

DRAFT 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 16 and 18 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 to enter into purchase agreement(s) with one or more buyers approved by the CMA before the CMA finally accepts the undertakings in lieu of a reference ("**Proposed Undertakings**") which Breedon has offered to give in each of the relevant local areas in which the CMA has identified competition concerns ("**Upfront Buyer Condition**"), Breedon will require access to certain Target information while the Initial Order is in force.

In particular, Breedon submits that it requires certain information regarding the Target assets listed in Tables 1, 2 and 3 of Annex 1 to the CMA's Decision of 10 September 2020 ("**Divestment Target Assets**") that undertakings in lieu of reference might be accepted in order to enable it to:

- a) Fully understand the nature and extent of the Divestment Target Assets, including, for example, for the purposes of describing the nature of the Divestment Target Assets to proposed purchaser/s, making adequate disclosures to the proposed purchaser/s in the context of legal, and financial and operational due diligence and giving appropriate warranties/indemnities in the context of the purchase agreement(s);
- b) Assign a value to the Divestment Target Assets with a view to negotiating and finalising a sale; and
- c) Enter into the purchase agreement(s) in respect of the Divestment Target Assets.

(together the "**Permitted Purposes**")

Breedon therefore requires access to such legal, operational and financial information regarding the Divestment Target Assets as may be strictly necessary for the Permitted Purposes, including the financial information set out in the Annex ("**Relevant Target Financial Information**").

Breedon submits that the receipt of the aforementioned information is strictly necessary to: (a) enable it to meet the Upfront Buyer Condition; 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 Permitted Purposes, strictly on the basis that:

- a) Where Target information is provided for the Permitted Purposes:
 - i. other than as specified in respect of Relevant Target Financial Information below, the Target information will only be provided to [X] (the "**Breedon Clean Team**"), for whom it is strictly necessary to receive the information to run the sales process, as well as to internally monitor compliance with the Initial Order and derogation. [X] do not hold commercial or strategic roles in the Breedon business;
 - ii. any confidential or commercially-sensitive information of the Target will be limited to that which is strictly necessary to provide the Breedon Clean Team with the information required for the Permitted Purposes; and
 - iii. the Breedon Clean Team shall maintain an updated schedule listing all of the documents and information relating to the Target information it has received, and provide the updated schedule to the

Monitoring Trustee on a weekly basis;

- b) Where the Target is providing the Relevant Target Financial Information:
- i. The information shall be strictly limited to the information set out in the financial templates agreed with the CMA in the Annex (or as subsequently amended with the prior written consent of the CMA, including by e-mail);
 - ii. The Annex containing the Relevant Target Financial Information, shared with Breedon for the purposes of this derogation will only be provided to:
 - [X], for whom it is strictly necessary to receive the information for the purposes of valuing the Divestment Target Assets; and
 - the Breedon Clean Team, for whom it is strictly necessary to receive the information to run the sales process, as well as to internally monitor compliance with the Initial Order and derogation.
 - iii. Only Section B of the Annex will be shared with [X] and only Section C of the Annex will be shared with [X], in order to discharge the fiduciary duties of their respective roles, on the basis that:
 - [X] are not permitted to receive any other confidential information provided by the Target to Breedon for the purposes of this derogation;
 - Sections B and C of the Annex shall not contain any commentary or further description (except with the prior written approval of the CMA); and
 - The Monitoring Trustee shall receive a copy of Section B of the Annex at the same time it is sent to [X] and a copy of Section C of the Annex at the same time it is sent to [X];
- c) Information provided to any of the Breedon individuals identified is not to be used for any other purpose than the Permitted Purposes;
- d) Each of the identified Breedon individuals above shall enter into an NDA/confidentiality undertaking in the form approved by the CMA;
- e) No changes to the Breedon personnel covered by this derogation are permitted without written consent from the CMA (including via email);
- f) 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;

- g) 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;
- h) Should the Proposed Undertakings (or an amended version of them) be accepted by the CMA, following completion of the divestiture of any Divestment Target Assets (as set out in any final undertakings in lieu), Breedon will ensure that any records or copies (electronic or otherwise) of such information relating to the Divestment Target Assets that have passed for the purpose of this derogation, wherever they may be held, will be destroyed except:
 - i. where the information is directly relevant to representations or warranties provided by Breedon to a purchaser(s) of the Divestment Target Assets, that information may be retained only by the Breedon Clean Team until the expiry of any period for purchaser claims under those representations or warranties, and then subsequently destroyed; and/or
 - ii. to the extent that record retention is required by law or regulation.
- i) 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, Financial Analysis

22 September 2020

