

## 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 submission of 22 April 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, Breedon and Cemex may carry out the following actions, in respect of the specific paragraphs:

#### **1. Paragraph 6(a) and 6(l) of the Initial Order**

Breedon submits that the Target business which is being acquired from Cemex in accordance with the transaction, does not include a payroll system. Therefore, with the support of a third party payroll solutions provider, Breedon needs to set-up and test a payroll system for the Target in advance of completion to ensure that there is no or minimal disruption to the Target employees being paid and accessing any employee benefits following completion. In order to achieve this, Breedon states that it requires certain information/data regarding: (i) the Target employees who will automatically transfer to Breedon by operation of law on completion, and (ii) the

additional Cemex employees required for the maintenance of the viability of the Target following completion (the **Target Employees**).

Breedon submits that the Target payroll system will be established on a segregated area of Breedon's payroll system, so that Breedon is able to provide equivalent compensation, benefits and pay to the Target Employees within the first payroll cycle following completion.

1. On this basis, the CMA consents to:

- (i) Cemex:
  - a. providing the information/data identified in Annex 1 (**Payroll Data**) to Breedon and its third party service provider, which is limited to that strictly necessary for the purposes of establishing a payroll system for Target Employees and ensuring no or minimal disruption to the Target Employees in providing equivalent compensation, benefits and pay following completion; and
  - b. engaging with Breedon and its third party service provider to the extent strictly necessary on the Payroll Data relating to the Target Employees; and
- (ii) Breedon, together with its third party service provider, building and testing a payroll system for the Target using the Payroll Data received from Cemex in accordance with paragraph 1(i)(a) above.

2. This derogation is granted strictly on the basis that:

- (i) the Payroll Data will only be provided to Breedon's third party service provider and the following identified Breedon individuals (i) [X], (ii) [X], (iii) [X], (iv) [X], (v) [X] and (vi) [X] (together the **Authorised Individuals**) and any other individual for whom it is strictly necessary to receive the information for this permitted purpose;
- (ii) the Payroll Data being shared by Cemex with the Authorised Individuals for these purposes is limited to that which is strictly necessary for Breedon and its third party service provider to build and test a payroll system for the Target;
- (iii) each of the Authorised Individuals shall enter into an NDA in the form approved by the CMA;
- (iv) no further changes to the Authorised Individuals covered by this derogation are permitted without written consent from the CMA (including via email);

- (v) Breedon's third party service providers will enter into an NDA in a form agreed with the CMA and will be fully briefed by Breedon on the obligations contained in the Initial Order;
- (vi) the Target payroll system will be established on a segregated area of Breedon's payroll system with access to this system being limited to the Authorised Individuals;
- (vii) firewalls or access restrictions will be put in place to prevent any unauthorised Breedon personnel from accessing any information provided by Cemex to the Authorised Individuals for the permitted purpose;
- (viii) Breedon will share with the Monitoring Trustee a copy of the Payroll Data received from Cemex as well as copies of the relevant signed NDAs, and the Monitoring Trustee will oversee the process;
- (ix) this derogation will not lead to any integration of the Breedon business and Target business and it will have no impact on any remedial action that the CMA may need to take regarding the transaction; and
- (x) should the transaction ultimately be prohibited, Breedon will ensure that any records or copies (electronic or otherwise) of such information that have passed for the purpose of this derogation, wherever they may be held, will be returned to Cemex and any copies destroyed, except to the extent that record retention is required by law or regulation.

Yours sincerely,

Assistant Director, Remedies, Business and Financial Analysis  
7 May 2020

### **Annex 1 – Payroll Data**