

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 submission of 23 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 4(a), (b), (c) and 5(a), (c), (f), (g) and (l) of the Initial Order

Breedon submits that as part of the Transaction Breedon acquired limited contract surfacing assets from Cemex, comprising mobile plant and equipment and a limited number of employees ("**Target Contract Surfacing Assets**"). The Target Contract Surfacing Assets form part of the Target business and are managed by [X] has decided to leave the Target business [X].

Breedon also submits that neither Breedon nor the Target business has an appropriately skilled individual to manage the business associated with the Target Contract Surfacing Assets. Given the particular skills required for managing a contract surfacing business as well as the small scale of the Target Contract Surfacing Assets, Breedon submits it would be extremely difficult to find a suitably skilled individual externally who would be prepared to take on this role on a temporary basis.

As such, Breedon submits it is strictly necessary for the Target Contract Surfacing

Assets to be integrated into the Breedon business to ensure the ongoing viability of both Breedon and the Target business.

Breedon also submits that, at Phase 1, the CMA has not found any SLC related to the Target Contract Surfacing Assets so it is appropriate to grant this derogation at this stage in the CMA process.

The CMA consents to the Target Contract Surfacing Assets and the business associated with it being integrated into the wider Breedon business, strictly on the basis that:

- a) The Target Contract Surfacing Assets are not relevant to the UILs which have been accepted by the CMA in principle at Phase 1, and this derogation will have no impact on any remedial action that the CMA may need to take regarding the transaction in the event that the transaction was referred to Phase 2;
- b) Breedon will take all reasonable and necessary steps to ensure that the Target Contract Surfacing Assets and the business (including all customers and suppliers) associated with them can be easily carved back out of the wider Breedon business should the transaction be referred to Phase 2 and if required to do so by the CMA;
- c) The Target Contract Surfacing Assets and the business associated with them will be maintained as a going concern and all of the Target Contract Surfacing Assets will be maintained and preserved for the duration of the CMA's investigation;
- d) This derogation will not lead to any integration of the Breedon business and the Target business other than in relation to the Target Contract Surfacing Assets;
- e) The Target Contract Surfacing Assets do not represent a material or significant outlet for the business of the Target asphalt plants; and
- f) Should the transaction ultimately be prohibited, Breedon will ensure that any records or copies (electronic or otherwise) of information that has 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

1 October 2020