

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 submissions of 22 April and 15 May 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, will be transferred to Breedon on completion without any IT, finance, operating or accounting systems. Breedon, with the assistance of third party IT service providers [✂], [✂] and [✂] (**Third Party IT Service Providers**), therefore needs to build and test the required replacement IT systems in advance of completion to ensure the continued and viable operation of the Target following completion.

In order to achieve this, Breedon states that it requires access to confidential and commercially-sensitive information of certain Target site specific customer, supplier, inventory and haulier data as set out in [X] the Business Purchase Agreement entered into between the Parties on 8 January 2020 and technical data (together the "**Required Data**") ahead of completion. Breedon submits that access to the Required Information is strictly necessary to enable Breedon to put in place the necessary IT, finance, operating and accounting systems, following completion.

On this basis, the CMA consents to:

- (i) Breedon's Third Party IT Service Providers engaging and discussing with Breedon the format, layout, quality and structure of the Required Data;
- (ii) [X] and [X] accessing the Required Data to the extent strictly necessary for administrative and compliance purposes;

[X]

- (iii) Cemex providing Breedon's Third Party IT Service Provider, [X], with those aspects of the Required Data which shall be used by [X] to verify, build, test and manage the [X] system required for the Target business ("**[X] Data**") which will be established on a separate server, physically located at [X], a Third Party IT Service Provider based in the UK to prevent unauthorised access by Breedon to the system and information contained therein, without the necessary consent being granted by the CMA pursuant to this derogation;
- (iv) The following Breedon individuals (a) reviewing and carrying out verification tests of the [X] Data and the [X] system built by the Third Party IT Service Providers for the Target, (b) uploading [X] Data into the [X] system, (c) validating the [X] Data and ensuring its provision complies with the terms of the BPA, and (d) building, managing or using the [X] Data as part of any other systems which are required for the Target business after completion: (i) [X]; (ii) [X]; (iii) [X], and (iv) [X];

[X]

- (v) Cemex providing Breedon's Third Party IT Service Provider, [X], with those aspects of the Required Data which shall be used by [X] to verify, build, test and manage the [X] ("**[X] Systems**") required for the Target business ("**[X] Data**") on Breedon's servers with access restrictions in place to prevent unauthorised access by Breedon to the system and information contained therein, without the necessary consent being granted by the CMA pursuant to this derogation;

- (vi) The following Breedon individuals (a) reviewing and carrying out verification tests of the [X] Data and the [X] Systems built by [X] for the Target, (b) uploading [X] Data into the [X] Systems, (c) validating the [X] Data and ensuring its provision complies with the terms of the BPA, and (d) building, managing or using the [X] Data as part of any other systems which are required for the Target business after completion: (i) [X]; (ii) [X]; (iii) [X], and (iv) [X];

Technical Data

- (vii) Cemex providing Breedon's Third Party IT Service Provider, [X], with the Technical Data (as set out in Annex 1) required for the Target business;
- (viii) The following identified individuals within Breedon accessing the Technical Data and using it for the purposes of building [X] by the Target business following completion: (i) [X], (ii) [X], and (iii) [X].

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

- a) Cemex will provide the Required Data directly to Breedon's Third Party IT Service Providers where it is possible to do so;
- b) Any information relating to the Target business which is shared with Breedon for the purposes of this derogation is limited to that which is strictly necessary to facilitate the build and testing of the required replacement IT systems in advance of completion to ensure the continued and viable operation of the Target following completion;
- c) The relevant aspects of the Required Data will only be accessible by the relevant identified individuals within Breedon strictly for the purposes described in this derogation;
- d) No further changes to the Breedon personnel covered by this derogation are permitted without written consent from the CMA (including via email);
- e) Breedon's Third Party IT Service Providers will be informed as to the existence of the Initial Order and fully briefed by Breedon on the obligations contained in the Initial Order;
- f) Each of the identified individuals and Breedon's Third Party IT Service Providers shall enter into an NDA/confidentiality undertaking in the form approved by the CMA;
- g) Breedon will share with the Monitoring Trustee a copy of the Required Data it receives as well as copies of the relevant signed NDAs/confidentiality

undertakings, and the Monitoring Trustee will oversee compliance with this derogation;

- h) Firewalls or access restrictions will be put in place to prevent any unauthorised Breedon personnel from accessing the Required Data;
- i) 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
- j) 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
1 June 2020

Annex 1 – Technical Data