

**COMPLETED ACQUISITION BY BREEDON AGGREGATES SCOTLAND LIMITED
("BREEDON SCOTLAND") OF CERTAIN SCOTTISH ASSETS OF AGGREGATE
INDUSTRIES ("TARGET")**

Adoption of Initial Undertakings

1. On 24 September 2013, the Office of Fair Trading (OFT) made a reference to the Competition Commission (CC) in accordance with section 22 of the Enterprise Act 2002 (the Act) concerning the completed acquisition by Breedon Scotland of the Target.
2. The reference has not been finally determined.
3. On 28 May 2013, prior to making the reference, the OFT accepted the undertakings reproduced in Annex A (Initial Undertakings) in accordance with section 71 of the Act. The Undertakings were subject to a number of consents which are reproduced in Annex B below.
4. The Initial Undertakings are still in force.
5. The CC hereby adopts the Initial Undertakings and associated consents in accordance with section 80(3) of the Act for the purpose of ensuring that no action is taken pending the determination of the reference, which might prejudice that reference or impede the taking of any action by the CC under Part 3 of the Act.

Signed by authority of the CC

Roger Witcomb
Chairman
25 September 2013

INITIAL UNDERTAKINGS

COMPLETED ACQUISITION BY BREEDON AGGREGATES SCOTLAND LIMITED ("BREEDON SCOTLAND") OF CERTAIN SCOTTISH ASSETS OF AGGREGATE INDUSTRIES ("TARGET")

UNDERTAKINGS GIVEN BY BREEDON AGGREGATES LIMITED ("BREEDON") AND BREEDON SCOTLAND TO THE OFFICE OF FAIR TRADING PURSUANT TO SECTION 71 OF THE ENTERPRISE ACT 2002

Pursuant to section 71 of the Enterprise Act 2002, for the purpose of preventing pre-emptive action, Breedon and Breedon Scotland hereby gives to the OFT the following undertakings (the "undertakings") in respect of the acquisition by Breedon Scotland of the Target.

Management of the parties' respective businesses until determination of proceedings

1. Except with the prior written consent of the OFT, each of Breedon and Breedon Scotland undertake that they will not during the specified period take any action which might:
 - (a) lead to the integration of the Breedon Scotland business with all or any part of the Target business;
 - (b) transfer the ownership or control of the Breedon Scotland business or the Target business;
 - (c) otherwise impair the ability of the Breedon Scotland business or the Target business to compete independently in any markets affected by the acquisition; or
 - (d) otherwise prejudice any reference to the CC or impede the taking of any action under the Act which may be justified by the CC's decisions on any such reference.
2. Without prejudice to the generality of paragraph 1, except with the prior written consent of the OFT, each of Breedon and Breedon Scotland will at all times during the specified period, procure that:

- (a) the Target business is carried on separately and under a separate brand identity from the Breedon Scotland business and separate sales of the Target business are maintained;
- (b) the Target business and the Breedon Scotland business are each maintained as a going concern and sufficient resources are made available for the development of the Target business and the Breedon Scotland business on the basis of their respective pre-merger plans;
- (c) no substantive changes are made to key staff or to the organisational structure of, or the management responsibilities within the Target business or the Breedon Scotland business;
- (d) in relation to the assets of each of the Target business and the Breedon Scotland business, and otherwise than in the ordinary course of business:
 - (i) the assets are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets is disposed of; and
 - (iii) no interest in the assets is created or disposed of;
- (e) the nature, description, range and standard of goods and/or services supplied in the United Kingdom by the Target business and the Breedon Scotland business at the date of these undertakings are in all material respects maintained and preserved;
- (f) there is no integration of the information technology of the Target business with the information technology of the Breedon Scotland business and the respective software and hardware platforms of the Target business and the Breedon Scotland business shall remain unchanged, except for routine changes and maintenance;
- (g) the customer and supplier lists of each of the Target business and the Breedon Scotland business shall be operated and updated separately and any negotiations with the customers and suppliers in relation to the Target business will be carried out by the Target business alone and for the avoidance of doubt

Breedon Scotland will not negotiate on behalf of Target or enter into any joint agreements with Target;

- (h) all existing contracts continue to be serviced by the business to which they were awarded;
- (i) all reasonable steps are taken to encourage all key staff of the Target business and the Breedon Scotland business to remain with the business in relation to which they were employed prior to the merger;
- (j) no business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to the Target business or the Breedon Scotland business ("Confidential Information") shall pass, directly or indirectly from the Target business (or any of its employees, directors, agents or affiliates) to the Breedon Scotland business (or any of its employees, directors, agents or affiliates) or vice versa, except:
 - (i) where strictly necessary in the ordinary course of business and on the basis that, should the merger be prohibited, any records or copies (electronic or otherwise) of such information wherever they may be held will be returned to the relevant business and any copies destroyed other than as may be required for the purposes of regulatory compliance under applicable law; and
 - (ii) the flow of Confidential Information from the Target business (or any of its employees, directors, agents or affiliates) to the Breedon Scotland business (or any of its employees, directors, agents or affiliates) is permitted to the extent that such disclosure of information is strictly necessary for compliance with external regulatory and/or accounting obligations.

Compliance

3. Breedon and Breedon Scotland shall procure that each of their subsidiaries complies with these undertakings as if it had given them.
4. Breedon and Breedon Scotland shall forthwith provide to the OFT such information as the OFT may from time to time require for the purposes of monitoring compliance by Breedon and Breedon Scotland and their

subsidiaries with these undertakings. In particular, on the 11th of June 2013 and subsequently every 10 working days thereafter (save where the obligation does not fall on a working day, in which case the first working day thereafter), the Chief Executive Officer of Breedon shall provide a statement to the OFT on behalf of Breedon confirming compliance with these undertakings in the form set out in the Appendix to these undertakings.

5. At all times, Breedon and Breedon Scotland will actively keep the OFT informed of any material developments relating to the Target business, which includes, but is not limited to:
 - (a) details of key staff who leave or join the Target business or the Breedon Scotland business;
 - (b) any Target business or Breedon Scotland business plant breakdowns which have halted production for more than 24 hours or changes in the Target business' or Breedon Scotland business' production arrangements which have affected the working pattern of more than five Target business or Breedon Scotland business employees;
 - (c) all substantial customer volumes won or lost by the Target business or the Breedon Scotland business including any substantial changes in customers' demand; and
 - (d) substantial changes in the Target business' or Breedon Scotland business' contractual arrangements or relationships with key suppliers.
6. Breedon and Breedon Scotland shall comply with such written directions as the OFT may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings.

Interpretation

7. The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
8. For the purposes of these undertakings:

"the Act" means the Enterprise Act 2002;

“an affiliate” of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under the common control for the purposes of section 26 of the Act;

“Breedon” means Breedon Aggregates Limited;

“Breedon Scotland” means Breedon Aggregates Scotland Limited;

“the Breedon Scotland business” means the business of Breedon Scotland and its subsidiaries carried on as from 30 April 2013;

“business” has the meaning given by section 129(1) and (3) of the Act;

“the CC” means the Competition Commission;

“control” shall be construed in accordance with section 26 of the Act and in the case of a body corporate, a person shall be deemed to control it if he holds, or has an interest in, shares of that body corporate which amount to 10 per cent or more of its issued share capital or which carry an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

“the decisions” means the decisions of the CC on the questions which it is required to answer by virtue of section 35 of the Act;

“key staff” means staff in positions of executive or managerial responsibility and/or whose performance could materially affect the viability of the business;

“the merger” means the creation of the relevant merger situation between the Breedon Scotland business and the Target business;

“the OFT” means the Office of Fair Trading, provided that, should the CC adopt these undertakings pursuant to section 80(3) of the Act, references to “the OFT” in paragraphs 1 and 2 of these undertakings shall be taken as references to the CC, and references to “the OFT” in paragraphs 4, 5 and 6 of these undertakings shall be taken to include both the Office of Fair Trading and the CC;

“the ordinary course of business” means matters connected to the day to day supply of goods and/or services by [Y] or Breedon Scotland and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of [Y] or Breedon Scotland;

“the specified period” means the period beginning on the date of these undertakings and terminating either at the end of the period specified in section 71(5) or (6) of the Act or, should the CC adopt these undertakings pursuant to section 80(3) of the Act, the end of the period specified in section 80(7) or (8) of the Act;

“subsidiary”, unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

“Target” means certain Scottish assets of Aggregate Industries;

“the Target business” means the business of the Target and its subsidiaries carried on as from 30 April 2013.

“working day” mean any day of the week other than a Saturday, Sunday or any other day that is a public holiday in England;

In these undertakings unless the context requires otherwise, the singular shall include the plural and vice versa.

FOR AND ON BEHALF OF BREEDON AGGREGATES LIMITED AND BREEDON AGGREGATES SCOTLAND LIMITED

..... Signature

..... Name

..... Title

..... Date

(Director)

**Consent to certain actions for the purposes of the initial undertakings
accepted by the Office of Fair Trading on 28 May 2013**

**Completed acquisition by Breedon Aggregates Scotland Limited ('Breedon
Scotland') of certain Scottish assets of Aggregate Industries ('Target')**

We refer to your letter dated 28 May 2013 requesting that the OFT consents to derogations to the Initial Undertakings of 28 May 2013 (the Initial Undertakings).

Under the Initial Undertakings, save for written consent by the OFT, provision was made that Breedon Aggregates Limited and Breedon Scotland, collectively 'Breedon', would hold separate from the Target. After due consideration of your request for derogations to the Initial Undertakings, Breedon may carry out the following actions, in respect of the specific paragraphs:

**1. Paragraphs 1(a), 1(b), 1(c), 2(a), 2(f), 2(g), 2(h), 2(j) of the Initial
Undertakings**

You have explained that the Target was made up of a collection of assets which were being sold on a stand-alone basis. Therefore, in order that the assets of the Target can continue to operate as going concerns, Breedon will need to provide specific services to the Target ('Common Services'). In each case, Breedon shall ensure that in providing any such Common Services, the recipient of any Confidential Information relating to the Target business will treat and keep all such Confidential Information disclosed to him as secret and confidential and will not disclose it to any other person nor use it for any purpose other than in either case for the provision of the Common Services to the Target business. In addition, in providing such Common Services, the recipient of any Confidential Information relating to Breedon shall not disclose it to any employees of the Target. Those Common Services are:

- (A) back office support, including tax, purchase administration, invoicing, credit control, treasury, accounting and financial services, legal, company secretarial services, human resources, pensions and benefits services;

- (B) operational support, including repairs and maintenance, health, safety and environmental management, quality control and technical services, and transport management;
- (C) estates management;
- (D) insurance and risk management;
- (E) senior executive services being the consideration and authorisation of: capital expenditure and of any proposals to incur expenditure and/or liabilities above thresholds set out in Breedon's internal management control processes (including without limitation the entering of contracts above certain financial thresholds, hiring new employees and the entering of lease agreements);
- (F) contract surfacing services being the provision of contract surfacing services to the Target business including services to be supplied under existing customer contracts as well as support for customer contract tenders;
- (G) supply of key raw materials, consumables and utilities;
- (H) subject to section 4 below and with the exception of one concrete block facility, IT and telecommunication services being the provision of such information technology and telecommunication support as may be required by the Target business including, but not limited to, the provision of exchange, ERP and payroll servers and mobile, fixed and WAN telecommunication services.
- (I) contract novation services whereby third party contracts relating to the Target are novated (in form or substance) from legal entities within the group to which Aggregate Industries belong to entities within the group to which Breedon belongs (given the Target no longer has a distinct legal personality).

The derogation from 2(j) will also apply to (a) the flow of Confidential Information from the Breedon business (or any of its employees, directors, agents or affiliates) to the Target business; (b) to Confidential Information disclosed by the Target to Breedon in order to enable Breedon to fulfil legal obligations in relation to banking covenants and directors' duties (such information will be aggregated information and not site-specific or customer-specific information); and (c) to Confidential Information disclosed by the Target to Breedon for the coordination of Breedon's and the Target's

submissions in relation to any OFT or CC investigation in connection with the present transaction.

The OFT nevertheless emphasises the importance of ensuring that disclosure of Confidential Information should be limited to where it is strictly necessary for the purposes of the provision of Common Services, or otherwise as set out above.

Accordingly, the OFT grants Breedon a derogation from paragraphs 1(a), 1(b), 1(c), 2(a), 2(f), 2(g), 2(h), 2(j) of the Initial Undertakings in order that Breedon can provide the Common Services listed in section 1 (A) to (I) above, subject to the terms set out in this letter and in particular sections 3 and 4 below, to the Target, so that the assets of the Target can continue to operate as going concerns.

2. Paragraph 1(b) of the Initial Undertakings

[]

Accordingly, the OFT grants Breedon a derogation from paragraph 1(b) of the Initial Undertakings [].

3. Paragraph 2(a) of the Initial Undertakings

Further to the derogations relating to the Common Services at section 1 above, you have explained that the Target business could not be carried on separately and did not have its own brand entity, except in relation to certain of the Target's activities in concrete blocks.

Nevertheless, pricing decisions of the sales function of the Target business must be ring-fenced from Breedon. In this regard, the OFT grants its consent only on the condition that the existing sales team in the Target business will report through to [] and that they will have no contact with Breedon staff in relation to decisions on pricing. In addition, except where strictly necessary in the ordinary course of business [] will not provide sensitive commercial information about the Target business to Breedon. The OFT emphasises the importance of ensuring that reports to Breedon other than for matters in excess of the thresholds set out in Appendix A (see below) do not contain Confidential Information to the extent that they are not required to safeguard the Target (this applies for example to financial or performance reporting).

Up to certain contract volume and certain other thresholds (set out in Appendix A), [] will not have to report to Breedon in the context of pricing decisions. These thresholds are similar to those applied to regional directors and other operational managers of a business of a size similar to the Target's within Breedon.

For matters in excess of the thresholds set out in Appendix A, [] will report to the Financial Director of Breedon Scotland, the Financial Director of Breedon, and/or the Chief Executive of Breedon. As stated above, [] will not share Confidential Information for the purposes of financial or performance reporting to the extent that it is not required to safeguard the Target. Breedon confirms that none of these three individuals are currently involved in the day-to-day pricing decisions of Breedon or Breedon Scotland. Breedon further confirms that this will remain the case for the duration of the OFT's review of the transaction.

Accordingly, the OFT grants Breedon a derogation from paragraphs 2(a) of the Initial Undertakings in order that Breedon can provide the Common Services listed in section 1 above to the Target, so that the assets of the Target can continue to operate as going concerns. This is subject to the terms set out in this letter.

4. 2(f) of the Initial Undertakings

You have explained that the Target did not have its own IT systems since these were all provided by Aggregate Industries. Breedon is therefore permitted to continue the integration of the IT systems for the Target. Breedon will however not have access to or merge the data from the Target's database existing immediately before 30 April 2013 without the OFT's consent. Access to the Target's data relating to on-going sales activities will be restricted by controlling user access to the relevant sales office database; only employees of the Target will have access to this information. Access to other data will be restricted to those individuals providing Common Services, as provided in section 1 above. The Target will not have access to Breedon's data relating to Breedon's on-going sales activities.

5. Paragraph 2(d) of the Initial Undertakings

You have explained that Breedon was required to provide a legal charge in favour of its lenders [] as security over the Target business' assets.

Accordingly, the OFT grants Breedon a derogation from paragraphs 2(d) of the Initial Undertakings in order for Breedon to provide a legal charge in favour of its lenders as security over the Target's business.

None of the above derogations will allow commercially sensitive information to be passed from the Target business to anyone within Breedon who is active in the operational aspects of the business unless otherwise provided.

**Consent to certain actions for the purposes of the initial undertakings
accepted by the Office of Fair Trading on 28 May 2013**

**Completed acquisition by Breedon Aggregates Scotland Limited ('Breedon
Scotland') of certain Scottish assets of Aggregate Industries ('Target')**

We refer to your email dated 16 July 2013 requesting that the OFT consents to derogations to the Initial Undertakings of 28 May 2013 (the Initial Undertakings).

Under the Initial Undertakings, save for written consent by the OFT, provision was made that Breedon Aggregates Limited and Breedon Scotland, collectively 'Breedon', would hold separate from the Target. After due consideration of your request for derogations to the Initial Undertakings, Breedon may carry out the following actions, in respect of the specific paragraph:

2(f) of the Initial Undertakings

You have explained that the arrangement for the provision of IT services by Aggregate Industries to the [] facility comes to an end on 31 July 2013. The Target does not have its own IT systems since they were all provided by Aggregate Industries. Breedon is therefore permitted to continue the integration of the IT systems for the Target. Breedon will however not have access to or merge the data from the Target's database existing immediately before 30 April 2013 without the OFT's consent. Access to the Target's data relating to on-going sales activities will be restricted by controlling user access to the relevant sales office database; only employees of the Target will have access to this information. Access to other data will be restricted to those individuals providing Common Services, as provided in section 1 of the Letter of Consent of 28 May 2013. The Target will not have access to Breedon's data relating to Breedon's on-going sales activities.