

## 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 2020 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. Paragraphs 6(a), 6(g), 6(h) and 6(l) of the Initial Order**

The CMA understands that the Target business being acquired from Cemex in accordance with the transaction, is not a standalone business within Cemex. As a result, Breedon submits that there are a number of considerations as regards customer and supplier (**Relevant Third Party**) contracts related to the Target business (**Third Party Contracts**) which will need to be addressed by Breedon and Cemex prior to completion, to ensure the continued viability of the Target following completion.

Breedon explains that the specific actions required in this regard include, inter alia, the following:

- (i) Breedon and Cemex agreeing with the Relevant Third Parties the separation (on completion) of shared contracts which relate to both the Target and other businesses carried on by Cemex, between the Target (the legal contracting party being Breedon) and Cemex (which will include sharing of draft contracts and commenting on draft contracts);
- (ii) Breedon engaging with the Relevant Third Parties unilaterally and/or Breedon and Cemex engaging jointly with the Relevant Third Parties for the purposes of assigning (from Cemex to Breedon), novating, varying, amending, and/or entering into the Third Party Contracts, and taking such steps necessary to assign, novate, vary, amend, or enter into those Third Party Contracts on completion; and
- (iii) Cemex sharing with Breedon copies and details of each of the assigned, novated, varied, amended and/or new Third Party Contracts, including details of (i) [REDACTED]; (ii) [REDACTED]; (iii) [REDACTED], and (iv) [REDACTED].

Where strictly necessary, and only where engagement with Breedon and/or joint engagement with Breedon and Cemex is specifically requested by the Relevant Third Parties, the CMA consents to Breedon and Cemex carrying out the actions described above in respect of the contracts related to the Target business.

This derogation is granted strictly on the basis that:

- a) Cemex will first seek to secure the necessary consents/waivers (as described in (i) and (ii) above) from the Relevant Third Parties without the need for engagement by Breedon with the Relevant Third Party;
- b) Meetings between Breedon and the Relevant Third Party and/or joint meetings between Breedon, Cemex and the Relevant Third Party will only take place where engagement with Breedon and/or joint engagement with Breedon and Cemex is specifically requested by the Relevant Third Party;
- c) Confidential and commercially sensitive information of Cemex in respect of the Relevant Third Party contracts will only be shared with Breedon to the extent that it is strictly necessary to:
  - i. secure the consents/waivers (as described in (i) and (ii) above) from the Relevant Third Parties and to update Breedon regularly on the outcome of which consents/waivers have been obtained, and which consents/waivers remain outstanding. Such information will only be

provided to the following identified Breedon individuals: (i) [X] and (ii) [X]; and

- ii. allow Breedon to advise on the legal aspects of the contracts and internally monitor compliance with the Initial Order and derogation and report to the CMA and MT in accordance with i) below. Such information will only be provided to the following identified Breedon individuals: (i) [X] and (ii) [X] (together, the identified individuals in (iii)a. and (iii)b. represent the **Breedon Authorised Individuals**).
- d) Breedon shall not share any confidential or commercially-sensitive information with Cemex. Where the Relevant Third Parties require confidential or 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.
- e) Any meetings with the Relevant Third Parties will be attended only by the following individuals on the basis that they are strictly required to be involved in the meetings:
  - i. From Breedon: [X] and [X] from Breedon ;
  - ii. From Cemex: [X] and the relevant contacts for each business area: for [X] (the **Cemex Authorised Individuals**).
- f) When Breedon engages with the Relevant Third Parties, the Relevant Third Parties will be informed of the CMA's merger investigation and the Initial Order in a form approved by the CMA and no action will be taken by Breedon to circumvent or hamper the onward divestment of the Relevant Third Party Contracts in the event that remedial action is later required by the CMA;
- g) The Target will continue to service Third Party Contracts following any assignment, novation, variation, amendment of, or entry into, any Third Party Contract in favour of Breedon;
- h) All ongoing contacts with Relevant Third Parties are handled by individuals employed by the Target at the date of completion and/or any hold separate manager appointed to manage the Target following any assignment, novation, variation, amendment of, or entry into, any Third Party Contract in favour of Breedon;

- i) Breedon is required to provide the CMA and the MT with a regular report (no later than two weeks after the date of this derogation, and at least every two weeks thereafter) with details of each of the assigned, novated, amended and/or new Third Party Contract (including (i) [X]; (ii) [X]; (iii) [X] and (iv) [X];
- j) No changes to the Breedon or Cemex Authorised Individuals are permitted without written consent from the CMA (including via email);
- k) Each of the Breedon Authorised Individuals shall enter into an NDA/confidentiality undertaking in the form approved by the CMA;
- l) Breedon will share with the Monitoring Trustee copies of the relevant signed NDAs/confidentiality undertakings;
- m) Firewalls or access restrictions will be put in place to prevent anyone but the Breedon Authorised Individuals from accessing any information provided for the permitted purpose;
- n) Legal transfer to Breedon of all Relevant Third Party contracts 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;
- o) This derogation will have no impact on any remedial action that the CMA may need to take regarding the transaction; and
- p) 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

18 June 2020