



Australian Government

Takeovers Panel

MEDIA RELEASE

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Bentley Capital Limited 01R – Review Panel Accepts Undertakings and Declines to Make a Declaration of Unacceptable Circumstances

The review Panel has accepted undertakings from the Chairman of Bentley Capital Limited, Mr Farooq Khan, and Database Systems Limited (**DBS**) and Mrs Ambreen Chaudhri (see annexures A and B) and has declined to make a declaration of unacceptable circumstances in response to an application dated 24 May 2011 by Bellwether Investments Pty Ltd and Mr Jim Craig in relation to the affairs of Bentley.

The applicants submitted that Mr Khan, his sister, Mrs Chaudhri and her husband, Mr Chaudhri, and their controlled entities were associated in relation to acquisitions of Bentley shares in 2009 and 2011. The initial Panel declined to make a declaration of unacceptable circumstances (see [TP11/38](#) and [TP11/44](#)). The applicants sought a review of the initial Panel's decision (see [TP11/40](#)).

The review Panel decided to consider only whether these parties were associated in relation to acquisitions in April 2011 and treated the acquisitions and circumstances in 2009 as part of the factual matrix. The review Panel did not consider whether the acquisitions and circumstances in 2009 constituted unacceptable circumstances, including because they occurred too long ago and noting the provisions in the legislation promoting prompt resolution of disputes before the Panel.

In light of the additional evidence provided to the review Panel, it considered that the acquisition of approximately 8% of the shares in Bentley by DBS in April 2011 resulted in a person's voting power in Bentley increasing otherwise than as permitted by Chapter 6 because:

- Mr Khan, Mrs Chaudhri and DBS were associated in relation to the affairs of Bentley and
- Mr Chaudhri and Mrs Chaudhri were associated in relation to the affairs of Queste Communications Ltd.

However, in light of the undertakings submitted by Mr Khan, DBS and Mrs Chaudhri, the review Panel has declined to make a declaration of unacceptable circumstances in relation to the affairs of Bentley.

The review Panel is satisfied that the terms of the undertakings adequately address the unacceptable circumstances.

In essence, the terms of the undertakings:

1. require the associated parties to lodge substantial holder notices disclosing the nature of their association and their voting power
2. allow Bentley shareholders (excluding the associated parties, Queste and Orion Equities Limited) to consider, and if thought appropriate, to approve the acquisition of shares in Bentley by DBS on or about 7 April 2011 (**Breach Shares**) pursuant to Item 7 of s611¹
3. if Bentley shareholders fail to approve the acquisition of the Breach Shares, require those shares to be offered to Bentley shareholders (excluding the associated parties, Queste and Orion) and
4. require any remaining Breach Shares to be sold under the supervision of ASIC.

The review Panel did not consider it against the public interest to accept the undertakings and to decline to make a declaration of unacceptable circumstances.

The sitting Panel was Ewen Crouch, Robert Johanson and Ian Ramsay (sitting President).

The review Panel will publish its reasons for the decision in due course on its website www.takeovers.gov.au.

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¹ References are to sections of the *Corporations Act 2001* (Cth) unless otherwise stated

Annexure A

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

BENTLEY CAPITAL LIMITED 01R

Pursuant to section 201A of the *Australian Securities and Investments Commission Act 2001* (Cth), Mr Farooq Khan undertakes to the Panel:

1. Substantial holding disclosure undertaking
 - 1.1. The Associated Parties must, as soon as practicable, give notice of their substantial holding in relation to their voting power in Bentley and their association, including disclosing:
 - (a) the name of each associate who has a relevant interest in voting shares in Bentley
 - (b) the nature of their association
 - (c) the relevant interest of each associate and
 - (d) details of any relevant agreement through which they have a relevant interest in Bentley shares.
2. Standstill undertaking
 - 2.1. Until either undertaking 4 or 5 given by DBS and Mrs Chaudhri are satisfied, the Associated Parties must not:
 - (a) acquire any further shares or interests in shares in Bentley or otherwise increase their voting power in Bentley; or
 - (b) dispose, transfer or grant any security interest over any shares or interests in shares in Bentley.
 - 2.2. Until either undertaking 4 or 5 given by DBS and Mrs Chaudhri are satisfied, the Associated Parties will use their use best endeavours to ensure that none of Mr Azhar Chaudhri, Orion or Queste or any of their associates seek to acquire any of the remaining Breach Shares that may be sold on market.
3. Mr Farooq Khan agrees to confirm in writing to the Panel when he has satisfied his obligations under this undertaking.

INTERPRETATION

In this undertaking:

Term	Meaning
Associated Parties	Mr Farooq Khan, Mrs Ambreen Chaudhri, DBS and any of their associates
Bentley	Bentley Capital Limited
Breach Shares	The 5,940,000 fully paid ordinary shares in Bentley acquired by DBS on or about 7 April 2011
DBS	Database Systems Limited
on market	in the ordinary course of trading on Australian Securities Exchange and not by crossing or special crossing

Signed by Mr Farooq Khan
Dated 5 July 2011

Annexure B

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

BENTLEY CAPITAL LIMITED 01R

Pursuant to section 201A of the *Australian Securities and Investments Commission Act 2001* (Cth), Database Systems Limited and Mrs Ambreen Chaudhri undertake to the Panel:

1. Substantial holding disclosure undertaking

1.1. The Associated Parties must, as soon as practicable, give notice of their substantial holding in relation to their voting power in Bentley and their association, including disclosing:

- (a) the name of each associate who has a relevant interest in voting shares in Bentley
- (a) the nature of their association
- (b) the relevant interest of each associate and
- (c) details of any relevant agreement through which they have a relevant interest in Bentley shares.

2. Standstill undertaking

2.1. Until either undertaking 4 or 5 is satisfied, the Associated Parties must not:

- (a) acquire any further shares or interests in shares in Bentley or otherwise increase their voting power in Bentley
- (b) dispose, transfer or grant any security interest over any shares or interests in shares in Bentley or
- (c) exercise any voting rights attaching to the Breach Shares.

3. Operation of shareholder approval and divestment undertakings

3.1. DBS must give written notice to Bentley and the Panel immediately these undertakings are accepted that DBS proposes to seek shareholder approval for the acquisition of the Breach Shares.

3.2. The Associated Parties will do all things necessary to cause the meeting to be conducted in accordance with undertaking 4.

- 3.3. If Bentley shareholders fail to approve the acquisition of the Breach Shares, then undertaking 5 applies.
4. Shareholder approval undertaking
- 4.1. DBS must call, and arrange to hold, a general meeting of Bentley under s249F² to put before the members a resolution to consider, and if thought fit, to approve the acquisition of the Breach Shares pursuant to Item 7 of s611 in accordance with these undertakings.
- 4.2. DBS must commission an independent expert selected from a list provided by ASIC to prepare an independent expert's report.
- 4.3. DBS must prepare a notice of meeting and explanatory memorandum for the shareholder meeting that includes the following:
- (a) a statement that any votes cast on the resolution by any of the Associated Parties, Mr Azhar Chaudhri, Orion and Queste, or any of their associates, will be disregarded
 - (b) all material information known to any of the Associated Parties required for shareholders to consider the acquisition of the Breach Shares by DBS in April 2011, including
 - (i) the identity of DBS, its directors, and its associates
 - (ii) the voting power that DBS would have if the acquisition is approved
 - (iii) the voting power that each of the Associated Parties would have if the acquisition is approved
 - (iv) the voting power that DBS would have if the acquisition is not approved
 - (v) the voting power that each of the Associated Parties would have if the acquisition is not approved
 - (vi) the effect of the undertakings given to the Panel and
 - (c) a copy of the independent expert's report.
- 4.4. The notice of meeting and explanatory memorandum must be in a form reviewed by ASIC and to which it has no objection.
- 4.5. DBS must arrange for the meeting be held at an appropriate venue in the central business district of Sydney.
- 4.6. DBS must arrange for the meeting be chaired by either Mr Christopher Ryan or Mr William Johnson, or if neither Mr Ryan nor Mr Johnson is available, the

² References are to the *Corporations Act 2001* (Cth), unless otherwise stated

meeting must be chaired by a person independent of the Associated Parties, Mr Azhar Chaudhri, Orion and Queste as elected by the meeting.

4.7. DBS must reimburse Bentley any costs that it incurs associated with the meeting.

5. Divestment undertaking

5.1. This undertaking takes effect upon the happening of the event in undertaking 3.3.

5.2. Following compliance with undertaking 5.3 DBS will invite offeree shareholders to purchase the Breach Shares at a price of \$0.22 per share on the following basis:

- (a) each offeree shareholder will be invited to acquire shares pro-rata to their shareholding in Bentley subject to paragraph (e);
- (b) any offeree shareholder will be entitled to apply for additional shares at a price of \$0.22 per share;
- (c) if not all shares available for purchase pursuant to paragraph (a) are taken up, any offeree shareholder who has applied to purchase additional shares pursuant to paragraph (b) shall be entitled to take up these additional shares subject to paragraphs (d) and (e);
- (d) in the event there are not enough shares to satisfy all applications under paragraph (b), those applications will be accepted pro rata to the holdings of those offeree shareholders prior to the offers;
- (e) no offeree shareholder shall be entitled to acquire more shares than they would otherwise be entitled to acquire pursuant to Chapter 6; and
- (f) the invitation to purchase shall be open to the offeree shareholders to accept for a period of no less than 21 days.

5.3. DBS will:

- (a) If the shareholders meeting referred to in undertaking 4 does not approve the acquisition, within 7 days of the date of that meeting prepare a draft form of offer to comply with undertaking 5.2 and provide it to Bentley for comments, which Bentley shall provide to DBS with 2 business days of receiving the draft from DBS;
- (b) within 9 business days after the date of the Bentley shareholders meeting referred to in paragraph (a) above submit the draft offer (after taking into consideration comments received from Bentley) to ASIC for its review prior to dispatch to Bentley shareholders;
- (c) within 7 days of ASIC having no objection dispatch those invitations to the offeree shareholders;

- (d) within 3 business days of the close of the invitation period (and third party invitation period referred to in undertaking 5.2(f) above) provide to the parties, Panel and ASIC details of all shares proposed to be transferred by DBS as a result of the invitations including details of the proposed transferees; and
 - (e) transfer the relevant shares upon receipt of 'no objection' statements from the Panel and ASIC and upon receipt of payment for the shares such payment to be held on account of DBS.
- 5.4. DBS must reimburse Bentley for any costs it incurs associated with the invitation to purchase the shares.
- 5.5. DBS agrees that any Breach Shares that have not been sold to offeree shareholders will be vested in the Appointed Seller on trust for DBS.
- 5.6. The Appointed Seller will be instructed to:
- (a) sell the remaining Breach Shares in accordance with these undertakings
 - (b) account to DBS for the proceeds of sale, net of the costs, fees and expenses of the sale and any costs, fees and expenses incurred by ASIC
 - (c) dispose of all of the remaining Breach Shares within 3 months from the date of its engagement
 - (d) use the most appropriate sale method to secure the best available sale price for the remaining Breach Shares reasonably available at that time in the context of complying with these undertakings, including the stipulated timeframe for the sale of the Breach Shares
 - (e) unless the Appointed Seller sells the remaining Breach Shares on market, obtain from any prospective purchaser of the remaining Breach Shares a statutory declaration that the prospective purchaser is not associated with any of the Associated Parties, Mr Azhar Chaudhri, Orion or Queste and
 - (f) not sell any of the remaining Breach Shares to the Associated Parties, Mr Azhar Chaudhri, Orion or Queste or any of their associates.
- 5.7. DBS and Mrs Chaudhri agree:
- (a) that neither they nor their associates will seek to acquire any of the remaining Breach Shares that may be sold on market and
 - (b) to use best endeavours to ensure that none of Mr Farooq Khan, Mr Azhar Chaudhri, Orion or Queste or any of their associates seek to acquire any of the remaining Breach Shares that may be sold on market.
- 5.8. None of the Associated Parties may take into account any relevant interest or voting power that any of them or their respective associates had, or have had, in the Breach Shares when calculating the voting power referred to in Item 9(b) of

s611 of a person six months before an acquisition exempted under Item 9 of s611.

6. DBS and Mrs Chaudhri agree to confirm in writing to the Panel when they have satisfied their obligations under this undertaking.

INTERPRETATION

In this undertaking:

Term	Meaning
Appointed Seller	The investment bank or stock broker nominated by ASIC, who has first provided to ASIC a statutory declaration declaring that, after having made proper inquiries, the investment bank or stock broker is not aware of any interest, past, present, or prospective which could conflict with the proper performance of the functions in relation to the disposal of the remaining Breach Shares
ASIC	Australian Securities and Investments Commission
Associated Parties	In relation to Bentley means Mr Farooq Khan, Mrs Ambreen Chaudhri, DBS and any of their associates
Bentley	Bentley Capital Limited
Breach Shares	The 5,940,000 fully paid ordinary shares in Bentley acquired by DBS on or about 7 April 2011
DBS	Database Systems Limited
on market	in the ordinary course of trading on Australian Securities Exchange and not by crossing or special crossing
offeree shareholders	Bentley shareholders other than: <ul style="list-style-type: none">• those registered in overseas jurisdictions where it is not reasonable as set out in listing rule 7.7.1 to make the invitation and• the Associated Parties, Mr Azhar Chaudhri, Orion and Queste or any of their associates
Orion	Orion Equities Limited
Queste	Queste Communications Limited

Signed by Ambreen Chaudhri of 175A Sarwar Road, Rawalpindi with the authority, and on behalf, of DBS
Dated 5 July 2011

Signed by Mrs Ambreen Chaudhri
Dated 5 July 2011