

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 of 3 February, 29 April, 15 May and 12 June 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 5(a) and 6(a) of the Initial Order

Breedon submits that various environmental permits required to operate the Target business must be transferred and/or issued to Breedon to ensure that the Target business does not breach any regulatory requirements following completion ("**Target Permits**"). Breedon explains that Breedon and Cemex need to make joint applications to the relevant regulatory bodies for the transfer and/or issue of the Target Permits to Breedon.

The CMA grants a derogation from paragraphs 5(a) and 6(a) of the Initial Order permitting:

- i. Breedon and Cemex to make the necessary applications in advance of completion, including any joint applications, for the transfer and/or issue of the Target Permits to Breedon; and
- ii. the Target Permits being transferred and/or issued to Breedon on completion.

The CMA consents to a derogation from paragraphs 5(a) and 6(a) the Initial Order strictly on the basis that:

- a) the transfer and/or issue of the Target Permits to Breedon is strictly necessary to ensure that the Target business does not breach any regulatory requirements following completion;
- b) the preparation and filing of the relevant applications for the Target Permits does not involve the sharing of any confidential or commercially-sensitive information between Breedon and Cemex;
- c) applications will only be made on a joint basis where required by the relevant regulatory body;
- d) the transfer and/or issue of the Target Permits to Breedon will not give rise to any material changes to the Target Permits;
- e) legal transfer and/or issue to Breedon of the Target Permits would only occur on or after completion;
- f) The transfer of the Target Permits to Breedon would not be costly or difficult to reverse, and the Target Permits are capable of being transferred, or materially equivalent permits issued, to the third party purchaser in the event that remedies are required; and
- g) This derogation will not affect any remedial action which the CMA may need to take regarding the Merger.

2. Paragraphs 5(a), 6(a), 6(g) and 6(l) of the Initial Order

Breedon submits that Cemex has provided various environmental bonds, performance bonds, guarantees (including bank guarantees) indemnities, counter indemnities, letters of comfort and/or other security interests in relation to the Target business ("**Environmental Security Interests**"). These Environmental Security Interests have been provided to or in favour of third parties (including any regulatory or public authority, together the "**Relevant Third Parties**") under applicable environment, health and safety laws and regulations or environmental permits, or relevant lettings or applicable planning laws and permissions.

Breedon submits that on completion of the Merger, Cemex will need to be released from the Environmental Security Interests in relation to the Target business. Breedon will then be required under applicable laws to provide replacement Environmental Security Interests in relation to the Target business on materially the same terms as provided by Cemex pre-completion of the Merger and as may be requested by the Relevant Third Parties.

Breedon's and Cemex's respective brokers ([X] for Cemex and [X] for Breedon) will engage with prospective surety providers and Breedon and Cemex will engage unilaterally with the Relevant Third Parties to obtain their consent to replace Cemex's bond protection with Breedon's offering and check administrative points (whether bonds can be replaced or should be renewed). The CMA understands that Breedon and Cemex will not need to engage jointly with the Relevant Third Parties.

Breedon is therefore seeking the CMA's consent for:

- i. Cemex to share with Breedon certain confidential information relating to the Environmental Security Interests which is limited to that strictly necessary for Breedon to provide replacement Environmental Security Interests;
- ii. Cemex to be released from the Environmental Security Interests on completion of the Merger; and
- iii. Breedon to provide the Environmental Security Interests on materially the same terms as provided by Cemex pre-completion of the Merger, and as may be requested by the Relevant Third Parties.

The CMA consents to a derogation from paragraphs 5(a), 6(a), 6(g) and 6(l) of the Initial Order, strictly on the basis that:

- a) the actions described in paragraphs (i) to (iii) above are strictly necessary to ensure that Cemex is released in full from the Environmental Security Interests, and that Breedon provides replacement Environmental Security Interests in compliance with applicable laws, environmental permits or planning permissions;
- b) any confidential information shared with Breedon by Cemex for the purposes of this derogation will:
 - a. be limited to that which is strictly necessary to release Cemex from the Environmental Security Interests and ensure that Breedon puts replacement Environmental Security Interests in place;
 - b. be shared with the Breedon individuals listed in Annex 1 for whom it is strictly necessary to see this information to progress the actions described in paragraphs (i) to (iii) above;

- c) For the avoidance of doubt, Cemex is not required to receive confidential information from Breedon for the purposes of this derogation and no commercially-sensitive information will be exchanged between Breedon and Cemex;
- d) each of the Breedon individuals listed in Annex 1 shall enter into an NDA/confidentiality undertaking in the form approved by the CMA (Breedon will share with the Monitoring Trustee copies of the relevant signed NDAs);
- e) no further changes to the Breedon personnel listed in Annex 1 are permitted without the prior written consent from the CMA (including via email);
- f) 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;
- g) The actions permitted by this derogation in respect of the Environmental Security Interests would not be costly or difficult to reverse, and it would be possible for another third-party to replace the Environmental Security Interests in the event that remedies are required;
- h) This derogation will not affect any remedial action which the CMA may need to take regarding the Merger; and
- i) should the Merger ultimately be prohibited or undertakings in lieu (UIL's) accepted, Breedon will ensure that any records or copies (electronic or otherwise) of information received from Cemex for the purposes 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 July 2020

ANNEX 1 – AUTHORISED BREEDON INDIVIDUALS

Name	Role
✂	✂
✂	✂
✂	✂
✂	✂
✂	✂