Australian Government

Takeovers Panel

Reasons for Decision
Dropsuite Limited
[2025] ATP 10

Catchwords:

Shareholder intention statement – truth in takeovers – substantial holder notice – scheme of arrangement – declaration – orders

Corporations Act 2001 (Cth), sections 671B, 657C(2)(d)

Guidance Note 1: Unacceptable Circumstances, Guidance Note 4: Remedies General, Guidance Note 23: Shareholder Intention Statements

ASIC Regulatory Guide 25 – Takeovers: false and misleading statements

Yowie Group Limited 01 & 02 [2019] ATP 46, Tribune Resources Ltd [2018] ATP 18, Finders Resources Limited 03R [2018] ATP 11, Ambassador Oil & Gas Limited [2014] ATP 14, Bullabulling Gold Limited [2014] ATP 8, Ludowici Limited 01R(a) and (b) [2012] ATP 4, Ludowici Limited [2012] ATP 3, MYOB Limited [2008] ATP 27, Golden West Resources Limited 03 and 04 [2008] ATP 1, Summit Resources Limited [2007] ATP 9, Austral Coal 02 [2005] ATP 13, Village Roadshow Limited 01 [2004] ATP 4, BreakFree Limited 04R [2003] ATP 42, BreakFree Limited 03 and 04 [2003] ATP 38 & 39, National Can Industries Limited [2003] ATP 35, ISIS Communications Ltd [2002] ATP 10

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

INTRODUCTION

1. The Panel, Bruce McLennan (sitting President), Deborah Page AM and Kate Towey made a declaration of unacceptable circumstances in relation to the affairs of Dropsuite. The application concerned a statement contained in an announcement by Dropsuite that Topline (Dropsuite's largest shareholder) intended to vote in favour of a proposed scheme pursuant to which Dropsuite would be acquired by NinjaOne, and subsequent significant disposals of Dropsuite shares by Topline which it failed to disclose in a timely manner. The Panel considered that, while the statement was ambiguous as to whether Topline implied it would not dispose of Dropsuite shares prior to the scheme meeting, timely disclosure of the disposals would have clarified the position. After the application was made, Topline disclosed further disposals. The Panel considered these were contrary to the intention stated in a second statement made by Topline and that it again failed to disclose in a timely manner. The Panel made orders requiring Topline to maintain and vote its remaining Dropsuite shares in favour of the scheme, subject to certain qualifications.

2. In these reasons, the following definitions apply.

Applicant	Harvest Lane Asset Management Pty Ltd
Dropsuite	Dropsuite Limited

First Intention Statement	has the meaning given in paragraph 5
First On-Market Sales	has the meaning given in paragraph 6
Intention Statements	the First Intention Statement and the Second Intention Statement
NinjaOne	NinjaOne, LLC and NinjaOne Australia Pty Ltd
On-Market Sales	the First On-Market Sales and the Second On-Market Sales
Proposed Scheme	has the meaning given in paragraph 4
RG 25	ASIC Regulatory Guide 25 – Takeovers: false and misleading statements
Scheme Meeting	has the meaning given in paragraph 9
Second Intention Statement	has the meaning given in paragraph 7
Second On-Market Sales	has the meaning given in paragraph 15
Topline	Topline Capital Management, LLC

FACTS

3. Dropsuite is an ASX listed company (ASX code: DSE) which provides cloud backup, archiving and recovery services.

4. On 28 January 2025, Dropsuite announced that it had entered into a scheme implementation deed with NinjaOne under which NinjaOne[1] had agreed to acquire 100% of Dropsuite's ordinary shares for $5.90 per share in cash via a scheme of arrangement (**Proposed Scheme**).

5. In its announcement, Dropsuite made the following statements (**First Intention Statement**) regarding its largest shareholder, Topline, which had been approved by Topline on 23 January 2025:

   (a) *"Dropsuite's largest shareholder, Topline Capital Management, LLC, which holds or controls approximately 31.0% of the Company's issued capital[5] as at the date of this announcement, has confirmed to Dropsuite that it intends to vote, or cause to be voted, all Dropsuite shares held or controlled by it in favour of the Scheme, subject to the same qualifications.*

   …

   [5] As at the date of this announcement, Topline Capital Management, LLC holds or controls approximately 21.6m Dropsuite shares, representing approximately 31.0% of the Dropsuite shares on issue on an undiluted basis".

   (b) *"Dropsuite's largest shareholder, Topline Capital Management, LLC, which as at the date of this announcement, holds or controls approximately 21.6 million Dropsuite*

[1] Through NinjaOne Australia Pty Ltd

shares or 31.0% of the Company's issued capital on an undiluted basis, has confirmed to Dropsuite that it intends to vote, or cause to be voted, all Dropsuite shares held or controlled by it in favour of the Scheme in the absence of a Superior Proposal and subject to an Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interest of Dropsuite shareholders".

6. Between 28 January 2025 and 6 February 2025 (inclusive), Topline disposed of Dropsuite shares on-market, decreasing its voting power from 21,639,316 shares (31.0%) to 13,829,409 shares (19.7%) (**First On-Market Sales**). During this period, Topline's undisclosed position changed by at least 1% on 28 January, 29 January, 31 January and 4 February 2025. However, it only disclosed its change in voting power in one substantial holder notice on 18 February 2025.[2]

7. Topline's 18 February 2025 substantial holder notice stated *"Topline Capital continues to firmly support Dropsuite being acquired by NinjaOne. The share sales were made because of an unforseen (sic) need for liquidity and because the position became a large percent of the portfolio. Topline Capital intends to hold its remaining shares through the close of the transaction and vote in favor of the transaction"* (**Second Intention Statement**).

8. On 11 March, 12 March and 14 March 2025, 3 institutions respectively lodged notices of initial substantial holder in relation to their substantial shareholdings in Dropsuite.[3]

9. On 2 April 2025, Dropsuite released the scheme booklet for the Proposed Scheme disclosing, among other things, that the meeting of Dropsuite shareholders to consider and vote on the scheme (**Scheme Meeting**) would be held on 9 May 2025.

APPLICATION

10. By application dated 17 March 2025, the Applicant sought a declaration of unacceptable circumstances. It submitted (among other things) that:

    (a) The First Intention Statement did not indicate that Topline had reserved the right to sell Dropsuite shares before voting in favour of the Proposed Scheme. Therefore, a reasonable investor would have concluded that Topline intended to maintain its 31% interest and vote that interest in favour of the Proposed Scheme.

    (b) The First On-Market Sales indicate that the First Intention Statement may have been given *"on a knowingly misleading basis"*.

    (c) Even if the First On-Market Sales were contemplated in the First Intention Statement, Topline failed to disclose those transactions within the time required by section 671B,[4] creating a false market in Dropsuite shares to Topline's benefit.

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[2] The ASIC Form 604 was lodged by Topline's associate, Topline Capital Partners LP (being the registered holder of the Dropsuite shares)

[3] A fourth institution also lodged a notice of initial substantial holder on 14 March 2025, however this was due to a relevant interest arising under section 608(3) in the Dropsuite shares that one of the other institutional investors had a relevant interest in

[4] 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)

11. The Applicant submitted that the effect of the circumstances was that *"without knowledge in [the] market that Topline had no intention to maintain its 31.0% interest and that it was a material seller, it likely achieved a higher sale price and sold more shares than might otherwise have been the case. Anyone transacting in Dropsuite shares between 28 January and 18 February were transacting on an uninformed basis to the benefit of Topline"*.

Interim orders sought

12. The Applicant sought interim orders that Topline *"be prevented from any further selling of shares"*.

Final orders sought

13. The Applicant sought final orders that Topline *"is required to return to and vote a 31.0% interest in favour of the scheme of arrangement at the relevant scheme meeting, in line with paragraph 12a and 12d of Takeovers Panel Guidance Note 23, such that it remains compliant with the [First Intention Statement]"*.

DISCUSSION

14. We have considered all the material presented to us in coming to our decision, but only specifically address those matters that we consider necessary to explain our reasoning.

Second On-Market Sales

15. On 18 March 2025 (the day after the application was submitted), Topline lodged another substantial holder notice disclosing that its voting power in Dropsuite had further decreased from 13,829,409 shares (19.7%) to 7,363,034 shares (10.5%) following various on-market sales of Dropsuite shares between 27 February 2025 and 17 March 2025 (inclusive) (**Second On-Market Sales**). During this period, Topline's undisclosed position changed by at least 1% on 28 February, 11 March, 12 March and 14 March 2025. However, it only disclosed its change in voting power in the one substantial holder notice on 18 March 2025.[5]

Interim orders

16. 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.

17. Topline submitted that:

    (a) It was prepared to give an undertaking that it would ensure that Topline Capital Partners LP (the registered holder of Topline's Dropsuite shares) did not dispose of its remaining 7,363,034 Dropsuite shares until the earliest of: (1) the determination of the proceedings or (2) the date which was two business days after Topline Capital Partners LP served a notice terminating the undertaking on the Panel and the Applicant, or the Panel otherwise made further orders in respect of Topline's shares.

[5] The ASIC Form 604 was lodged by Topline's associate, Topline Capital Partners LP (being the registered holder of the Dropsuite shares)

(b) Accordingly, no interim orders were required.

18. The Applicant submitted that the interim orders sought in its application should be made because:

(a) The Second On-Market Sales, which Topline had again failed to disclose within the time required by section 671B, were contrary to the intention stated in the Second Intention Statement.

(b) Having regard to this (which only became apparent the day after the application was submitted) and the matters raised in the application concerning the First Intention Statement and First On-Market Sales, Topline had:

(i) shown no intention to comply with its intention statements or its disclosure obligations

(ii) shown an intention to "*wilfully act in an opposite manner to its public representations, indicating that statements have been made to market on a deliberately misleading basis*" and

(iii) acted in a manner that conflicts with the operation of section 602.

19. The Acting President made interim orders (see Annexure A) which provided that without the prior consent of the Acting President or the Panel (once appointed), Topline, Topline Capital Partners LP and their associates must not: (1) sell, transfer or otherwise dispose of any shares or interests in shares in Dropsuite or (2) decrease their voting power in Dropsuite.

20. In making these interim orders, the Acting President considered it relevant that the undertaking offered by Topline could be terminated by Topline upon giving two days' notice. In the Acting President's view, this introduced a risk that could undermine the preservation of the status quo.

Decision to conduct proceedings

21. On 21 March 2025, Topline made preliminary submissions in response to the application, submitting that we should decline to conduct proceedings because, among other things:

(a) Topline's contraventions of section 671B were in each case an honest, inadvertent and administrative oversight caused by a combination of limited resources, extraordinarily volatile market conditions which materially affected its business, and the personal circumstances of its sole manager.

(b) The form of the First Intention Statement is very common in the Australian market and cannot be reasonably understood to restrict Topline from disposing of any Dropsuite shares.

(c) The Second Intention Statement did clearly suggest that Topline would not dispose of shares in Dropsuite. However, it was "*unlikely to have been actually relied upon by persons considering whether or not to trade in Dropsuite shares. The statement was contained in fine print as a footnote at the very back of the substantial holding notice*".

(d) Topline genuinely had no intention, at the time it approved the First Intention Statement or made the Second Intention Statement, to dispose of any Dropsuite shares. Further, it did not understand the potential for such statements to be binding under ASIC's 'truth in takeovers' policy as opposed to non-binding statements of current intention only.

(e) There were no unacceptable circumstances because there had been no impact on an efficient, competitive and informed market or other relevant adverse impact. In support of this, Topline submitted that:

(i) market participants who bought shares from Topline were very unlikely to vote against the Proposed Scheme because it would be economically irrational to do so[6] and

(ii) since Topline provided disclosure pursuant to section 671B, there had not been any material movement in trading price in Dropsuite shares. In particular:

(A) Dropsuite's closing price on the date it announced the Proposed Scheme (28 January 2025) was $5.74

(B) Dropsuite's closing price on the dates Topline disclosed the First On-Market Sales (on 18 February 2025) and Second On-Market Sales (on 18 March 2025) was $5.75 and $5.76 respectively

(C) Dropsuite's average closing price throughout the period from 28 January to 20 March 2025 (inclusive) was $5.76 and

(D) the average price at which Topline sold shares pursuant to the On-Market Sales was $5.75.

(f) While the Applicant suggested that market participants would have assigned a higher probability of a successful vote in favour of the Proposed Scheme, leading to a willingness to pay higher prices due to a lower perceived risk profile, the actual trading data set out above was inconsistent with this argument.

(g) There were no final orders which would be appropriate to remedy the circumstances, and the specific final orders sought by the Applicant would be unfairly prejudicial to Topline.

(h) The Applicant should have been aware of the relevant circumstances from 18 February 2025 following the lodgement of Topline's substantial holder notice on that date, however the application was not made until one month later. Therefore, the application was unreasonably delayed which in part contributed to the circumstances.

22. In our view, the matters raised in the application and Topline's subsequent disclosure of the Second On-Market Sales raised concerns that warranted further enquiry, including in relation to the application of ASIC's 'truth in takeovers' policy

[6] Topline submitted that initial substantial holder notices lodged since 28 January 2025 (see paragraph 8) suggest that purchasers of Topline's shares were financial investors likely to be motivated to behave in an economically rational manner

to the Intention Statements and Topline's contraventions of section 671B in connection with the On-Market Sales. Accordingly, we decided to conduct proceedings.

Standing

23. It was unclear based on the application how the Applicant's interests were affected by the relevant circumstances. To confirm whether the Applicant had standing under section 657C(2)(d) to make an application, we asked it to confirm the nature and extent of its interest in Dropsuite (and when it acquired its interest).[7]

24. The Applicant confirmed that it had a relevant interest in 1,986,276 Dropsuite shares, representing voting power of approximately 2.85%. It acquired most of these shares on-market on 28 January 2025 – the date on which the Proposed Scheme was announced and the First Intention Statement was made. The Applicant submitted that it was an asset management company operating a merger arbitrage investment strategy focused on corporate activity events, and that it acquired its Dropsuite shares at a discount to the Proposed Scheme consideration with a view to profiting from the successful implementation of the transaction.

25. Based on the Applicant's response, we were satisfied that its interests were affected by the relevant circumstances and it therefore had standing under section 657C(2)(d) to make an application.

Truth in takeovers

26. ASIC's 'truth in takeovers' policy is contained in RG 25. Under the policy, substantial holders risk regulatory action by ASIC, or an application by ASIC or another party for a declaration of unacceptable circumstances, where they depart from a public statement regarding their intentions in relation to a bid.[8]

27. The Panel has endorsed 'truth in takeovers' principles and RG 25 in several decisions,[9] subject to the duty of the Panel to exercise its powers in accordance with the *Corporations Act 2001* (Cth), including by complying with section 657A in making a declaration and section 657D in making orders.[10]

28. The general application of the policy to the Panel's jurisdiction was described in *BreakFree Limited 03 & BreakFree Limited 04*[11] as follows (footnotes omitted):

> *"110. We consider that, in general, ASIC's truth in takeovers policy is an important and appropriate policy to apply in the context of takeovers in Australia.*

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[7] An applicant does not need to be a shareholder to have standing as *"any other person whose interests are affected by the relevant circumstances"* for the purposes of section 657C(2)(d), although in practice this will usually be the case

[8] See RG 25 at [25.29] (although, as explained at paragraph 29 of these reasons, RG 25 does not expressly apply to schemes of arrangement)

[9] Including some involving intention statements by shareholders (although the Panel did not make orders holding shareholders to their statements in these decisions). See for example: *Ambassador Oil & Gas Limited* [2014] ATP 14, *Bullabulling Gold Limited* [2014] ATP 8, *MYOB Limited* [2008] ATP 27, *Golden West Resources Limited 03 and 04* [2008] ATP 1, *BreakFree Limited 04R* [2003] ATP 42 and *BreakFree Limited 03 and 04* [2003] ATP 38 & 39

[10] *Finders Resources Limited 03R* [2018] ATP 11 at [12]

[11] [2003] ATP 38 & ATP 39

111. Requiring persons to act in accordance with statements that they have made to the market concerning their intentions in the context of a takeover bid under Chapter 6 promotes the principle set out in section 602(a) that one of the purposes of Chapter 6 is to ensure that:

> *the acquisition of control over… the voting shares in a listed company… takes place in an efficient, competitive and informed market*

112. Clearly, the market will be better informed if it is able to rely on people acting, or being required to act, in accordance with their public statements of their own intentions. Of course, as is noted in [RG 25], it is possible for a person to make a public statement but still retain flexibility in relation to the subject matter of the statement if the statement is appropriately qualified".

29. The Panel has also considered that the 'truth in takeovers' policy applies to both takeover bids and schemes of arrangement. In *Ludowici Limited*,[12] the Panel stated as follows (at [39], footnotes omitted):

> *"[ASIC's 'truth in takeovers' policy] does not expressly apply to schemes of arrangement. This may be because of the significant differences between takeovers and that form of control transaction. Nevertheless, ASIC keeps a watchful eye on statements made in the context of schemes. [A party] submitted 'we ask how this policy cannot apply to schemes?' We agree that, generally, the policy should apply in a scheme context. But its application may be different to its application in a takeover context".*

30. We agree with the Panel in *Ludowici Limited* and believe that ASIC's 'truth in takeovers' policy applies in the circumstances of this case.

First Intention Statement and First On-Market Sales

31. We asked the parties whether the First Intention Statement should have indicated that Topline had reserved the right to sell Dropsuite shares before voting in favour of the Proposed Scheme (and whether the fact it did not do so indicated to the market that Topline intended to maintain its 31% interest and vote that interest in favour of the Proposed Scheme).

32. The Applicant and NinjaOne submitted (among other things) that the First Intention Statement should have included such a qualification, and that the omission conveyed to the market that Topline intended to retain its 31% interest and vote that interest in favour of the Proposed Scheme.

33. ASIC submitted (among other things) that:

    (a) It was open for the market to have read the First Intention Statement in several ways. Therefore, to prevent an inference that Topline may have committed to maintain its voting power, the First Intention Statement should have been clearer about the possibility that Topline's voting power might change by the time of the Scheme Meeting. An express statement that Topline had reserved its right to sell Dropsuite shares before the Scheme Meeting would have implied that possibility.

[12] [2012] ATP 3

(b) As contemplated by Guidance Note 23: Shareholder Intention Statements,[13] the First Intention Statement may have been misleading because it was expressed in terms that are unclear in meaning or ambiguous.[14]

(c) Where similar shareholder intention statements are provided at the announcement of a scheme, the shareholder will generally not dispose its shares, and shareholders may have interpreted the First Intention Statement in the context of that market practice.

(d) The First Intention Statement indicates Topline's support for the Proposed Scheme, but the act of disposing its shares undermines this.

(e) Market participants might also have placed weight on Topline's significant 31% voting power to conclude disposal was neither intended nor likely. Firstly, a 31% shareholding is a potentially decisive amount to the success of a scheme. Secondly, any disposal between announcement and the Scheme Meeting would generally occur at below the consideration offered, which appears economically irrational in the absence of disclosure about the possibility, intent or need for disposal.

34. Dropsuite submitted (among other things) that:

(a) In considering how the market would have interpreted the First Intention Statement, one must consider the statement without regard to the subsequent actions by Topline and in light of the market practice in the formulation, and interpretation, of such statements.

(b) The First Intention Statement did not need to state expressly that Topline had reserved the right to sell shares in order to be free to take such action, and did not indicate to the market that Topline would not sell any shares.

(c) The wording of the First Intention Statement is similar to that used in many recent voting intention statements and is not understood to restrict the maker of the statement from disposing of target shares. Accordingly, "*[i]f the Panel now decides that, as a matter of policy, a person who gives a voting intention statement is prevented from selling (or otherwise dealing in) any of their shares unless they expressly reserve the right to sell (or to otherwise deal in) their shares, this would be a material new development… If this position is adopted, it is reasonable to expect that voting intention statements will start to be accompanied by long lists of qualifications as the persons giving such statements will feel the need to seek to 'cover the field' in terms of all the actions that they could take in the future (eg selling shares, buying shares, stock lending, granting of security interests, transfer of shares to related bodies corporate etc)*".

35. Topline submitted (among other things) that:

(a) It genuinely had no intention at the time it approved the First Intention Statement to dispose of any Dropsuite shares, and the disposals resulted from

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[13] At [8(a)] and [8(b)]

[14] Similarly, RG 25 sets out ASIC's policy position on ambiguous or confusing statements at [25.67] – [25.70], which suggests that a true statement may be misleading if it is inadequately explained

subsequent investor withdrawals in the last week of January 2025 and margin calls in early February 2025 onwards.

(b) Regardless of Topline's intention, the First Intention Statement cannot reasonably be understood to restrict Topline from disposing of Dropsuite shares (and it was not understood by Topline to have this effect).

(c) The form of statement represented by the First Intention Statement is very common in the Australian market and it has never been understood to act as a standstill restricting the disposal or acquisition of shares in the target during the period from making the statement to the scheme meeting.

36. As is apparent from the parties' divergent interpretations, it was open for the market to have read the First Intention Statement in several ways. In our view, the First Intention Statement was ambiguous as to whether Topline had implied it would not dispose of any Dropsuite shares prior to the Scheme Meeting.

37. In and of itself, this is not unacceptable and, in most cases, statements in the form of the First Intention Statement are unlikely to give rise to concerns from a Panel perspective. This is particularly so where the shareholder does not dispose of any of its shares, or if it does, the resulting decrease in voting power is small and disclosed within the time required by section 671B.

38. The ambiguity in the First Intention Statement would have been clarified on 30 January 2025 if Topline had lodged a substantial holder notice by that date as it was required to do. However, this did not occur and in contravention of the substantial holder provisions, Topline instead waited until 18 February 2025 to disclose the First On-Market Sales. For the following reasons we think this was unacceptable.

39. The decrease in Topline's voting power was significant. We agree with the Applicant that "*[a] declaration to vote 19.7% in favour of a scheme of arrangement is materially different from a declaration to vote 31% in favour (with increased materiality when taken in context of shareholder turnout rates of less than 100%)*".

40. We acknowledge that it is not common market practice for shareholder intention statements to expressly reserve the right to sell shares and such reservations weaken the strength of the commitment. While we do not consider that statements in the form of the First Intention Statement are prima facie misleading,[15] we agree with ASIC that:

(a) where such shareholder intention statements are provided at the announcement of a scheme, the shareholder will generally not dispose its shares[16] and shareholders may have interpreted the First Intention Statement in the context of that market practice and

[15] As contemplated by Guidance Note 23: Shareholder Intention Statements – see paragraph 33(b)

[16] Or at least not a substantial portion of its shares, as occurred in this case. Accordingly, we do not consider it particularly persuasive in this context that (as submitted by Topline and Dropsuite) the wording of the First Intention Statement is similar to that used in several other recent shareholder intention statements

(b) market participants might also have placed weight on Topline's 31% voting power to conclude disposal was neither intended nor likely.

41. Accordingly, to prevent an inference that Topline may have committed to maintain its voting power, the First Intention Statement could have been clearer about the possibility that Topline's voting power might change before the Scheme Meeting. This is particularly so given the significance of Topline's holding and because as a leveraged fund, it is (and was) especially exposed to market volatility and the risk of margin calls and withdrawal requests forcing it to sell shares (as submitted by Topline). Furthermore, Topline began selling shares the same day the Proposed Scheme and the First Intention Statement were announced (i.e. 28 January 2025). While we acknowledge that Topline consented to the inclusion of the First Intention Statement on 23 January 2025 (i.e. five days earlier) we consider the proximity of Topline selling shares to the date of the First Intention Statement indicates that Topline was likely aware its voting power might change before the Scheme Meeting.

42. We also note that Topline was expressly advised by Dropsuite – when seeking approval for the First Intention Statement – that the First Intention Statement was *"…akin to a formal confirmation from your part, so you should consider getting a specialized lawyer to give you counsel"*. It did not do so. In our view, Dropsuite's suggestion was appropriate, and it would have been better practice for Topline to obtain legal advice before approving the First Intention Statement.[17]

43. We consider that the significant decrease in Topline's voting power and the ambiguity of the First Intention Statement (especially given the context in which it was made and the higher-than-usual likelihood that Topline would dispose of shares) exacerbate the severity of Topline's contraventions of the substantial holder provisions. These circumstances created a real risk that the market would not be properly informed about the Proposed Scheme's prospects of obtaining shareholder approval, given the appearance of support from a 31% shareholder. In that context, timely disclosure of the First On-Market Sales, as required under section 671B, was particularly important. Topline's failure to do so deprived the market of material information during a live control proposal for Dropsuite and, in our view, rendered the contraventions especially concerning.[18]

Second Intention Statement and Second On-Market Sales

44. The Second On-Market Sales were only disclosed by Topline the day after the application was submitted. Therefore, the application did not allege any non-compliance with the Second Intention Statement or contraventions of the substantial holder provisions in connection with the Second On-Market Sales by Topline.

45. Nonetheless, our preliminary view was that these matters are logically connected to the application and should be considered.[19] We shared this preliminary view with the parties, none of whom disagreed, and accordingly we consider that the Second

[17] See also paragraph 62(b)
[18] The effect of the circumstances is further discussed at paragraphs 48 to 57
[19] See *BreakFree Limited 04(R)* [2003] ATP 42 at [47]-[49]

Intention Statement and Second On-Market Sales are logically connected to the application.

46. Unlike the First Intention Statement, the Second Intention Statement clearly stated that "*Topline Capital intends to hold its remaining shares through the close of the transaction and vote in favor of the transaction*". Accordingly, we consider that the Second On-Market Sales were clearly contrary to the intention stated in the Second Intention Statement.[20]

47. As mentioned, Topline was also required under section 671B to lodge substantial holder notices in relation to the Second On-Market Sales on 4 separate occasions, being by 4 March, 13 March, 14 March and 18 March 2025 respectively, but only disclosed its change in voting power in one notice on 18 March 2025.

Effect of the circumstances

48. We asked the parties whether the circumstances had any impact on an efficient, competitive and informed market in Dropsuite shares or any other relevant adverse effect, and whether the rights or interests of any person, or group of persons, have been or are being affected, or will be or are likely to be affected, by the circumstances.

49. The Applicant submitted (among other things) that "*[a]nyone transacting in Dropsuite shares since the First Intention Statement has been affected… If Dropsuite fails to secure shareholder support for the Proposed Scheme, particularly as a direct result of Topline's disposal transactions, the share price is likely to fall to levels prior to the Proposed Scheme, inflicting losses*".

50. NinjaOne submitted (among other things) that "*[t]here remains a risk to NinjaOne and its investors that their rights or interests may have been affected by Topline having sold 20.5% of the issued share capital, if such shares are acquired by a rival bidder or otherwise voted against the [Proposed] Scheme*".

51. Dropsuite submitted (among other things) that the circumstances surrounding Topline had a limited impact on the price or trading volume of Dropsuite shares, providing an analysis of Dropsuite's trading volume and pricing over the relevant period in support.

52. Topline largely cross-referred to its preliminary submissions set out in paragraphs 21(c) and 21(e).

53. ASIC submitted that it generally agreed that Topline's substantial holder notices lodged on 18 February 2025 and 18 March 2025 did not materially move the market for Dropsuite shares. However, it also submitted (among other things) that the overall circumstances undermined the principles of an efficient, competitive and informed market because the market was not properly informed about Topline's intentions and disposals, and shareholders may have acquired or chosen not to sell shares on the basis the Proposed Scheme appeared to have the support of a 31% shareholder, making it more likely although not inevitable that the Proposed Scheme would be approved.

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[20] We also note that Topline submitted that "*[b]y contrast with the First [Intention] Statement, Topline accepts that [the Second Intention Statement] does clearly suggest that Topline will not dispose of shares in Dropsuite*"

54. We agree with ASIC that the absence of material movement in Dropsuite's share price – or a clearly quantifiable benefit and detriment – does not necessarily mean the circumstances had no impact on an efficient, competitive and informed market. The market was uninformed about Topline's intentions or its disposals for extended periods during a live control proposal. The principal objective of the substantial holder provisions is to disclose to the market the whereabouts of shares which might affect control.[21] The substantial holder provisions support the overall policy of Chapter 6, as set out in section 602, which includes the objectives that: (a) control over shares in companies is acquired in an efficient, competitive and informed market,[22] and (b) directors and shareholders in a company know the identity of a person who proposes to acquire a substantial interest in the company.[23] In this case, the repeated and substantial delays in disclosing the On-Market Sales during a live control proposal undermined those principles.

55. Furthermore, as a result of the circumstances, the First Intention Statement now only relates to 10.5% of Dropsuite shares (compared to 31%), impacting the certainty of the Proposed Scheme being approved at the Scheme Meeting. In this regard, we agree with NinjaOne that there remains a risk from a deal certainty perspective to NinjaOne if the shares sold by Topline are acquired by a rival bidder or otherwise voted against the Proposed Scheme.[24]

56. As mentioned, Topline also submitted that the Second Intention Statement "*was unlikely to have been actually relied upon by persons considering whether or not to trade in Dropsuite shares. The statement was contained in fine print as a footnote at the very back of the substantial holding notice at the end of the annexure containing details of the trades and consideration. It is unlikely to have been identified by market participants and was not reported on in any public commentary or announcements by Dropsuite*".

57. While we agree that the Second Intention Statement was not prominently disclosed, we do not consider this materially reduced the effect of the circumstances as described above. We consider that market participants were likely to have paid more attention to the details in Topline's substantial holder notice, given Topline disclosed a significant disposal of Dropsuite shares after the First Intention Statement was made.

Alleged inadvertence of conduct

58. We asked the parties what significance (if any) we should attribute to Topline's submissions that it acted inadvertently or without awareness of the consequences of its conduct (see paragraphs 21(a) and 21(d)).

59. Topline submitted (among other things) that:

    (a) In considering whether there have been unacceptable circumstances, the Panel's focus is "*the effect of the circumstances on persons and the market in light of*

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[21] *Austral Coal 02* [2005] ATP 13 at [159]

[22] *Village Roadshow Limited 01* [2004] ATP 4 at [51] and [75-[78] and cases there cited

[23] Section 602(b) and *National Can Industries Limited* [2003] ATP 35 at [62(a)]

[24] Though we acknowledge Topline's submissions that market participants who bought shares from it are unlikely to vote against the Proposed Scheme because it would be economically irrational to do so

the principles in s602".[25] Further, consistent with section 657A(1), the Panel has stated that it does not consider "*that s675A(2)(c) operates to provide automatically that any contravention or a likely contravention of Chapter 6, 6A, 6B or 6C is per se unacceptable*".[26]

(b) The Panel has previously taken into account whether conduct was "*inadvertent and unintended*" in determining that there were no unacceptable circumstances and considered that an honest and accidental contravention of a particular section of Chapter 6 may not be unacceptable if it *"has not had any relevant adverse effect"*.[27]

60. The Applicant submitted that:

(a) "*Ignorance of relevant laws should not be sufficient to absolve a market participant of its transgressions*".

(b) After lodging its delayed substantial holder notice in relation to the First On-Market Sales on 18 February 2025, Topline had ample opportunity to avail itself of the disclosure requirements of section 671B and ASIC's 'truth in takeovers' policy to avoid a repeat transgression, yet it failed to do so.

61. ASIC submitted that:

(a) The Panel has generally attributed limited significance to submissions that a substantial shareholder has acted inadvertently or without awareness when breaching Chapter 6C.[28]

(b) Topline has invested in Chapter 6 entities since at least 2020 and lodged at least 30 substantial holder notices since that time. It is the responsibility of substantial shareholders to make themselves aware of their obligations under the law.

62. We agree with the Applicant and ASIC that Topline's submissions that it acted without awareness or inadvertently should be given limited weight in the circumstances. In reaching this conclusion, we consider the following to be relevant:

(a) While Guidance Note 1: Unacceptable Circumstances states (at footnote 28) that "*[a]n honest and accidental contravention [of the law] may not be unacceptable if it has not had any relevant adverse effect*", in this case, there was an adverse effect – most notably, that the principles of an efficient, competitive and informed market were undermined (see paragraph 54). While Topline's submissions offer explanations for its conduct, those explanations do not excuse these effects.

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[25] Guidance Note 1: Unacceptable Circumstances at [24]
[26] *Yowie Group Limited 01 & 02* [2019] ATP 46 at [46]
[27] *ISIS Communications Ltd* [2002] ATP 10 at [66] (noting this was a decision in relation to a contravention of section 606)
[28] For example, in *Tribune Resources Ltd* [2018] ATP 18 at [70], the Panel considered it was not for the Panel to determine whether parties could rely on a defence for civil liability to contraventions of Chapter 6C and, even in the event that such defences could be established, the existence of any such defence would not preclude the Panel from making a declaration of unacceptable circumstances

(b) Topline's submissions that it acted inadvertently or without awareness of the consequences of its conduct are difficult to accept in relation to both its non-compliance with the Second Intention Statement and its contraventions of the substantial holder provisions concerning the Second On-Market Sales. As mentioned, Topline was expressly advised by Dropsuite – when seeking approval for the First Intention Statement – that the First Intention Statement was *"…akin to a formal confirmation from your part, so you should consider getting a specialized lawyer to give you counsel"*. It was also notified by Dropsuite of its failure to comply with the substantial holder provisions in connection with the First On-Market Sales, after which it lodged its substantial holder notice on 18 February 2025. Despite this, Topline proceeded to act inconsistently with the Second Intention Statement and again failed to comply with the substantial holder provisions in relation to the Second On-Market Sales.

(c) Topline is not an unsophisticated investor that might more reasonably rely on limited knowledge or inadvertence – rather, it is a sophisticated fund with US$504 million under management which held voting power of 31% in a company with a current market capitalisation of approximately $400 million.

(d) Topline has lodged at least 19 substantial holder notices in respect of Dropsuite shares since it became a substantial holder in 2020, and the majority appear to have been lodged within the time required by section 671B, indicating familiarity with the substantial holder provisions. Furthermore, ASIC's submission that Topline has invested in Chapter 6 entities since at least 2020 and lodged at least 30 substantial holder notices since that time was not rebutted by Topline.

Timeliness

63. As mentioned, Topline submitted that the application was unreasonably delayed which in part contributed to the circumstances (see paragraph 21(h)).

64. We do not agree that the application was unreasonably delayed, particularly in the context of the likely timing of the Proposed Scheme. The timing of the Applicant's actions appears to have been guided by a reasonable and considered assessment of the relevant facts and circumstances before submitting the application. We also had regard to the Applicant's rebuttal that it *"spent an appropriate amount of time and resources confirming the merits and specifics of its application to ensure it was not frivolous or vexatious. The onus is not on [the Applicant], a small asset management firm, to ensure all market participants comply with the relevant takeover laws, and nor is it reasonable to expect that [the Applicant] dedicate resources in the ordinary course of business to identify external contrary conduct in a timeframe convenient to the offending market participant"*.

DECISION

Declaration

65. We consider that:

(a) Topline contravened the substantial holder provisions on the occasions referred to in paragraphs 6 and 15 above.

(b) The First Intention Statement was ambiguous as to whether Topline had implied it would not dispose of any Dropsuite shares prior to the Scheme Meeting.

(c) The First Intention Statement would have been clarified on 30 January 2025 if Topline had lodged a substantial holder notice by that date, as it was required to do.

(d) The Second On-Market Sales were contrary to the intention stated in the Second Intention Statement.

(e) As a result of the above, among other things, the market for Dropsuite was uninformed about material developments in relation to the level of support for the Proposed Scheme during a period in which trading in Dropsuite shares took place.

66. It appears to us that the circumstances are unacceptable circumstances:

(a) having regard to the effect that we are satisfied they have had, are having, will have or are likely to have:

(i) on the control, or potential control, of Dropsuite or

(ii) on the acquisition, or proposed acquisition, by a person of a substantial interest in Dropsuite

(b) in the alternative, having regard to the purposes of Chapter 6 set out in section 602

(c) in the further alternative, because they constituted, constitute, will constitute or are likely to constitute a contravention of a provision of Chapter 6C or gave or give rise to, or will or are likely to give rise to, a contravention of a provision of Chapter 6C.

67. Accordingly, we made the declaration set out in Annexure B and consider that it is not against the public interest to do so. We had regard to the matters in section 657A(3).

Orders

68. Following the declaration, we made the final orders set out in Annexure C. We were not asked to, and did not, make any costs orders. The Panel is empowered to make 'any order'[29] if 4 tests are met:

(a) It has made a declaration under section 657A. This was done on 4 April 2025.

(b) It must not make an order if it is satisfied that the order would unfairly prejudice any person. As discussed below, we are satisfied that our orders do not unfairly prejudice any person.

(c) It gives any person to whom the proposed order would be directed, the parties and ASIC an opportunity to make submissions. This was done on 1 April

[29] Including a remedial order but other than an order requiring a person to comply with a provision of Chapters 6, 6A, 6B or 6C

2025. Each of the parties made submissions. Dropsuite, NinjaOne and Topline made rebuttal submissions. The Applicant and ASIC did not.

(d) It considers the orders appropriate to either protect the rights and interests of persons affected by the unacceptable circumstances, or any other rights or interests of those persons. The orders do this by requiring that Topline, Topline Capital Partners LP and their associates must (1) not sell, transfer or otherwise dispose of any shares or interests in shares in Dropsuite, (2) not decrease their voting power in Dropsuite and (3) vote, or cause to be voted, all Dropsuite shares held or controlled by them at the date of the Scheme Meeting in favour of the Proposed Scheme, subject to the same qualifications as those contained in the First Intention Statement. This order has effect until the earliest of: (1) the day immediately following the Scheme Meeting, (2) if the scheme implementation deed between Dropsuite and NinjaOne is terminated, the date of such termination, (3) 28 September 2025 (being the 'End Date' in the scheme implementation deed) or (4) further order of the Panel. The orders also provide parties and ASIC with the liberty to apply for further orders, to deal with (among other things) developments in relation to the Proposed Scheme.

69. We note and appreciate that Topline offered to provide an undertaking on similar terms to the orders made. However, in the circumstances, we considered it preferable to make the orders because (among other reasons) this would ensure that the parties and ASIC have the liberty to apply for further orders, including in response to developments in relation to the Proposed Scheme.

70. The Applicant submitted (among other things) that the orders *"offer no material remedy to the unacceptable circumstances"* because:

(a) The orders do not assist market participants who purchased Dropsuite shares on the basis that the Proposed Scheme had the support of a 31% shareholder. These investors now face an increased risk profile, as the certainty of the Proposed Scheme being approved has been impacted, which may result in a decline in Dropsuite's share price if the transaction is not implemented as a result.

(b) Not requiring Topline to reinstate its position in Dropsuite to what it was at the time the First Intention Statement was made (i.e. 31%) *"sets a precedent that there is no material penalty to a breach of 'truth in takeovers' policy or disclosure requirements under s671B as it relates to schemes of arrangement"*.

71. We did not make the final order sought by the Applicant (i.e. that Topline be required to reinstate its voting power in Dropsuite to 31%) for the following reasons:

(a) Requiring Topline to re-purchase Dropsuite shares on-market could have unintended consequences for the trading price of Dropsuite shares. For example, the presence of a known buyer may artificially inflate the price.

(b) We acknowledge that market participants who acquired Dropsuite shares on the basis that the Proposed Scheme had the support of a 31% shareholder now face an increased risk profile, as the certainty of the Proposed Scheme being approved has been impacted. However, if this is a concern for those

participants, they remain free to sell their shares on-market. In this regard, we note that Topline's substantial holder notices lodged on 18 February 2025 and 18 March 2025 did not materially move the market for Dropsuite shares.

(c) Topline submitted that given the liquidity position of its fund, it would not be possible to comply with the orders sought by the Applicant without unfairly and materially prejudicing its third-party investors. We agree and are satisfied that such an order would be unfairly prejudicial to Topline (noting also our concern in paragraph (a) above).

(d) We do not agree that our orders set a precedent that there is no material consequence for a breach of the 'truth in takeovers' policy. In any event, the Panel's role is remedial, not punitive.[30]

(e) The orders grant the parties and ASIC liberty to apply for further orders, including in response to developments relating to the Proposed Scheme.

72. ASIC submitted that we should be reluctant to make an order requiring Topline to vote in favour of the Proposed Scheme because doing so (among other things) "*overlaps with the Court's discretion on matters directly within its supervisory jurisdiction under the policy of s411*" and "*raises prima facie and untested questions in respect of a members right to vote, the interest and class voting regimes, and whether the scheme meeting will fairly represent the interests of members*".

73. While we acknowledge that the jurisprudence relating to schemes of arrangement is complex, we consider that the concerns raised by ASIC are unlikely to materialise. In any event, should any such issues emerge, they may be addressed under the liberty to apply provision included in our orders.

74. NinjaOne submitted (among other things) that Topline should be held to its unqualified voting intention statement (i.e. the Second Intention Statement). Accordingly, the order requiring Topline to vote in favour of the Proposed Scheme should be unqualified, rather than subject to the qualifications contained in the First Intention Statement – namely, that Topline will vote its Dropsuite shares in favour of the Proposed Scheme in the absence of a superior proposal and subject to an independent expert concluding (and continuing to conclude) that the Proposed Scheme is in the best interest of Dropsuite shareholders.

75. In contrast, Dropsuite submitted that the order should be subject to the same qualifications contained in the First Intention Statement, stating that it would be concerned "*with any order of the Panel that may introduce a chilling effect on a potential contest for control for Dropsuite, or dissuade a potential competing bidder for Dropsuite emerging*".

76. On balance we agree with Dropsuite's submission. Although Topline's voting power in Dropsuite has decreased to 10.5%, it remains a significant interest and could be perceived as a 'blocking stake' by a potential competing bidder.

[30] See Guidance Note 4: Remedies General at [5]

Other matters

77. We commend ASIC, the parties and their advisers for their succinct and on point submissions during these proceedings. This facilitated the prompt determination of these proceedings.

Bruce McLennan
President of the sitting Panel
Decision dated 4 April 2025
Reasons given to parties 8 May 2025
Reasons published 15 May 2025

Advisers

Party	Advisers
Applicant	-
Dropsuite Limited	Herbert Smith Freehills
NinjaOne, LLC and NinjaOne Australia Pty Ltd	Gilbert + Tobin
Topline Capital Management, LLC	Corrs Chambers Westgarth

Australian Government
Takeovers Panel

Annexure A

CORPORATIONS ACT
SECTION 657E
INTERIM ORDERS

DROPSUITE LIMITED

Harvest Lane Asset Management Pty Ltd made an application to the Panel dated 17 March 2025 in relation to the affairs of Dropsuite Limited.

The Acting President ORDERS:

1. Without the prior consent of the Acting President or the Panel (once appointed), Topline Capital Management LLC, Topline Capital Partners LP and their associates must not:

   (i) sell, transfer or otherwise dispose of any shares or interests in shares in Dropsuite Limited or

   (ii) decrease their voting power in Dropsuite Limited.

2. These interim orders have effect until the earliest of:

   (i) further order of the Acting President or the Panel (once appointed)

   (ii) the determination of the proceedings and

   (iii) 2 months from the date of these interim orders.

Tania Mattei
General Counsel
with authority of Yasmin Allen AM
Acting President
Dated 20 March 2025

Australian Government
Takeovers Panel

Annexure B

CORPORATIONS ACT
SECTION 657A
DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

DROPSUITE LIMITED

CIRCUMSTANCES

1. Dropsuite Limited (**Dropsuite**) is an ASX listed company.

2. On 28 January 2025, Dropsuite announced that it had entered into a scheme implementation deed with NinjaOne, LLC and NinjaOne Australia Pty Ltd (together, **NinjaOne**), under which NinjaOne Australia Pty Ltd had agreed to acquire 100% of Dropsuite's ordinary shares for $5.90 per share in cash via a scheme of arrangement (**Proposed Scheme**).

3. In its announcement, Dropsuite made the following statements (**First Intention Statement**) regarding its largest shareholder, Topline Capital Management, LLC (**Topline**), which had been approved by Topline:

   "Dropsuite's largest shareholder, Topline Capital Management, LLC, which holds or controls approximately 31.0% of the Company's issued capital[5] as at the date of this announcement, has confirmed to Dropsuite that it intends to vote, or cause to be voted, all Dropsuite shares held or controlled by it in favour of the Scheme, subject to the same qualifications.

   …

   [5] As at the date of this announcement, Topline Capital Management, LLC holds or controls approximately 21.6m Dropsuite shares, representing approximately 31.0% of the Dropsuite shares on issue on an undiluted basis" and

   "Dropsuite's largest shareholder, Topline Capital Management, LLC, which as at the date of this announcement, holds or controls approximately 21.6 million Dropsuite shares or 31.0% of the Company's issued capital on an undiluted basis, has confirmed to Dropsuite that it intends to vote, or cause to be voted, all Dropsuite shares held or controlled by it in favour of the Scheme in the absence of a Superior Proposal and subject to an Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interest of Dropsuite shareholders".

4. Between 28 January 2025 and 6 February 2025 (inclusive), Topline disposed of Dropsuite shares on-market, decreasing its voting power from 21,639,316 shares (31.0%) to 13,829,409 shares (19.7%). Topline was required under section 671B of the *Corporations Act 2001* (Cth) (**Act**) to lodge substantial holder notices in relation to

these disposals on 4 separate occasions, being by 30 January, 31 January, 4 February and 6 February 2025 respectively, but only disclosed its change in voting power in one notice on 18 February 2025.[1]

5. Topline's 18 February 2025 substantial holder notice stated *"Topline Capital continues to firmly support Dropsuite being acquired by NinjaOne. The share sales were made because of an [unforeseen] need for liquidity and because the position became a large percent of the portfolio. Topline Capital intends to hold its remaining shares through the close of the transaction and vote in favor of the transaction"* (**Second Intention Statement**).

6. Between 27 February 2025 and 17 March 2025 (inclusive), Topline disposed of Dropsuite shares on-market, decreasing its voting power from 13,829,409 shares (19.7%) to 7,363,034 shares (10.5%). Topline was required under section 671B of the Act to lodge substantial holder notices in relation to these disposals on 4 separate occasions, being by 4 March, 13 March, 14 March and 18 March 2025 respectively, but only disclosed its change in voting power in one notice on 18 March 2025.[2]

7. On 11 March, 12 March and 14 March 2025, 3 institutions respectively lodged notices of initial substantial holder in relation to their substantial shareholdings in Dropsuite.

8. The meeting of Dropsuite shareholders to consider and vote on the Proposed Scheme has been convened to be held on 9 May 2025.

EFFECT

9. It appears to the Panel that:

   (a) Topline has contravened the substantial holder provisions on the occasions referred to in paragraphs 4 and 6 above.

   (b) The First Intention Statement was ambiguous as to whether Topline had implied it would not dispose of any Dropsuite shares prior to the shareholder meeting to approve the Proposed Scheme.

   (c) The First Intention Statement would have been clarified on 30 January 2025 if Topline had lodged a substantial holding notice by that date, as it was required to do.

   (d) Topline's disposals of Dropsuite shares between 27 February 2025 and 17 March 2025 (inclusive) were contrary to the intention stated in the Second Intention Statement.

   (e) As a result of the above, among other things, the market for Dropsuite was uninformed about material developments in relation to the level of support for

[1] The ASIC Form 604 was lodged by Topline's associate, Topline Capital Partners LP (being the registered holder of the Dropsuite shares)
[2] Ibid

the Proposed Scheme during a period in which trading in Dropsuite shares took place.

CONCLUSION

10. It appears to the Panel that the circumstances are unacceptable circumstances:

    (a) having regard to the effect that the Panel is satisfied they have had, are having, will have or are likely to have:

        (i) on the control, or potential control, of Dropsuite or

        (ii) on the acquisition, or proposed acquisition, by a person of a substantial interest in Dropsuite

    (b) in the alternative, having regard to the purposes of Chapter 6 set out in section 602 of the Act

    (c) in the further alternative, because they constituted, constitute, will constitute or are likely to constitute a contravention of a provision of Chapter 6C of the Act or gave or give rise to, or will or are likely to give rise to, a contravention of a provision of Chapter 6C of the Act.

11. The Panel considers that it is not against the public interest to make a declaration of unacceptable circumstances. It has had regard to the matters in section 657A(3).

DECLARATION

The Panel declares that the circumstances constitute unacceptable circumstances in relation to the affairs of Dropsuite.

Allan Bulman
Chief Executive
with authority of Bruce McLennan
President of the sitting Panel
Dated 4 April 2025

Australian Government
Takeovers Panel

Annexure C

CORPORATIONS ACT
SECTION 657D
ORDERS

DROPSUITE LIMITED

The Panel made a declaration of unacceptable circumstances on 4 April 2025.

THE PANEL ORDERS

1. Topline Capital Management LLC, Topline Capital Partners LP and their associates must:

   (a) not sell, transfer or otherwise dispose of any shares or interests in shares in Dropsuite

   (b) not decrease their voting power in Dropsuite and

   (c) vote, or cause to be voted, all Dropsuite shares held or controlled by them at the date of the Scheme Meeting in favour of the Proposed Scheme, subject to the same qualifications as those contained in the First Intention Statement.

2. The parties to these proceedings and ASIC have the liberty to apply for further orders.

3. Order 1 applies until the earliest of:

   (a) 10.00am (Melbourne time) on the day immediately following the Scheme Meeting

   (b) if the Scheme Implementation Deed is terminated, the date of such termination

   (c) 28 September 2025 or

   (d) further order of the Panel.

Definitions

4. In these orders the following terms apply:

Dropsuite	Dropsuite Limited
First Intention Statement	The following statements contained in Dropsuite's ASX announcement dated 28 January 2025: *"Dropsuite's largest shareholder, Topline Capital Management, LLC, which holds or controls approximately 31.0% of the Company's issued capital[5] as at the date of this announcement, has confirmed to Dropsuite that it intends to vote, or cause to be voted, all*

	Dropsuite shares held or controlled by it in favour of the Scheme, subject to the same qualifications. … [5] *As at the date of this announcement, Topline Capital Management, LLC holds or controls approximately 21.6m Dropsuite shares, representing approximately 31.0% of the Dropsuite shares on issue on an undiluted basis"* and *"Dropsuite's largest shareholder, Topline Capital Management, LLC, which as at the date of this announcement, holds or controls approximately 21.6 million Dropsuite shares or 31.0% of the Company's issued capital on an undiluted basis, has confirmed to Dropsuite that it intends to vote, or cause to be voted, all Dropsuite shares held or controlled by it in favour of the Scheme in the absence of a Superior Proposal and subject to an Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interest of Dropsuite shareholders"*
Proposed Scheme	means the proposed scheme of arrangement pursuant to which NinjaOne Australia Pty Ltd is to acquire all of the shares in Dropsuite for $5.90 per share in cash
Scheme Implementation Deed	the scheme implementation deed between Dropsuite, NinjaOne, LLC and NinjaOne Australia Pty Ltd dated 28 January 2025 in relation to the Proposed Scheme
Scheme Meeting	the meeting of Dropsuite shareholders to consider and vote on the Proposed Scheme (including any meeting convened following any adjournment or postponement of that meeting)

Allan Bulman
Chief Executive
with authority of Bruce McLennan
President of the sitting Panel
Dated 4 April 2025