, on the material before us and in the absence of a competing or superior proposal, Mr Omland does not appear to be a "participating insider". He is clearly an insider, but Guidance 19 makes clear the Panel's intention that:³

... *the description of participation should not include:*

...

² Citing Guidance Note 19: *Insider Participation in Control Transactions* at [8(a)]

³ Guidance Note 19: *Insider Participation in Control Transactions* at [10(b)]

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b. any participation in a control transaction which is on the same terms^[footnote omitted] as afforded to all other shareholders in the target¹⁸.

18 This exception applies to circumstances where an insider enters into an agreement with the bidder pursuant to which the insider agrees to sell its shares in the target to the bidder (i.e., what is commonly referred to as a “pre-bid agreement”), but only to the extent that the consideration being paid to the insider is the same as that available under the bid to all other shareholders in the target (see *North Queensland Metals Limited* 02 [2010] ATP 7 at [23] and *Payne v Adelaide Steamship Co Ltd & ORS* (1976) 14 ACLR 252)

22. The material before us suggests that Ocean Partners’ interests are aligned with other shareholders⁴ who wish to sell their shares for the best price currently available, albeit that Ocean Partners appears to have decided that a better offer than CAML’s is unlikely. The Call Option supports that alignment as it confirmed that Ocean Partners itself was not seeking to increase its stake or acquire control.⁵
23. Ocean Partners may receive less than other shareholders, given the Call Option can only be exercised where a superior proposal (presumably offering more) has been declared. In that context, other shareholders may be able to sell their shares on-market for more than the Scheme Consideration’s value or otherwise wait for the superior proposal to complete. If the Call Option is exercised, Ocean Partners has certainty of receiving the Scheme Consideration (but no more) for at least 9.9%. The Applicants submit that this is not participation on the same terms as other shareholders as exercise of the Call Option “*delivers Ocean Partners a certain exit of its 9.9% while every other shareholder loses the superior proposal and remains in a company with an entrenched 9.9% blocker*”. However, a 9.9% stake in the hands of CAML will not necessarily block a superior proposal that involves a scheme or takeover bid with a 50.1% minimum acceptance condition. Assessed as a matter of substance,⁶ we do not consider that the Call Option confers a “benefit” on Ocean Partners that is not afforded to other Cygnus shareholders.⁷ In our view, footnote 18 of Guidance Note 19⁸ was not intended to imply that an insider receiving less than the consideration available to all other shareholders makes that person a participating insider.
24. Accordingly, we were not satisfied there was sufficient material to warrant investigating whether Mr Omland was a participating insider or had a conflict of interest. That may change if a competing proposal emerges. Cygnus submitted that it would manage any participation by Mr Omland in accordance with the requirements of Guidance Note 19 if that occurs. Cygnus offered (without admission) an undertaking to that effect. We would expect Cygnus to comply with Guidance Note 19, but did not consider it necessary to require an undertaking.

⁴ See ss 191(2)(a)(i), 195(1A)(b)

⁵ Compare *Humm Group Limited* [2026] ATP 4 at [156]-[161], [166]

⁶ *Guidance Note 19: Insider Participation in Control Transactions*, footnote 17

⁷ If the Call Option is exercised and within 12 months CAML acquires 100% of Cygnus under a scheme, or at least 50.1% under a takeover bid, clauses 4.1 and 4.2 of the Call option give Ocean Partners an uplift in certain circumstances. In our view, as a matter of substance, this seeks to put Ocean Partners in an equivalent position (subject to s 622) as other shareholders if the consideration offered is increased

⁸ See paragraph 22

Anti-competitive deal protection

25. The Applicants submitted that potential competitive bidders are structurally dissuaded or prevented from making a superior proposal due to the combination of the:
- (a) Pre-Committed Block
 - (b) Call Option
 - (c) No-Disposal Statements and
 - (d) additional deal protection measures (reciprocal break fees, no-shop, no-talk, no-due-diligence, notification and matching- right provisions).
26. We address each of these before considering their combined effect.

Pre-Committed Block

27. The Pre-Committed Block consisted of four shareholders making Intention Statements of intention to vote in favour of the Scheme, subject to “superior proposal” and “expert opinion” qualifications. The Applicants did not submit that the Intention Statements were inconsistent with the Panel’s guidance.⁹
28. The Applicants submitted that the Pre-Committed Block operated as a “*hard veto*” over competing arrangements requiring shareholder approval and foreclosed “*meaningful competition for control of Cygnus*”.
29. CAML and Cygnus disagreed. CAML submitted that the Intention Statements were given to Cygnus, not CAML, and cease to bind the maker upon a superior proposal emerging.
30. We agree with CAML and Cygnus that the Intention Statements do not give a “*veto*” and shareholders are free to vote for a superior proposal. The Intention Statements are no doubt intended to make it clear that any competing proposal will need to be superior. We do not consider that inconsistent with an efficient, competitive and informed market.

Call Option

31. The Applicants submitted, among other things, that the Call Option:
- (a) was granted for no fee and is terminable at will by CAML only
 - (b) is a lock-up device which converts “*into a blocking stake in CAML’s hands upon the declaration of a superior proposal*”
 - (c) contains a “Tail Provision” that “*prevents a rival bidder from triggering a termination of the SID (which would otherwise cause the call option to lapse)*”, allowing CAML to convert from a scheme to takeover bid.
32. CAML and Cygnus both made submissions to the effect that the Applicants had misconstrued the “Tail Provision” and that it does not affect termination of the SID

⁹ Guidance Note 23: Shareholder intention statements. See also *Cue Energy Resources Limited* [2026] ATP 5 at [17]-[22]

but rather prevents the Call Option expiring if CAML seeks to match a superior offer within 10 business days.

33. CAML submitted that:

- (a) call options are not unusual in Australian M&A and do not prevent a superior proposal for the target emerging
- (b) entry into the Call Option facilitated CAML proceeding with the Scheme proposal
- (c) the Application does not demonstrate how the Call Option is inconsistent with Panel precedent that pre-deal arrangements with shareholders below 20% are generally not unacceptable.

34. We agree with CAML and Cygnus that a call option or other pre-bid stake of up to 20% is not, of itself, ordinarily anti-competitive or unacceptable.¹⁰ There must, of course, be proper compliance with Chapter 6C, other applicable laws and regulatory requirements. Subject to that, its availability as a strategy may have potential to promote a competitive market. A pre-bid stake can confer an advantage, or equalise a disadvantage, but it is also not without risk.

35. In our view, the Call Option was not, of itself, anti-competitive or unacceptable.

No-Disposal Statements

36. The Applicants submitted that the No-Disposal Statements:

- (a) had the effect that 25.1% of the Cygnus register was contractually unavailable to any rival bidder and
- (b) conferred nothing on Cygnus or its shareholders – their only function being to protect CAML from competition.

37. CAML submitted that the No-Disposal Statements:

- (a) reflected a market move, in response to recent Panel decisions,¹¹ to clarify in voting intention statements whether a shareholder is preserving its ability to dispose of shares prior to the vote and
- (b) did not mean the shares are “contractually unavailable” to a rival bidder since, if there is a superior proposal, the voting intention statements would no longer bind the shareholder and the SID would be terminated.

38. We accept that the No-Disposal Statements helpfully clarify the effect of voting intention statements on the outcome of a vote. We also agree with CAML that such statements do not mean the shares are “contractually unavailable” to a rival bidder. We assume that the No-Disposal Statements, like the Intention Statements, were given to Cygnus, not CAML,¹² for no consideration. If so, it appears likely that the

¹⁰ See eg *Cue Energy Resources Limited* [2026] ATP 5, *RHG Limited* [2013] ATP 10 at [37], *MYOB Limited* [2008] ATP 27 at [37], *Vision Systems Limited 01* [2006] ATP 32 at [4], [30]–[31]

¹¹ citing *Dropsuite Limited* [2025] ATP 10

¹² See paragraph 31

No-Disposal Statements are not binding, but that ASIC or the Panel may seek to prevent a person resiling from them in accordance with “truth in takeovers” and ASIC’s Regulatory Guide 25 Takeovers: False and misleading statements. That may mean such statements do not give any person a sufficient degree of power or control over disposal to give rise to a relevant interest.¹³ However, that may not always be the case.

39. We were not satisfied that the No-Disposal Statements “*protect[ed] CAML from competition*” inconsistently with the purposes in section 602. If a superior proposal emerges, we expect that shareholders who made the Intention Statements and No-Disposal Statements would support it. If they do not, that may constitute new circumstances that could form the basis of another application.

Additional deal protection and combined effect

40. The Application referred to additional deal protection mechanisms¹⁴ in the SID which it said were “*[i]ndividually unremarkable*” but completed the structure when layered on the Pre-Committed Block, the Call Option and the Non-Disposal Statements.
41. Cygnus submitted that the additional deal protection mechanisms:
- (a) were not uncommon in Australian transactions (with examples given)
 - (b) comply with applicable regulatory guidance and judicial commentary
 - (c) were subject to ‘fiduciary carve-out’, ‘no superior proposal’ and ‘expert opinion’ exceptions that help ensure they are not coercive or anti-competitive (individually or collectively).
42. Cygnus submitted that the Applicants did not say how the combined effect of the deal protection measures they objected to were coercive or anti-competitive.
43. CAML made similar submissions, adding that all aspects of the deal protection mechanisms had been fully disclosed to the market (which would be repeated in the Scheme Booklet).
44. We accept that a combination of deal protection mechanisms, together with other factors and circumstances, may increase the anti-competitive or coercive effect so as to give rise to unacceptable circumstances.¹⁵ However, we were not satisfied that was the case here, as the deal protection arrangements in the SID were not unusual or extreme, in our experience. We note (for example) that they did not relate to a non-binding proposal¹⁶, did not give “hard” exclusivity without a fiduciary out¹⁷, and included a reciprocal break fee that did not exceed 1%.¹⁸

¹³ Section 608(1)(2)

¹⁴ reciprocal break fees, no-shop, no-talk, no-due-diligence, notification and matching-right provisions

¹⁵ See eg *Guidance Note 7: Deal protection* at fn1, paragraphs [5]-[12]

¹⁶ See eg *Guidance Note 7: Deal protection* at fn1, paragraphs [39]-[41],[51]

¹⁷ See eg *Guidance Note 7: Deal protection* at fn1, paragraphs [42]-[47]

¹⁸ See eg *Guidance Note 7: Deal protection* at footnote 1, [48]-[49]

Information deficiency

45. The Applicants submitted that by entering into the SID while the UPEA remained unreleased and announcing simultaneously that the UPEA would only be released after completion of the transaction and by CAML, the Cygnus board denied shareholders and the market the information they required to properly assess the merits of CAML's proposal.
46. Cygnus submitted, among other things, that:
- (a) it does not possess a draft or completed UPEA
 - (b) it had announced the reasons for the delayed completion and release of the UPEA, and would further explain the status of the UPEA in the Scheme Booklet
 - (c) the Applicants had erroneously conflated the absence of a particular technical study with a failure of disclosure.
47. CAML made similar submissions, adding that:
- (a) any rival bidder conducting due diligence (which the fiduciary exception facilitates) will be able to access the same information CAML had in formulating its offer (as also will the Independent Expert preparing the report for the Scheme Booklet)
 - (b) the Scheme Booklet had been lodged with ASIC for review and the Applicants had formally lodged a complaint with ASIC regarding these matters, making it inappropriate for the Applicants to subsequently commence these proceedings, on the same issues, to have them heard in multiple forums.
48. We were not satisfied that the Application provides a sufficient basis to investigate whether Cygnus:
- (a) withheld information that could properly be announced or
 - (b) improperly delayed completing the UPEA.
49. Furthermore, to the extent that further information can and should be provided, we consider that the Court is the appropriate forum to examine that and its significance for the Scheme. We consider that the Application is premature in raising such issues before ASIC and the Court have had opportunity to consider them.

Combined effect of circumstances

50. As set out above, we considered that:
- (a) there was insufficient material to warrant investigating whether Mr Omland was a participating insider or had a conflict of interest
 - (b) the use of the Intention Statements did not appear to be inappropriate
 - (c) the Call Option was not, of itself, anti-competitive or unacceptable
 - (d) the No-Disposal Statements did not "*protect CAML from competition*" and
 - (e) Cygnus had not been shown to have withheld information that could properly be announced or improperly delayed completing the UPEA.

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51. We were not satisfied that the circumstances identified by the Application, even when considered in combination, warranted further enquiry or commencing proceedings.

DECISION

52. 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).
53. 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.

Bruce McLennan

President of the sitting Panel

Decision dated 3 August 2026

Reasons given to parties 21 September 2026

Reasons published 7 October 2026

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Advisers

Party	Advisers
Foboce Pty Ltd ACN 003 538 707	-
Natalie Obrart	-
Cygnus Metals Limited	Hamilton Locke
Central Asia Metals PLC	Corrs Chambers Westgarth