

**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 31 July 2020.

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

We refer to your submissions of 29 April, 15 May, 23 June and 22 July 2020 requesting that the CMA consents to a derogation to the Initial Enforcement Order of 31 July 2020. 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 (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, Breedon may carry out the following actions, in respect of the specific paragraphs:

1. Paragraphs 4(a), 5(a), (g) and (l) of the Initial Order

Breedon submits that following completion of the Transaction, the Target business will make use of a new and separate bank account of Breedon Southern Limited, to be opened specifically for use by the Target business (the "**Target Bank Account**") given that the Target business would require access to a bank account to ensure its ongoing viability is maintained.

Breedon submits that the Target Bank Account would be operationally dedicated to the Target business only, and that all payments to, or from, the Target business would be made through the Target Bank Account. Breedon also submits that the Target Bank Account will be used by Breedon to make available working capital for the Target business (in line with Breedon's obligation under paragraph 5(b) of the Initial Order to provide sufficient resources to the Target business).

Further, Breedon submits that certain Breedon individuals will require access to the Target Bank Account for the purposes of providing appropriate financing to the Target business and ensuring ongoing compliance with the Breedon's group [X] and obligations. In addition, in

accordance with the principles of good corporate governance, that certain Breedon individuals will require access to details of payments made from the Target Bank Account which are above a certain level, in order to double-check the details of such payments.

On this basis, the CMA consents to:

- a) The Target making use of a new and separate Target Bank Account following completion of the Transaction;
- b) the following Breedon individuals (the “**Authorised Breedon Individuals**”): (1) accessing the Target Bank Account on a daily basis, to verify details of cash balances and transactions (ie debits and credits); and (2) accessing the Target's daily [X] cash flow forecast (“[X] **cash flow forecast**”) on a weekly basis; (together, the “**Permitted Purposes**”):
 - [X]
 - [X]
 - [X]
 - [X]
- c) the Target business reporting its daily cash balances to the Authorised Breedon Individuals so that the Target's bank balance can be consolidated and monitored at group level to ensure the business has sufficient working capital (in accordance with Breedon's obligations under the IEO);
- d) [X] having visibility over the consolidated Breedon group overall balance incorporating the balance of the Target Bank Account on a daily basis; and
- e) [X] accessing details of payment requests made by the Target business and authorising payments made from the Target Bank Account which are above [X], strictly for the purposes of risk management, fraud and accuracy purposes only.

The CMA consents to this derogation from the Initial Order strictly on the basis that:

- (i) Where the use of the Target Bank Account results in Breedon Southern Limited being mentioned in any communications with parties (other than Breedon or the Target business) either in written or verbal form, it shall be specified (to the extent legally permissible) specify to that party in that same communication that the Target business is legally part of Breedon but is being operated separately pursuant to a hold separate arrangement obligation imposed by the CMA;
 - (ii) The Target Bank Account would be operationally dedicated to the Target business only, and that all payments to, or from, the Target business would be made through the Target Bank Account;
 - (iii) The Target Bank Account will be used by Breedon to make available working capital for the Target business (in line with Breedon’s obligation under paragraph 6(b) of the Initial Order to provide sufficient resources to the Target business) and that the
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Target Bank Account would not be used by Breedon for any other purpose while the Initial Order is in force;

- (iv) The template of the Target business's [X] cash flow forecast is in a form approved by the CMA;
- (v) Any information of the Target business, which is shared with, or accessed by, the Authorised Breedon Individuals is limited to the minimum which is strictly necessary for the Permitted Purposes and will not be shared with, or accessed by, anyone who is not an Authorised Breedon Individual;
- (vi) [X] will only have visibility over the consolidated Breedon group overall balance, incorporating the balance of the Target Bank Account on a daily basis;
- (vii) [X] will only receive details of any payments made from the Target Bank Account which are above [X], which are strictly limited to what is necessary for the purposes of risk management, fraud and accuracy purposes only, and authorising any such payments. For the avoidance of doubt, [X] authorisation is limited to checking that any such payment is not fraudulent, suspicious, inappropriate or erroneous, and any authorisation shall not be unreasonably withheld. [X] shall also notify the CMA and the Monitoring Trustee of any instances where a payment has not been authorised within 1 business day;
- (viii) Each of the Breedon personnel covered by this derogation shall enter into a non-disclosure agreement (NDA)/confidentiality undertaking in a form approved by the CMA;
- (ix) No further changes to the Breedon personnel covered by this derogation are permitted without written consent from the CMA (including via email);
- (x) Firewalls or access restrictions will be put in place to prevent any Breedon personnel from accessing the Target Bank Account or from accessing any confidential information relating to the Target Bank Account other than in accordance with this Derogation;
- (xi) Should the transaction ultimately be prohibited, or remedies required, 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 the Target and any copies destroyed, except to the extent that record retention is required by law or regulation; and
- (xii) In the event that the transaction was prohibited or remedies required, the arrangements permitted under this derogation would not be difficult or costly to reverse.

Yours sincerely,

Assistant Director, Remedies. Business and Financial Analysis

31 July 2020
