

## **ANTICIPATED ACQUISITION BY BREEDON GROUP PLC OF CERTAIN ASSETS OF CEMEX INVESTMENTS LIMITED**

**Directions issued on 14 February 2020 pursuant to paragraph 11 of the Initial Enforcement Order imposed by the Competition and Markets Authority on Breedon Group plc, Breedon Southern Limited and Cemex Investments Limited on 20 January 2020.**

The CMA is currently investigating the anticipated acquisition by Breedon Group plc of certain assets of Cemex Investments Limited.

On 20 January 2020, the CMA made an Initial Enforcement Order (the **Order**) addressed to Breedon Group plc (**Breedon**), Breedon Southern Limited (**Breedon Southern**) and Cemex Investments Limited (**Cemex**), in accordance with section 72(2) of the Enterprise Act 2002 to prevent pre-emptive action. The Order is still in force.

The CMA now issues written directions under paragraph 11 of the Order that, for the purpose of securing compliance with the Order, Breedon, Breedon Southern and Cemex must appoint a monitoring trustee in accordance with the terms provided for in this Annex and must comply with the obligations set out in the Annex.

Signed

Director, Mergers  
Competition and Markets Authority  
14 February 2020

## **Annex**

### **Directions to appoint a monitoring trustee**

#### **Interpretation**

In these Directions:

**‘the Act’** means the Enterprise Act 2002;

**‘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;

**‘CMA’** means the Competition and Markets Authority;

**‘Derogations’** means any derogations or variations to derogations granted whether before or after the appointment of the MT by the CMA by which the Breedon business, Cemex and/or the Target business may undertake certain actions that derogate from the Order;

**‘Merger’** means the transaction by which Breedon, Breedon Southern and certain assets of Cemex 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;

**‘MT’** means the monitoring trustee appointed in accordance with paragraphs 1 to 3 of this Annex;

**‘Order’** means the initial enforcement order made by the CMA on 20 January 2020 and addressed to Breedon, Breedon Southern and Cemex;

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

**‘Target business’** means the businesses and assets of Cemex and its subsidiaries that are the subject of the transaction;

**‘the two businesses’** means the Breedon business and the Target business;

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

Terms and expressions defined in the Order have the same meaning in these directions, unless the context requires otherwise.

## **Appointment**

1. Breedon, Breedon Southern and Cemex must appoint a MT in order to ensure compliance with the Order, in particular to:
  - a. avoid any pre-emptive action (within the meaning of the Act) taking place during the CMA's investigation;
  - b. monitor and report to the CMA on compliance by Breedon, Breedon Southern, Cemex and their subsidiaries with the Order; and
  - c. support the CMA taking any remedial action which may be required to maintain the Target business and Breedon business as going concerns.
2. The MT must act on behalf of the CMA and be under an obligation to the CMA to carry out its functions to the best of its abilities.
3. Breedon, Breedon Southern and Cemex must cooperate fully with the MT, in particular as set out below, and Breedon, Breedon Southern and Cemex must ensure that the terms and conditions of appointment of the MT reflect and give effect to the functions and obligations of the MT and the obligations of Breedon, Breedon Southern and Cemex as set out in these directions.

## **General**

4. The MT must possess appropriate qualifications and experience to carry out its functions.
5. The MT must neither have, nor become exposed to, a conflict of interest that impairs its objectivity and independence in discharging its duties under these directions, unless it can be resolved in a manner and within a timeframe acceptable to the CMA.
6. Breedon, Breedon Southern and Cemex shall remunerate and reimburse the MT for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the MT's independence or ability to effectively and properly carry out its functions.
7. Subject to the CMA approving the draft terms and conditions of appointment of the MT notified to the CMA in accordance with paragraphs 8(b) and (c) below, Breedon, Breedon Southern and Cemex must appoint the MT as soon as is reasonably practicable and in any event by **24 February 2020** and the MT will continue to act either until the CMA reaches a decision to clear the Merger or, if earlier, until the CMA directs that the MT is no longer required.

8. The appointment of a MT by Breedon, Breedon Southern and Cemex is subject to the approval of the CMA as to the identity of the MT and the terms and conditions of appointment in their entirety and:
- a. the name of the proposed MT must be notified to the CMA as soon as is reasonably practicable and in any event by **18 February 2020**;
  - b. the draft terms and conditions of appointment must be notified to the CMA as soon as is reasonably practicable and in any event by **20 February 2020**; and
  - c. once the MT has been approved by the CMA and appointed, Breedon, Breedon Southern and Cemex must provide the CMA with a copy of the agreed terms and conditions of appointment.

## Functions

9. The functions of the MT will be to:
- a. ascertain and report to the CMA in relation to the current level of compliance by Breedon, Breedon Southern, Cemex and their subsidiaries with the Order;
  - b. assess and report to the CMA in relation to the arrangements made by Breedon, Breedon Southern, Cemex and their subsidiaries for compliance with the Order and what changes to those arrangements, if any, are necessary to preserve the possibility of the CMA taking any remedial action, if required;
  - c. identify and supervise, if necessary, the arrangements made by Breedon, Breedon Southern and Cemex for ensuring compliance with the Order;
  - d. monitor compliance by Breedon, Breedon Southern and Cemex and their subsidiaries with the Order; and
  - e. without prejudice to the right of Breedon, Breedon Southern and Cemex to contact the CMA, respond to any questions which Breedon, Breedon Southern or Cemex may have in relation to compliance with the Order, in consultation with the CMA.
10. The MT must take such steps as it reasonably considers necessary in order to carry out its functions effectively, including requiring the provision of information or the production of documents relating to communications within and between the Breedon business and the Target business, such as written and electronic communications, telephone conversations and meetings as may be required.
11. The MT must comply with any requests made by the CMA for the purpose of ensuring the full and effective compliance by Breedon, Breedon Southern, Cemex and their subsidiaries with the Order.

## Obligations of Breedon, Breedon Southern and Cemex

12. Breedon, Breedon Southern, Cemex and their employees, officers, directors, advisers and consultants must cooperate fully with the MT, in particular by providing the MT with all cooperation, assistance and information as the MT may reasonably require in order to discharge its functions, including but not limited to:
  - a. the provision of full and complete access to all personnel, books, records, documents, facilities and information of the Breedon business and the Target business as the MT may reasonably require; and
  - b. the provision of such office and supporting facilities as the MT may reasonably require.
13. If Breedon, Breedon Southern or Cemex are in any doubt as to whether any action or communication would infringe the Order, they are required to contact the MT for clarification.
14. If Breedon, Breedon Southern or Cemex has any reason to suspect that the Order may have been breached, they must notify the MT and the CMA immediately.

## Reporting functions

15. The MT is required to provide an initial report to the CMA by no later than 5pm (UK time) on **9 March 2020**, giving details of any arrangements which have been, or should be, put in place to ensure compliance with the Order, and including among other things:
  - a. details of the current extent of compliance with the Order;
  - b. a description of the current arrangements made for the operation of the Target business and for the preservation of the assets required to operate the Target business;
  - c. recommendations as to what changes to those arrangements, if any, are necessary.
16. In addition to providing the initial report referred to in paragraph 15 above, the MT must provide a statement to the CMA every two weeks thereafter (or otherwise as required by the CMA) stating whether or not, in its view, Breedon, Breedon Southern, Cemex and their subsidiaries have complied with the Order. At the same time, the MT must provide the CMA with a report setting out the following:
  - a. the basis for the MT's view that the Order has or has not, as the case may be, been complied with and in particular whether:
    - i. anything has caused the MT to be concerned as to whether Breedon, Breedon Southern, Cemex and their subsidiaries have

complied with the Order, and if it has, whether those concerns have been resolved and why;

ii. the MT has any remaining doubts or uncertainties as to whether Breedon, Breedon Southern, Cemex and their subsidiaries have complied with the Order; and

iii. anything that causes the MT to be concerned about a possible future breach of the Order (whether deliberate or inadvertent);

b. details of the performance of the Breedon and Target business, including any factors that might indicate asset deterioration;

c. whether appropriate steps are being taken to maintain the Target business as a going concern;

d. the extent to which Breedon, Breedon Southern, Cemex and their subsidiaries have cooperated with the MT in its task of monitoring its compliance with the Order and details of any aspects of the cooperation of Breedon, Breedon Southern, Cemex or any of their subsidiaries that the MT considers could be improved;

e. the extent to which the MT considers that it is in an appropriate position to monitor the compliance of Breedon, Breedon Southern, Cemex and their subsidiaries with the Order and if there is anything that the MT considers would assist it in monitoring compliance;

f. any current or anticipated requests for consent to vary the Order; and

g. the information it used to compile the report.

17. When providing reports to or otherwise engaging with the CMA, the MT must ensure that it does not disclose any information or documents to the CMA which Breedon, Breedon Southern, Cemex or any of their subsidiaries would be entitled to withhold from the CMA on the grounds of legal privilege and nothing in these directions requires Breedon, Breedon Southern or Cemex to produce any information or documents to the MT which are privileged.

18. The MT must immediately notify the CMA in writing if it forms a reasonable suspicion that the Order has been breached, or if it considers that it is no longer in a position to effectively carry out its functions. In that situation, the MT must give reasons for this view, including any supporting evidence available (unless doing so would infringe the obligations referred to in paragraph 17 above).

19. All communications between the MT and the CMA (including the statements and reports referred to in paragraphs 15 and 16) are confidential and should not be disclosed to Breedon, Breedon Southern, Cemex or any of their subsidiaries, save with the prior written consent of the CMA. The MT shall not disclose such communications to third parties.