

Anticipated acquisition by Breedon Group Plc of certain assets of Cemex Investments Limited

Variation Order made by the Competition and Markets Authority pursuant to section 72(4)(b) of the Enterprise Act 2002 (the Act)

Whereas:

- (a) the Competition and Markets Authority (**CMA**) imposed an initial enforcement order pursuant to section 72(2) of the Act in relation to the anticipated acquisition by Breedon Group Plc of certain assets of Cemex Investments Limited on 20 January 2020 (the **Initial Enforcement Order**);
- (b) the CMA considers that it is appropriate to vary the Initial Enforcement Order;

For the purpose of varying the Initial Enforcement Order, the CMA hereby makes the following order pursuant to section 72(4)(b) of the Act, addressed to Breedon Group plc (**Breedon**), Breedon Southern Limited (**Breedon Southern**) and Cemex Investments Limited (**Cemex**) (the **Variation Order**).

The Initial Enforcement Order is varied in accordance with the version contained in the **Annex** to this Variation Order (with changes highlighted in track).

This order comes into force on **11 February 2020**.

Signed

Assistant Director

11 February 2020

ANNEX TO THE VARIATION ORDER

ACQUISITION BY BREEDON GROUP PLC OF CERTAIN ASSETS OF CEMEX INVESTMENTS LIMITED

Initial Enforcement Order made by the Competition and Markets Authority pursuant to section 72(2) of the Enterprise Act 2002 (the Act)

Whereas:

- (c) the Competition and Markets Authority (CMA) has reasonable grounds for suspecting that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result: (i) Breedon Group plc, including its subsidiary Breedon Southern Limited; and (ii) certain assets of Cemex Investments Limited (**Target**) ceasing to be distinct;
- (d) the CMA is considering whether to make a reference under section 22 or 33 of the Act;
- (e) the CMA wishes to ensure that no action is taken pending final determination of any reference under sections 22 or 33 of the Act which might prejudice that reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the reference; and
- (f) the circumstances set out in section 72(6) of the Act do not apply and the reference has not been finally determined in accordance with section 79(1) of the Act.

Now for the purposes of preventing pre-emptive action in accordance with section 72(2) of the Act the CMA makes the following order addressed to Breedon Group plc (**Breedon**), Breedon Southern Limited (**Breedon Southern**) and Cemex Investments Limited (**Cemex**) (**Order**).

Commencement, application and scope

1. This Order commences on the commencement date: 20 January 2020.
2. This Order applies to Breedon, Breedon Southern and Cemex.
3. Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige Breedon,

Breedon Southern or Cemex to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.

4. This Order does not prohibit the completion of the transaction provided that Breedon, Breedon Southern and Cemex observe the restrictions set out below.

Management of the Breedon and Target businesses until determination of proceedings

5. Except with the prior written consent of the CMA, Breedon, Breedon Southern and Cemex shall not, during the specified period, take any action which might prejudice a reference of the transaction under section 22 or 33 of the Act or impede the taking of any action under the Act by the CMA which may be justified by the CMA's decisions on such a reference, including any action which might:
 - (a) lead to the integration of the Target businesses with the Breedon business;
 - (b) transfer the ownership or control of the Breedon business or the Target businesses or any of their subsidiaries; or
 - (c) otherwise impair the ability of the Target businesses or the Breedon business to compete independently in any of the markets affected by the transaction.
6. Further and without prejudice to the generality of paragraph 5 and subject to paragraph 3 and 4, Breedon, Breedon Southern and Cemex shall at all times during the specified period procure that, except with the prior written consent of the CMA:
 - (a) the Target businesses ~~are~~ is carried on separately from the Breedon business and the Target businesses' separate sales or brand identity is maintained;
 - (b) the Target businesses and the Breedon business are maintained as a going concern and sufficient resources are made available for the development of the Target businesses and the Breedon business, on the basis of their respective pre-merger business plans;
 - (c) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the Target businesses or the Breedon business;

- (d) the nature, description, range and quality of goods and/or services supplied in the UK by each of the two businesses are maintained and preserved;
- (e) except in the ordinary course of business for the separate operation of the two businesses:
 - (i) all of the assets of the Target businesses~~es~~ and the Breedon business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the Target businesses~~es~~ or the Breedon business are disposed of; and
 - (iii) no interest in the assets of the Target businesses~~es~~ or the Breedon business is created or disposed of;
- (f) there is no integration of the information technology of the Target or Breedon businesses, and the software and hardware platforms of the Target businesses~~es~~ shall remain essentially unchanged, except for routine changes and maintenance;
- (g) the customer and supplier lists of the two businesses shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Target businesses~~es~~ will be carried out by the Target businesses~~es~~ alone and for the avoidance of doubt the Breedon business will not negotiate on behalf of the Target businesses~~es~~ (and vice versa) or enter into any joint agreements with the Target businesses~~es~~ (and vice versa);
- (h) all existing contracts of the Target businesses~~es~~ and the Breedon business continue to be serviced by the business to which they were awarded;
- (i) no changes are made to key staff of the Target businesses~~es~~ or the Breedon business;
- (j) no key staff are transferred between the Target businesses~~es~~ and the Breedon business;
- (k) all reasonable steps are taken to encourage all key staff to remain with the Target businesses~~es~~ and the Breedon business; and
- (l) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses shall pass, directly or

indirectly, from the Target businesses (or any of its employees, directors, agents or affiliates) to the Breedon business (or any of its employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business (including for example, where required for compliance with external regulatory and/or accounting obligations or for due diligence, integration planning or the completion of any merger control proceedings relating to the transaction) and on the basis that, should the transaction be prohibited, any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed.

Compliance

7. Breedon, Breedon Southern and Cemex shall procure that each of their subsidiaries complies with this Order as if the Order had been issued to each of them.
8. Breedon, Breedon Southern and Cemex shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by Breedon, Breedon Southern and Cemex and their subsidiaries with this Order. In particular, on 3 February 2020 and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officer of each of Breedon, Breedon Southern and Cemex or other persons of Breedon, Breedon Southern and Cemex as agreed with the CMA shall, on behalf of each of Breedon, Breedon Southern and Cemex, provide a statement to the CMA in the form set out in the Annexes to this Order confirming compliance with this Order.
9. At all times, Breedon, Breedon Southern and Cemex shall each actively keep the CMA informed of any material developments relating to the Target businesses or the Breedon business, which includes but is not limited to:
 - (a) details of key staff who leave or join the Target businesses or the Breedon business;
 - (b) any interruption of the Target businesses or the Breedon business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;

- (c) all substantial customer volumes won or lost or substantial changes to the customer contracts for the Target businesses or the Breedon business including any substantial changes in customers' demand; and
 - (d) substantial changes in the Target businesses or the Breedon business' contractual arrangements or relationships with key suppliers.
10. If Breedon, Breedon Southern and Cemex has any reason to suspect that this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that Breedon, Breedon Southern and Cemex may be directed to appoint under paragraph 11.
11. The CMA may give directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, this Order, or do or refrain from doing any specified action in order to ensure compliance with the Order. The CMA may vary or revoke any directions so given.
12. Breedon, Breedon Southern and Cemex shall comply in so far as they are able with such directions as the CMA 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 this Order.

Interpretation

13. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.
14. For the purposes of this Order:

'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 common control for the purposes of section 26 of the Act;

'Breedon' means Breedon Group plc, a company registered in Jersey, with company number 98465;

'Breedon Southern' means Breedon Southern Limited, a company registered in England and Wales, with company number 00156531;

'the Breedon business' means the business of Breedon and its subsidiaries (including Breedon Southern) carried on as at the commencement date;

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

'Cemex' means Cemex Investments Limited, a company registered in England and Wales, with company number 00249776;

'commencement date' means 20 January 2020;

'control' includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise;

'the decisions' means the decisions of the CMA on the questions which it is required to answer by virtue of sections 35 or 36 of the Act;

'key staff' means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business;

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

'specified period' means the period beginning on the commencement date and terminating in accordance with section 72(6) of the Act;

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

'Target' means the businesses and assets of Cemex and its subsidiaries that are the subject of the transaction;

'the transaction' means the transaction by which Breedon, Breedon Southern and certain assets of Cemex Investments Limited as contemplated by the business purchase agreement of 8 January 2020 will cease to be distinct within the meaning of section 23 of the Act;

'the two businesses' means the Breedon business and the Target businesses;

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



Assistant Director

Compliance statement for [Breedon / Breedon Southern]

I [insert name] confirm on behalf of [Breedon / Breedon Southern] that:

Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period):
 - (a) [Breedon / Breedon Southern] has complied with the Order made by the CMA in relation to the transaction on 20 January 2020 (the **Order**).
 - (b) [Breedon / Breedon Southern]'s subsidiaries have also complied with this Order.
2. Subject to paragraph 3 and 4 of the Order, and except with the prior written consent of the CMA:
 - (a) No action has been taken by [Breedon / Breedon Southern] that might prejudice a reference of the transaction under section 22 or 33 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
 - (i) lead to the integration of the Target businesses with the Breedon business;
 - (ii) transfer the ownership or control of the Breedon business ~~or the Target businesses or any of their subsidiaries~~; or
 - (iii) otherwise impair the ability of the ~~Target businesses or the~~ Breedon business to compete independently in any of the markets affected by the transaction.
 - (b) The Target businesses have been carried on separately from the Breedon business and the Target businesses' separate sales or brand identity has been maintained.
 - (c) The ~~Target businesses and the~~ Breedon business have been maintained as a going concern and sufficient resources have been made available for the development of the ~~Target businesses and the~~ Breedon business, on the basis of ~~their~~ its ~~respective~~ pre-merger business plans.

- (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, ~~the Target businesses or the~~ Breedon business, except in the ordinary course of business.
- (e) The nature, description, range and quality of goods and/or services supplied in the UK by ~~the Target businesses and the~~ Breedon business ~~has~~ve been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
 - (i) all of the assets of the ~~Target businesses and the~~ Breedon business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
 - (ii) none of the assets of the ~~Target businesses or the~~ Breedon business have been disposed of; and
 - (iii) no interest in the assets of ~~the Target businesses or the~~ Breedon business has been created or disposed of.
- (g) There has been no integration of the information technology of the Target businesses ~~es~~ or the Breedon business, ~~and the software and hardware platforms of the Target businesses have remained essentially unchanged, except for routine changes and maintenance.~~
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Target businesses ~~es~~ ~~has~~ve been carried out by the Target businesses ~~es~~ alone and, for the avoidance of doubt, the Breedon business has not negotiated on behalf of the Target businesses ~~es~~ (and vice versa) or entered into any joint agreements with the Target businesses ~~es~~ (and vice versa).
- (i) All existing contracts of ~~the Target businesses and the~~ Breedon business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of ~~the Target businesses or the~~ Breedon business.

- (k) No key staff have been transferred between the Target businesses and the Breedon business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with ~~the Target businesses and~~ the Breedon business.
- (m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the Target businesses (or any of its employees, directors, agents or affiliates) to the Breedon business (or any of its employees, directors, agents or affiliates), or vice versa.
- (n) Except as listed in paragraph (o) below, there have been no:
 - (i) key staff that have left or joined ~~the Target businesses or~~ the Breedon business;
 - (ii) interruptions of ~~the Target businesses or~~ the Breedon business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
 - (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for ~~the Target businesses or~~ the Breedon business; or
 - (iv) substantial changes in the ~~Target businesses or the~~ Breedon business' contractual arrangements or relationships with key suppliers.

(o) *[list of material developments]*

3. Breedon and its subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to ~~the Target businesses or~~ the Breedon business in accordance with paragraph 9 of the Order.

Interpretation

4. Terms defined in the Order have the same meaning in this compliance statement.

I understand that:

it is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in **fin****es, imprisonment for a term not exceeding two years, or both.** (Section 117 of the Enterprise Act 2002.)

Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom the penalty is imposed. (Section 94A of the Enterprise Act 2002.)

FOR AND ON BEHALF OF [Breedon / Breedon Southern]

Signature

Name

Title

Date

Compliance statement for Cemex Investments Limited

I [insert name] confirm on behalf of Cemex that:

Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period):
 - (a) Cemex has complied with the Order made by the CMA in relation to the transaction on 20 January 2020 (the **Order**).
 - (b) Cemex's subsidiaries have also complied with this Order.
2. Subject to paragraph 3 and 4 of the Order, and except with the prior written consent of the CMA:
 - (a) No action has been taken by Cemex that might prejudice a reference of the transaction under section 22 or 33 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
 - (i) lead to the integration of the Target businesses with the Breedon business;
 - (ii) transfer the ownership or control of ~~the Breedon business or~~ the Target businesses or any of ~~their-its~~ subsidiaries; or
 - (iii) otherwise impair the ability of the Target businesses ~~or the Breedon business~~ to compete independently in any of the markets affected by the transaction.
 - (b) The Target businesses has been carried on separately from the Breedon business and the Target businesses' separate sales or brand identity has been maintained.
 - (c) The Target businesses ~~and the Breedon business~~ hasve been maintained as a going concern and sufficient resources have been made available for the development of the Target businesses ~~and the Breedon business~~, on the basis of ~~their-its~~ respective pre-merger business plans.

- (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the Target businesses, except in the ordinary course of business.
- (e) The nature, description, range and quality of goods and/or services supplied in the UK by the Target businesses have been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
 - (i) all of the assets of the Target businesses, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
 - (ii) none of the assets of the Target businesses have been disposed of; and
 - (iii) no interest in the assets of the Target businesses has been created or disposed of.
- (g) There has been no integration of the information technology of the Target businesses or the Breedon businesses, and the software and hardware platforms of the Target businesses have remained essentially unchanged, except for routine changes and maintenance.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Target businesses have been carried out by the Target businesses alone and, for the avoidance of doubt, the Breedon business has not negotiated on behalf of the Target businesses (and vice versa) or entered into any joint agreements with the Target businesses (and vice versa).
- (i) All existing contracts of the Target businesses ~~and the Breedon business~~ have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the Target businesses.

- (k) No key staff have been transferred between the Target businesses and the Breedon business.
 - (l) All reasonable steps have been taken to encourage all key staff to remain with the Target businesses.
 - (m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the Target businesses (or any of its employees, directors, agents or affiliates) to the Breedon business (or any of its employees, directors, agents or affiliates), or vice versa.
 - (n) Except as listed in paragraph (o) below, there have been no:
 - (i) key staff that have left or joined the Target businesses;
 - (ii) interruptions of the Target businesses (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
 - (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Target businesses; or
 - (iv) substantial changes in the Target businesses' contractual arrangements or relationships with key suppliers.
 - (o) *[list of material developments]*
3. Cemex and its subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the Target businesses ~~or the Breedon business~~ in accordance with paragraph 9 of the Order.

Interpretation

4. Terms defined in the Order have the same meaning in this compliance statement.

I understand that:

it is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in **fin**es, **imprisonment for a term not exceeding two years, or both**. (Section 117 of the Enterprise Act 2002.)

Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom the penalty is imposed. (Section 94A of the Enterprise Act 2002.)

FOR AND ON BEHALF OF Cemex Investments Limited

Signature

Name

Title

Date