

## DEROGATION LETTER

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

**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') 31 July 2020.**

#### **Completed acquisition by Breedon Group plc of certain assets of Cemex Investments Limited**

We refer to your email of 30 July 2020 requesting that the CMA consents to a derogation to the Initial Enforcement Order of 31 July 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**") are required to hold separate certain assets acquired from Cemex Investments Limited ("**Cemex**") (the "**Target business**") from the Breedon business and refrain from taking any action which might prejudice a reference under section 22 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, the Target business may carry out the following actions, in respect of the specific paragraphs:

#### **1. Paragraphs 4(c), 5(b), (e) of the Initial Order**

The CMA understands that, as a result of the COVID-19 pandemic, Cemex suspended activities at certain Target business sites prior to the application of the Initial Order (pursuant to a derogation granted to Cemex from the initial enforcement order imposed on Breedon and Cemex on 20 January 2020 and varied on 11 February 2020), and that the Target business may need to suspend activities at further particular sites at short notice, either because the Target business:

- Is required/mandated to do so;
- Does not have enough staff to viably keep a site operating, or
- Cannot viably continue the operation of the site, including financially, due to the circumstances presented by COVID-19.

The CMA considers that the derogation requested is required in the unprecedented and fast-moving circumstances of the COVID-19 situation.

On that basis, the CMA consents to a derogation from the Initial Order strictly on the basis that:

- (i) The reason for the temporary suspensions of activities will be limited only to those set out above (unless otherwise agreed by the CMA in writing);
- (ii) the Target business will report periodically to the CMA and Monitoring Trustee on any such temporary suspensions, and will include in such reports details of:
  - a. The relevant site/s;
  - b. The anticipated duration of the temporary suspension;
  - c. The reason/s for the temporary suspension;
- (iii) Any suspensions will be at the sole discretion of the Target business and Breedon will have no involvement in decisions to suspend activities at Target sites; and
- (iv) Unless withdrawn beforehand, this derogation shall remain in effect until 2 September 2020 (unless amended with the prior written consent of the CMA, including by e-mail).

Your sincerely,

Assistant Director, Remedies Business and Financial Analysis

31 July 2020