

**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 and 29 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 and 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 may carry out the following actions, in respect of the specific paragraphs:

1. Paragraphs 5(a), 6(a), 6(c), 6(g), 6(h) and 6(l) of the Initial Order

Breedon submits that given the Target business is not itself a legal entity, Breedon Southern Limited ("**Breedon Southern**") as the acquiring entity of the Target business, will be required to enter into contracts on behalf of the Target business. The CMA understands that prior to completion, any contract entered into by Breedon Southern will not relate to the Target business's commercial contracts with customers, but relate to contracts which are strictly necessary to maintain the viability of the Target business from completion (eg provision of services to the Target business). Therefore, in order to ensure the ongoing viability and operation of the Target business, Breedon Southern will be required to act as the legal purchasing and contracting entity on behalf of the Target business.

Breedon submits that it is also necessary to:

- permit Breedon Southern to enter into contracts on behalf of the Target business;
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- permit the Target Managing Director / Hold Separate Manager (once appointed) (“**HSM**”) and the Target Finance Director (once appointed) to be appointed to act as authorised signatories on behalf of Breedon Southern; and
- permit [X] ([X]) to be permitted to sign contracts together with the Target Managing Director / HSM and/or Target Finance Director where a third party requires a statutory director of Breedon to sign the contracts.

Breedon is therefore seeking CMA consent for the following:

- a) Breedon Southern to contract and purchase on behalf of the Target business strictly on the basis that the Target business is not itself and will not post-completion be a legal entity and is and will therefore be unable to contract and purchase itself without such support from Breedon Southern;
- b) The Target Managing Director / HSM and the Target Financial Director to act as authorised signatories of Breedon Southern insofar as it relates only to the Target business; and
- c) [X] to act as a second signatory to contracts/documents signed by Breedon Southern on behalf of the Target business, but only where a third party requires a statutory director of Breedon to be a signatory to the contract.

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

- (i) Prior to completion, any contract entered into by Breedon Southern will not relate to the Target business’s commercial contracts with customers, but will relate to contracts which are strictly necessary to maintain the viability of the Target business from completion;
 - (ii) The Target Managing Director / HSM and the Target Financial Director will not act as signatories to any contracts that do not relate to the Target business, and will not have access to any Breedon IT systems or Breedon confidential information as a result of being authorised signatories of Breedon Southern;
 - (iii) Any information which is shared with [X] will be limited to that which is strictly necessary in order for [X] to act as a second signatory on behalf of Breedon Southern, where a third party requires a statutory director of Breedon to be a signatory to the contract;
 - (iv) [X] does not hold a commercial or strategic role within Breedon;
 - (v) [X] shall enter into an NDA/confidentiality undertaking in a form approved by the CMA;
 - (vi) For the avoidance of doubt, the Target Managing Director / HSM and Target Financial Director will maintain sole responsibility for taking all contracting and purchasing decisions on behalf of the Target business. This derogation does not therefore provide Breedon with any veto rights over the proposed action of the
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Target Managing Director / HSM or Target Financial Director and Breedon will not seek to influence any decisions taken by the Target Managing Director / HSM or Target Finance Director;

- (vii) [X] shall not consult with any individual at Breedon in acting in his capacity as signatory unless otherwise permitted by the CMA;
- (viii) No further changes to the personnel covered by this derogation are permitted without prior written consent from the CMA (including via email);
- (ix) Firewalls or access restrictions will be put in place to prevent any unauthorised Breedon personnel from accessing any confidential information shared with Breedon for the permitted purpose;
- (x) Whilst Breedon Southern will need to contract on behalf of the Target business prior to completion, all relevant contracts covered by this derogation will only become effective on completion;
- (xi) 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 Investments Limited or the Target business (as applicable) and any copies destroyed, except to the extent that record retention is required by law or regulation; and
- (xii) This derogation shall have no impact on any remedial action that the CMA may need to take regarding the Merger.

Yours sincerely,

Assistant Director, Remedies. Business and Financial Analysis

24 July 2020
