

DEROGATION LETTER

IN RESPECT OF INITIAL ENFORCEMENT ORDERS ISSUED PURSUANT TO SECTION 72(2) ENTERPRISE ACT 2002

Please note that [✂] indicates figures or text which have been deleted at the request of the parties for reasons of commercial confidentiality.

Consent under section 72(3C) of the Enterprise Act 2002 to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority ('CMA') on 20 January 2020, as varied on 11 February 2020.

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

We refer to your email and supporting submission dated 31 March 2020 requesting that the CMA consents to a derogation to the Initial Enforcement Order of 20 January 2020 as amended by the Variation Order of 11 February 2020 (the '**Initial Order**'). The terms defined in the Initial Order have the same meaning in this letter.

Under the Initial Order, save for written consent by the CMA, Breedon Group plc, Breedon Southern Limited (together, "**Breedon**") and Cemex Investments Limited ("**Cemex**") are required to hold separate certain assets of Cemex Investments Limited (the "**Target**") from the Breedon business and refrain from taking any action which might prejudice a reference under section 22 or 33 of the Act or impede the taking of any remedial action following such a reference. After due consideration of your request for derogations from the Initial Order, based on the information received from you and in the particular circumstances of this case, Cemex and Breedon may carry out the following actions, in respect of the specific paragraphs:

1. Paragraph 6(a), 6(e), 6(g) and 6(l) of the Initial Order

Cemex submits that, in order to dispose of certain interests in Target properties to Breedon on completion in connection with the transaction, Cemex and Breedon are required to obtain the relevant third party/landlord (the **Relevant Third Parties**) consents and/or waivers for several sites identified in Annex 1 (the **Sites**). These Sites are [✂].

Cemex submits that it will meet with the Relevant Third Parties, and Breedon will provide the Relevant Third Parties with the information required by the Relevant Third Parties to evidence the viability of Breedon as a potential future tenant.

However, in some instances, the Relevant Third Parties may require Breedon to attend certain of these meetings in order to assist with securing the necessary consents/waivers. As such, Breedon and Cemex may both need to engage with the Relevant Third Parties and Cemex may need to provide Breedon with certain confidential information relating to those interests for the purposes of obtaining the consents and/or waivers required from the Relevant Third Parties for Cemex to lawfully dispose of certain interests in the Sites. Additionally, Breedon may need to provide Cemex with certain confidential information relating to [REDACTED].

Where strictly necessary and only where requested by the Relevant Third Parties, Cemex has explained that obtaining the consents and/or waivers required from the Relevant Third Parties for Cemex to lawfully dispose of certain interests in the Sites, may take the form of a joint meeting involving both Breedon and Cemex.

On this basis, the CMA consents to:

- (i) Identified individuals within Breedon and Cemex engaging in joint communications or meetings with the Relevant Third Parties as strictly necessary for the purposes of obtaining the Relevant Third Parties' consent or waiver prior to transferring any Target property interest from Cemex to Breedon;
- (ii) Cemex sharing with Breedon [REDACTED] and participating in discussions between Breedon and the Relevant Third Parties to discuss the basis on which these property interests may be transferred to Breedon.
- (iii) Breedon sharing with Cemex certain confidential information relating to [REDACTED].

The CMA consents to this derogation from the Initial Order, strictly on the basis that:

- (a) Cemex and Breedon will first seek to secure the consents/waivers from the Relevant Third Parties in relation to the Sites without the need for joint meetings;
- (b) Joint meetings will only take place where required by the Relevant Third Party;
- (c) Relevant Third Parties with whom a joint meeting is to take place will be fully briefed by Cemex on the obligations contained in the Initial Order. Additionally:
 - An agenda will be prepared in advance for each joint meeting;
 - a record of the meeting will be kept in writing;

- all attendees will be reminded before each meeting of the terms of this derogation and that no commercially-sensitive information can be shared between Cemex and Breedon during the meeting;
- (d) Joint meetings with Relevant Third Parties will be limited to the Sites (or any other sites as may be subsequently agreed by the CMA in writing, including via email) and will only be permitted pursuant to this derogation where the Relevant Third Parties specifically request that a joint meeting with Breedon and Cemex takes place;
- (e) For the avoidance of doubt, Breedon shall not share any commercially-sensitive information with Cemex. Where the Relevant Third Parties require commercially-sensitive information from Breedon, Breedon will share such information directly with the Relevant Third Parties in writing. Where such requests are made during a joint meeting with Breedon and Cemex, Cemex representatives will excuse themselves from this part of the meeting;
- (f) Cemex shall only share with Breedon information on [✂];
- (g) Breedon shall only share with Cemex information on [✂];
- (h) Confidential information exchanged between Cemex and Breedon pursuant to this derogation shall only be provided to the following named individuals who are strictly required to be involved in the process:
 - a. From Breedon: [✂], and
 - b. from Cemex: [✂];Further changes to the Breedon or Cemex personnel covered by this derogation are permitted with written consent from the CMA (including via email).
- (i) Each of the identified individuals shall enter into an NDA in the form approved by the CMA;
- (j) Firewalls are put into place to prevent any unauthorised personnel at Breedon and Cemex from accessing information exchanged for the permitted purpose;
- (k) Cemex and Breedon will share with the Monitoring Trustee (and the CMA upon request), the relevant NDAs, list of attendees, agendas and notes of the meetings as requested;
- (l) legal transfer to Breedon of all Target properties being acquired in accordance with the transaction will not occur until completion or a later date in

circumstances where the relevant consent or waiver has not been obtained by completion.

Yours sincerely,

Assistant Director, Remedies, Business and Financial Analysis

9 April 2020

Annex 1 – Target business sites [✂]

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