

# 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 15 July, 26 August and 2 September 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 produce monthly consolidated management accounts which it is required to provide to the banks, and to consolidate the Breedon group results, forecasting and budgeting, Breedon will require access to certain Target financial information while the Initial Order is in force. For the above purposes, Breedon therefore requires:

- i. monthly financial information relating to the Target business as set out in Annex 1 (the "**Relevant Monthly Information**"); and
- ii. to the extent that further clarification of the above information is required, where anomalies arise, access to such further information required to determine whether there is an error/the information has not been prepared on a consistent basis, and as such whether an explanation/correction is required.

Breedon submits that the receipt of the aforementioned information is strictly necessary to: (a) enable Breedon to produce monthly consolidated management accounts which it is legally required to provide to the banks; and (b) enable Breedon to consolidate the group results, forecasting and budgeting (the “**Permitted Purposes**”).

The CMA consents to the Target providing Breedon with information relating to the Target business which is strictly required for the Permitted Purposes, strictly on the basis that:

- a) Where the Target is providing the Relevant Monthly Information:
  - i. the Relevant Monthly Information is only provided in a form approved by the CMA as Annex 1 (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.
- b) To the extent that further clarification of the Relevant Monthly Information is required to be provided by the Target:
  - i. this clarification will be limited to information that is strictly necessary to resolve any anomalies which may arise;
  - ii. prior CMA approval will be sought where competitively-sensitive information of the Target needs to be provided for the purpose of further clarification of the Relevant Monthly Information, including (but not limited to): the details of individual customer contracts, individual site- or product-level information, or pricing or volume information; and
  - iii. Breedon will provide a report to the Monitoring Trustee on the matter/s clarified and which Target information was accessed for the purposes of the investigation as soon as reasonably practicable and as part of Breedon’s fortnightly reports to the Monitoring Trustee.

Information shared with Breedon for the purposes of this derogation will only be provided to:

- i. [X] at Breedon, for whom it is strictly necessary to receive the information to fulfil Breedon’s group accounting obligations for the purposes permitted under this

derogation. None of the above individuals hold commercial or strategic roles in the Breedon business; 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.
- c) Each of the identified individuals shall enter into an NDA/confidentiality undertaking in the form approved by the CMA;
- d) No changes to the Breedon personnel covered by this derogation are permitted without written consent from the CMA (including via email);
- e) 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;
- f) 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
- g) 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

3 September 2020

## **Annex 1: Relevant Monthly Information template**