

ACQUISITION BY BREEDON GROUP PLC OF CERTAIN ASSETS OF CEMEX INVESTMENTS LIMITED

Directions issued pursuant to paragraph 11 of the Initial Enforcement Order made by the Competition and Markets Authority pursuant to section 72(2) of the Enterprise Act 2002

On 20 January 2020 the Competition and Markets Authority (**CMA**) served an initial enforcement order under section 72(2) of the Enterprise Act 2002 (the **Act**) on Breedon Group plc (**Breedon**), Breedon Southern Limited (**Breedon Southern**) and Cemex Investments Limited (**Cemex**) in relation to the proposed acquisition of a portfolio of assets by Breedon from Cemex (the **Target business**) (the **Transaction**) for the purpose of preventing pre-emptive action which was subsequently varied on 11 February 2020 (the **Initial IEO**);

On 18 February 2020, the CMA issued directions to Breedon, Breedon Southern and Cemex to appoint a monitoring trustee (**MT**) for securing compliance with the Initial IEO.

On 31 July 2020, the Transaction completed. On the same date, the CMA revoked the Initial IEO and issued an initial enforcement order in accordance with section 72(2) of the Act to Breedon and Breedon Southern concerning the completed Transaction (the **Initial Enforcement Order**). Under the terms of the Initial Enforcement Order, the directions to appoint a MT continue to apply to Breedon and Breedon Southern.

The Target Business consists of a sale of assets and, while certain employees will transfer to Breedon by virtue of the provisions of the Transfer of Undertakings (Protection of Employment) regulations, it does not include pre-Transaction senior management.

In order to ensure that no action is taken pending final determination of any reference under section 22 of the Act which might prejudice that reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decision on the reference, the CMA now issues written Directions under paragraph 11 of the Initial Enforcement Order that Breedon and Breedon

Southern must appoint a formal Hold Separate Manager (**HSM**) of the acquired Target business in accordance with the terms provided for, and must comply with the obligations set out, in Annex 1.

Assistant Director, Mergers
Competition and Markets Authority
31 July 2020

ANNEX 1

Directions to appoint a Hold Separate Manager

Interpretation

1. In these Directions:

‘the Act’ means the Enterprise Act 2002;

‘Breedon’ means Breedon Group plc, a company registered in Jersey, with company number 98465;

‘the Breedon business’ means the business of Breedon and its subsidiaries (including Breedon Southern) carried on as at the Commencement date but excluding the Target business;

‘Breedon Southern’ means Breedon Southern Limited, a company registered in England and Wales, with company number 00156531;

‘business’ has the meaning given by section 129(1) and (3) of the Act;

‘CMA’ means the Competition and Markets Authority;

‘Cemex’ means Cemex Investments Limited, a company registered in England and Wales, with company number 00249776;

‘Commencement date’ means 31 July 2020, which is the commencement date of the Initial Enforcement Order;

‘Derogations’ means any derogations granted whether before or after the appointment of the HSM by the CMA by which Breedon or Breedon Southern may undertake certain actions that derogate from the Initial Enforcement Order;

‘HSM’ means the Hold Separate Manager appointed in accordance with these Directions;

‘Initial IEO’ means the initial enforcement order issued under section 72(2) of the Enterprise Act 2002 on 20 January 2020 (and varied on 11 February 2020) addressed to Breedon, Breedon Southern and Cemex;

‘Initial Enforcement Order’ means the initial enforcement order issued under section 72(2) of the Enterprise Act 2002 by the CMA on 31 July 2020 and addressed to Breedon and Breedon Southern;

‘MT’ means the Monitoring Trustee initially appointed by Breedon, Breedon Southern and Cemex pursuant to the directions issued by the CMA on 14 February 2020 under paragraph 10 of the Initial IEO and which continue to

apply to Breedon and Breedon Southern by virtue of paragraph 6 of the Initial Enforcement Order;

‘the transaction’ means the transaction by which Breedon and the Target business have ceased to be distinct within the meaning of section 23 of the Act.

Terms and expressions defined in the Initial Enforcement Order have the same meaning in these directions, unless the context requires otherwise.

Appointment

2. Breedon and Breedon Southern must appoint a formal HSM to ensure that the Target business operates as a viable and competitive business, separately from and independently of the Breedon business. The HSM must be subject to the approval by the CMA of his or her identity and the terms and conditions of appointment. Any appointment must be made in accordance with the provisions of these Directions.
3. Breedon and Breedon Southern must appoint the HSM without delay and in any event by 5 August 2020 (or such longer period as the CMA may reasonably agree in writing) and the HSM will continue to act until the CMA has finally determined the reference (within the meaning of section 79 of the Act) or revoked the Initial Enforcement Order. Breedon and Breedon Southern must provide the CMA with the name(s) of potential candidate HSM(s), and provide draft terms and conditions of appointment, by 3 August 2020 (or such longer period as the CMA may reasonably agree in writing).
4. The HSM must act on behalf of the CMA and be under an obligation to the CMA to carry out his or her functions to the best of his or her abilities.
5. Breedon and Breedon Southern must ensure that the terms and conditions of appointment of the HSM reflect and give effect to the functions and obligations of the HSM and the obligations of Breedon and Breedon Southern as set out in these Directions.
6. Breedon and Breedon Southern, their subsidiaries and their employees, officers, directors, advisers and consultants must cooperate fully with the HSM, in particular by providing the HSM with all cooperation, assistance and information as the HSM may reasonably require in order to discharge his or her functions.

Functions

7. The functions of the HSM will be to exercise day-to-day management and control of the Target business so that:

- (a) it operates as a viable and competitive business, separately from and independently of the Breedon business and competes actively with the Breedon business;
 - (b) appropriate management, reporting and decision-making systems are put in place to preserve the independence of the Target business and ensure such independence on an ongoing basis;
 - (c) the Target business is maintained as a going concern with access to sufficient resources for its continued operation and development.
8. The HSM will also be required to:
- (a) ensure that the Target business complies with the Initial Enforcement Order;
 - (b) ensure the economic viability and competitiveness of the Target business in accordance with good business practice;
 - (c) minimise, as far as possible, any risk of loss of competitive potential of the Target business;
 - (d) implement any additional measures that may be necessary to ensure that the Breedon business does not have access to any business secrets or information of a confidential or proprietary nature relating to the Target business and that the Target business does not have access to any business secrets or information of a confidential or proprietary nature relating to the Breedon business unless permitted under the Initial Enforcement Order or by virtue of a derogation granted by the CMA;
 - (e) assist the CMA and MT in monitoring the extent of compliance by Breedon and Breedon Southern (insofar as such compliance relates to the Target business) with the Initial Enforcement Order (including any direction issued under paragraph 11 of the Initial Enforcement Order) or any other order issued by the CMA pursuant to section 72 of the Act;
 - (f) discuss with the MT arrangements which have been, or should be, put in place to ensure the separate operation from the Breedon business of a viable, competitive Target business and compliance by Breedon and Breedon Southern (insofar as such compliance relates to the Target business) with the Initial Enforcement Order; and
 - (g) provide every two weeks (or otherwise as required by the CMA) a statement stating whether or not the Target business has complied with the Initial Enforcement Order.

9. The HSM must take such steps as he or she reasonably considers necessary in order to carry out the HSM's functions effectively.
10. The HSM must comply with any requests made by the CMA for the purpose of ensuring the full and effective compliance by Breedon, Breedon Southern and the Target Business with the Initial Enforcement Order.
11. The HSM must immediately notify the CMA in writing if he or she forms a reasonable suspicion that the Initial Enforcement Order has been breached or if he or she considers that he or she is no longer in a position to effectively carry out the HSM's functions.

General

12. The HSM must possess the appropriate qualifications and experience to carry out the HSM's functions.
13. The HSM must neither have nor become exposed to a conflict of interest that impairs the HSM's objectivity and independence in discharging his or her functions under these Directions, unless it can be resolved in a manner and within a timeframe acceptable to the CMA.
14. Breedon and Breedon Southern shall remunerate and reimburse the HSM for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the HSM's independence or ability to effectively and properly carry out the HSM's functions.
15. Breedon and Breedon Southern must provide the CMA with a copy of the agreed terms and conditions of the appointment of the HSM prior to his or her appointment.
16. Any termination of the appointment of the HSM is subject to the agreement of the CMA, such agreement not to be unreasonably withheld.
17. All communications between the HSM and the CMA are confidential and should not be disclosed to Breedon and Breedon Southern, save with the prior written consent of the CMA. The HSM shall not disclose such communications to third parties, save for external legal advisers provided they are under a similar obligation to keep such communications confidential.
18. The CMA may issue such further directions as it considers necessary to ensure compliance with the Initial Enforcement Order, including, where the appointment of the HSM has been terminated, directions for the appointment of a further HSM.