

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 2020, 3 June 2020, 22 June 2020, 15 July 2020 and 26 August 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 (the "**Target**") 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 and the Target may carry out the following actions, in respect of the specific paragraphs:

1. Paragraphs 6(l) of the Initial Order

Breedon submits that in order for Breedon Group plc to fulfil its reporting and disclosure obligations as an AIM-listed company, Breedon will require access to certain Target financial information while the Initial Order is in force. In particular, Breedon submits that it:

- a) has a general duty to disclose to the stock market without delay any new developments which are not public, which, if made public, would be likely to have a significant movement in the share price; and
- b) must make regular trading update and results announcements.

(a) and (b) together, the "**Market Disclosures**".

For the purposes of Market Disclosures, Breedon therefore requires the following information (the “**Relevant Target Information**”):

- i. monthly financial information relating to the Target business (as set out in Annex A); and
- ii. a balance sheet for the Target business (as set out in Annex B).

To the extent that the Relevant Target Information indicates a potential issue meriting further investigation, Breedon requires access to such further information regarding the Target business as may be strictly necessary for the purposes of the Market Disclosures (“**Additional Target Information**”).

Breedon submits that the receipt of the aforementioned information is strictly necessary to: (a) enable Breedon to comply with the Market Disclosures; and (b) allow [X], to discharge the fiduciary duties associated with their respective roles.

The CMA consents to the Target providing Breedon with information relating to the Target business which is strictly required for the purposes of Market Disclosures, strictly on the basis that:

- a) Where the Target is providing the Relevant Target Information:
 - i. the information shall be strictly limited to the information set out in the financial templates agreed with the CMA in Annexes A and B (or as subsequently amended with the prior written consent of the CMA, including by e-mail); and
 - ii. Breedon will share a copy of the information received from the Target with the Monitoring Trustee at the same time as the information is shared with the authorised Breedon individuals.
- b) Where the Target is providing the Additional Target Information:
 - i. any confidential or commercially-sensitive information of the Target will be limited to that which is strictly necessary to provide Breedon with the information required to adequately investigate and make an announcement regarding the particular matter, for the purposes of the Market Disclosures; and
 - ii. Breedon will share a copy of the information received from the Target with the Monitoring Trustee **at the same time** as the information is shared with the authorised Breedon individuals, and within 3 working days of the Target sharing this information, Breedon will provide a

report to the Monitoring Trustee on the issue investigated and which Target information was accessed for the purposes of the investigation.

- c) The Monitoring Trustee shall notify the CMA as soon as it considers the Relevant Target Information and/or the Additional Target Information goes beyond the permitted purpose of this derogation, or has any other concerns in relation to the operation of this derogation;
- d) Annexes A and B and the Additional Target Information shared with Breedon for the purposes of this derogation will only be provided to:
 - i. [X], for whom it is strictly necessary to receive the information to fulfil its obligations in respect of the Market Disclosures; and
 - ii. [X], both at Breedon, for whom it is strictly necessary to receive the information to internally monitor compliance with the Initial Order and derogation. [X] do not hold commercial or strategic roles in the Breedon business.
- e) Only if a Market Disclosure is considered necessary by the Breedon individuals in (d) above, then [X] at Breedon shall receive only the information provided in Annex A in order to discharge the fiduciary duties of his role. For the avoidance of doubt, [X] is not permitted to receive any other information provided by the Target to Breedon for the purposes of this derogation;
- f) Information provided to any of the individuals in (d) and (e) above is not to be used for any other purpose than Breedon's compliance with the Market Disclosures.
- g) Each of the identified individuals shall enter into an NDA/confidentiality undertaking in the form approved by the CMA;
- h) No changes to the Breedon personnel covered by this derogation are permitted without written consent from the CMA (including via email);
- i) Firewalls or access restrictions will be put in place to prevent any unauthorised Breedon personnel from accessing any information provided by the Target to Breedon for the permitted purpose;

- j) This derogation will not lead to any integration of the Breedon business and Target business and it will have no impact on any remedial action that the CMA may need to take regarding the transaction; and
- k) 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 the Target 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

2 September 2020

Annex A – Monthly financial information

Annex B – Balance sheet