

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

## Decision that undertakings might be accepted

**ME/6862-19**

The CMA's decision under section 73A(2) of the Enterprise Act 2002 that undertakings might be accepted, given on 10 September 2020. Full text of the decision published on 18 September 2020.

**Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.**

### Introduction

1. On 31 July 2020, Breedon Group plc (**Breedon**) acquired a portfolio of assets, together with associated freehold property, employees, inventory, contracts, intellectual property and permits (the **Target Business**) from Cemex Investments Limited (**Cemex**) (the **Merger**).
2. On 26 August 2020, the Competition and Markets Authority (**CMA**) decided under section 22(1) of the Enterprise Act 2002 (the **Act**) that it is, or may be the case, that the Merger constitutes a relevant merger situation that has resulted or may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**).
3. On the date of the SLC Decision, the CMA gave notice pursuant to section 34ZA(1)(b) of the Act to Breedon of the SLC Decision. However, the CMA did not refer the Merger for a phase 2 investigation pursuant to section 22(3)(b) on the date of the SLC Decision in order to allow Breedon the opportunity to offer undertakings to the CMA in lieu of such reference for the purposes of section 73(2) of the Act.
4. Pursuant to section 73A(1) of the Act, if a party wishes to offer undertakings for the purposes of section 73(2) of the Act, it must do so within the five working day period specified in section 73A(1)(a) of the Act. Accordingly, on 3

September 2020, Breedon offered undertakings to the CMA for the purposes of section 73(2) of the Act.

5. The CMA now gives notice, pursuant to section 73A(2)(b) of the Act, to Breedon that it considers that there are reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it is considering the offer.

## The undertakings offered

6. Under section 73 of the Act, the CMA may, instead of making a reference, and for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from such of the merger parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.
7. The SLC Decision found that the Merger gives rise to a realistic prospect of an SLC in relation to: (i) the supply of ready mix (**RMX**) in the local areas around 13 RMX plants; (ii) the supply of aggregates in the local area around one non-specialist aggregates quarry; and (iii) the supply of asphalt in the local area around one asphalt plant (together the **Relevant Local Areas**) as a result of unilateral effects. The Relevant Local Areas are listed in Annex 1. In addition, the SLC Decision found that the Merger gives rise to a realistic prospect of an SLC in relation to the supply of bulk cement in the East of Scotland, as a result of coordinated effects.
8. To address this SLC, Breedon has offered to give undertakings in lieu of a reference to divest certain assets in each of the Relevant Local Areas as well as in the East of Scotland (**Divestment Assets**) (the **Proposed Undertakings**).<sup>1</sup> In respect of the Relevant Local Areas, the Divestment Assets consist of either (i) all the product-specific assets Breedon acquired from Cemex in the Relevant Local Area as a result of the Merger or (ii) all the product-specific assets owned by Breedon in the Relevant Local Area prior to the Merger.<sup>2</sup> In relation to the supply of bulk cement in the East of Scotland,

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<sup>1</sup> In respect of certain Relevant Local Areas, Breedon submitted undertakings for consideration by the CMA which, as an alternative to the Proposed Undertakings, included proposals for divestment of only part of the increment or of assets not comprising the increment but that Breedon submitted constituted (in weighted market share terms) at least the increment. Noting that, at Phase 1, undertakings in lieu of a reference are appropriate where they represent a clear cut remedy to the SLC identified, the CMA considers it appropriate in this case to seek divestment of the full increment in each Relevant Local Area of either the Target Business assets or the Breedon assets.

<sup>2</sup> The Divestment Assets include, where applicable, any mothballed sites in the Relevant Local Area, but do not include greenfield sites without any planning permission.

Breedon has offered to divest its Dundee import terminal. A list of the Divestment Assets offered is provided at Annex 1.

9. Under the Proposed Undertakings, Breedon has also offered to enter into purchase agreements with one or more buyers approved by the CMA before the CMA finally accepts the Proposed Undertakings (**Upfront Buyer Condition**).

## The CMA's provisional views

10. The CMA considers that undertakings in lieu of a reference are appropriate when they are clear-cut and capable of ready implementation. The CMA's starting point when assessing undertakings is to seek an outcome that restores competition to the level that would have prevailed absent the merger.<sup>3</sup>
11. The CMA believes that the Proposed Undertakings, or a modified version of them, might be acceptable as a suitable remedy to the SLC identified by the CMA, given that they appear to amount to a sufficiently clear-cut and effective resolution of the CMA's competition concerns. In each Relevant Local Area in respect of each of RMX, aggregates and asphalt, and in the East of Scotland in respect of bulk cement, Breedon will be divesting the entirety of the assets operated prior to the Merger either by the Target Business or by Breedon itself; i.e. the Proposed Undertakings constitute divestment of the full increment in each case. The Proposed Undertakings should therefore result in the replacement of the competitive constraint previously provided, either by the Target Business or by Breedon, that would otherwise be lost following the Merger.
12. The CMA currently believes that the Proposed Undertakings are capable of amounting to a sufficiently clear-cut and effective resolution of the CMA's competition concerns. The CMA also believes, at this stage, that the Proposed Undertakings may be capable of ready implementation. Following divestment, the Divestment Assets are such that the purchaser (or purchasers) should be able to operate each divested plant, quarry or terminal as a competitor to the merged entity. The CMA believes that the Divestment Assets are readily capable of being sold.
13. The CMA considers that the Divestment Assets should be divested in ~~the~~, unless otherwise agreed in writing by the CMA.

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<sup>3</sup> [Mergers remedies \(CMA87\)](#), December 2018, Chapter 3 (in particular paragraphs 3.27, 3.28 and 3.30).

14. The Upfront Buyer Condition means that the CMA will only accept the Proposed Undertakings after Breedon has entered into an agreement (or agreements) with a nominated buyer (or buyers) that the CMA considers to be suitable. It also means that, before acceptance, the CMA will consult publicly on the suitability of the nominated buyer (or buyers), as well as other aspects of the Proposed Undertakings. At Phase 1, the CMA will generally require an upfront buyer unless it considers that there are reasonable grounds for not doing so.<sup>4</sup> The CMA has not found such grounds in this case. In particular, the CMA notes that, in respect of certain of the Divestment Assets and/or possible divestment packages, there may be a limited pool of potential purchasers. In addition, the Upfront Buyer Condition will allow the CMA to assess the suitability of the proposed buyer or buyers to operate the Divested Assets as an effective competitor in the market such that they constitute a suitable remedy to the SLC identified by the CMA in each Relevant Local Area and in the East of Scotland respectively.
15. For these reasons, the CMA currently thinks that there are reasonable grounds for believing that the Proposed Undertakings, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act.
16. The CMA's decision on whether ultimately to accept the Proposed Undertakings or refer the Merger for a phase 2 investigation will be informed by, among other things, third party views on whether the Proposed Undertakings are suitable to address the competition concerns identified by the CMA. In particular, before ultimately accepting the Proposed Undertakings, the CMA must be confident that the nominated buyer (or buyers) is effective and credible such that the competitive constraint in each Relevant Local Area, and in the East of Scotland, provided by Cemex prior to the Merger is replaced to a sufficient extent.

## **Consultation process**

17. Full details of the undertakings offered will be published in due course when the CMA consults on the undertakings offered as required by Schedule 10 of the Act.<sup>5</sup>

## **Decision**

18. The CMA therefore considers that there are reasonable grounds for believing that the Proposed Undertakings offered by Breedon, or a modified version of

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<sup>4</sup> See [CMA 87](#) paragraphs 5.28–5.32, and [CMA2](#), paragraph 8.34.

<sup>5</sup> [CMA2](#), paragraph 8.29.

them, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 5 November 2020 pursuant to section 73A(3) of the Act to decide whether to accept the undertakings, with the possibility to extend this timeframe pursuant to section 73A(4) of the Act to 5 January 2021 if it considers that there are special reasons for doing so. If no undertakings are accepted, the CMA will refer the Merger for a phase 2 investigation pursuant to sections 22(1) and 34ZA(2) of the Act.

**Senior Director  
Competition and Markets Authority  
10 September 2020**

## ANNEX 1: RELEVANT LOCAL AREAS AND DIVESTMENT ASSETS

**Table 1: RMX**

No.	Relevant Local Area	Breedon / Target site	Proposed divestment
1.	Stourport Concrete Plant	Breedon	Target Kidderminster
2.	Kidderminster	Target	
3.	Norton Bottoms Concrete	Breedon	Target Whisby
4.	Whisby Concrete Plant	Target	
5.	Kings Lynn Concrete Plant	Breedon	Target King's Lynn and Target Wisbech (mothballed)
6.	Kings Lynn Concrete Plant	Target	
7.	Hartlepool Concrete Plant	Target	Target Hartlepool, Target Stockton and Target Middlesbrough
8.	West Deeping Concrete	Breedon	Target Peterborough and Target Wisbech (mothballed)
9.	Peterborough Concrete Plant	Target	
10.	Peterborough Concrete Plant	Breedon	
11.	Theftord Concrete Plant	Target	Either of: (i) Breedon Costessey and Breedon Snetterton; or (ii) Target Norwich, Target Theftord and Target Newmarket <sup>6</sup>
12.	Snetterton Concrete Plant	Breedon	
13.	Costessey Concrete Plant	Breedon	

**Table 2: Non-specialist aggregates**

No.	Relevant Local Area	Breedon / Target site	Proposed divestment
1.	Shierglas Quarry	Breedon	Target Collessie and Target Loanleven

**Table 3: Asphalt**

No.	Relevant Local Area	Breedon / Target site	Proposed divestment
1.	Longwater Asphalt Plant	Breedon	Target Ely

**Table 4: Cement in the East of Scotland**

No.	Proposed divestment
1.	Dundee Cement Terminal (Breedon)

<sup>6</sup> This will be at Breedon's election, subject to the consent of the CMA; [X]. This is in line with [CMA 87](#) paragraph 5.6.