

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

Please note that [X] 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 (the 'Merger')**

We refer to your submissions dated 22 April, 9 and 11 June 2020 requesting that the CMA consents to derogations 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 (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. Paragraphs 6(a) and 6(l) of the Initial Order**

The CMA understands that Breedon is acquiring four Target building product plants ('**Target BP plants**') as part of the Merger. Breedon submits that the Target BP plants have bespoke operational aspects that are not comparable with facilities Breedon currently owns. Breedon is therefore seeking a derogation from the Initial Order to carry out site visits to the four Target BP plants prior to completion of the Merger in order for Breedon to:

- a) understand and assess the operational aspects of the Target BP plants;
- b) understand the capability and functional basis of the equipment at the Target

- BP plants;
- c) understand the extent to which any functionalities of the Target BP plants are dependent on Cemex supporting systems which do not form part of the Target business; and
  - d) ensure it is able to fulfil customer orders with no disruption once completion occurs.

(a) to (d) above together, the '**BP Site Visit Purpose**'.

The CMA grants a derogation from paragraphs 6(a) and 6(l) of the Initial Order, permitting Breedon to carry out site visits at the four Target BP plants for the BP Site Visit Purpose and to ensure the viable operation of the Target BP plants once completion occurs, strictly on the basis that:

- a) the site visits:
  - i. will not cause any material disruption to the Target business;
  - ii. are strictly necessary to ensure the ongoing viability of the Target business following completion; and
  - iii. will not result in any integration of the Target business with the Breedon business;
- b) the site visits will only be attended by the Breedon staff listed in Annex 1 who will be accompanied at all times by one of more of the Cemex staff listed in Annex 2;
- c) any commercially sensitive information shared with the Breedon staff listed in Annex 1 for the purposes of this derogation is strictly limited to that which is strictly necessary for the BP Site Visit Purpose;
- d) firewalls and/or other ring-fencing measures will be put in place to prevent any unauthorised individuals within the Breedon business from accessing the information shared with the individuals listed in Annex 1 for the purposes of this derogation;
- e) each of the Breedon staff listed in Annex 1 shall enter into a confidentiality agreement in a form approved by the CMA;
- f) no further changes to the staff listed in Annexes 1 and 2 are permitted without written consent from the CMA (including via email);
- g) prior to each site visit, Breedon and Cemex will prepare an agenda and a list of all attendees. Following each site visit, the individuals listed in Annex 1 and

Annex 2 will prepare a written record of the site visit, which shall only be shared with:

- i. individuals who are listed in Annex 1 and Annex 2; and
- ii. [REDACTED] ([REDACTED], Breedon), [REDACTED] ([REDACTED], Breedon), [REDACTED] (Cemex [REDACTED]) and [REDACTED] (Cemex [REDACTED]) (or as otherwise amended with the prior written consent of the CMA, including via email) to the extent strictly necessary for administrative and compliance purposes and subject to each recipient entering into confidentiality agreement in a form approved by the CMA.

The agendas, the attendee list and the records will be shared with the Monitoring Trustee and the CMA, at the CMA's request; and

- h) should the Merger be prohibited, Breedon will ensure that any confidential and/or commercially sensitive information received from the Target business for the purposes of this derogation will be returned to the Target business 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

12 June 2020

## ANNEX 1 – AUTHORISED BREEDON INDIVIDUALS

Name	Role
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]

## ANNEX 2 – AUTHORISED CEMEX INDIVIDUALS

Name	Role
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]