

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

### Notice under paragraph 2(1) of Schedule 10 to the Enterprise Act 2002 (the Act) – consultation on proposed undertakings in lieu of reference pursuant to section 73 of the Act

ME/6862-19

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<sup>1</sup> 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**). The text of the SLC Decision is available on the CMA webpages.<sup>2</sup>
3. On 3 September 2020, Breedon offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act.
4. On 10 September 2020, the CMA gave notice to Breedon, pursuant to section 73A(2)(b) of the Act, that it considers that there are reasonable grounds for believing that the undertakings offered, or a modified version of them, might

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<sup>1</sup> Pursuant to section 25(4) of the Act the four-month period mentioned in section 24 of the Act is extended while the CMA is seeking undertakings in lieu of reference.

<sup>2</sup> See <https://www.gov.uk/cma-cases/breedon-group-plc-cemex-investments-limited>.

be accepted by the CMA under section 73(2) of the Act and that it is considering Breedon's offer (the **UIL Provisional Acceptance Decision**).<sup>3</sup>

## The undertakings offered

5. As set out in the SLC Decision, the CMA found a realistic prospect of an SLC in relation to (i) the production and supply of ready mix (RMX) in the local areas around 13 RMX plants; (ii) the production and supply of aggregates in the local area around one non-specialist aggregates quarry; and (iii) the production and supply of asphalt in the local area around one asphalt plant (together the **Relevant Local Areas** with each being a **Relevant Local Area**) as a result of unilateral effects. 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.
6. As set out in the UIL Provisional Acceptance Decision, to address the SLCs identified by the CMA Breedon offered undertakings to divest certain assets in each of the Relevant Local Areas as well as in the East of Scotland to an upfront buyer (the **Proposed Undertakings**). In respect of the Relevant Local Areas, these proposed 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>4</sup> In relation to the supply of bulk cement in the East of Scotland, Breedon has offered to divest its Dundee import terminal. The text of the Proposed Undertakings is available on the CMA webpages.<sup>5</sup>
7. Following further discussion with the CMA, Breedon has proposed Tillicoultry Quarries Limited (**Tillicoultry**) as the upfront buyer of the sites listed in Annex 1 (the **Divestment Assets**). On 7 November 2020, Breedon and Tillicoultry entered into a Business Purchase Agreement for the Divestment Assets, as well as for the Target Business' aggregates depot at Ely. The Business Purchase Agreement is conditional on acceptance by the CMA of the Proposed Undertakings, including approval of Tillicoultry as the buyer of the Divestment Assets.

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<sup>3</sup> UIL Provisional Acceptance Decision available at: [Completed acquisition by Breedon Group plc of certain assets of Cemex Investments Limited: Decision that undertakings might be acceptable](#).

<sup>4</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.

<sup>5</sup> See <https://www.gov.uk/cma-cases/breedon-group-plc-cemex-investments-limited>.

## **CMA assessment**

8. The CMA currently considers that, subject to responses to the consultation required by Schedule 10 of the Act, the Proposed Undertakings will resolve the SLCs identified in the SLC Decision in a clear-cut manner, ie the CMA currently does not have material doubts about the overall effectiveness of the Proposed Undertakings or concerns about their implementation.<sup>6</sup>
9. This is because:
  - (a) for each of aggregates, RMX and asphalt, by divesting the Divestment Sites, Breedon will be divesting the entirety of the overlapping assets currently operated by either Breedon or the Target Business in each Relevant Local Area that gave rise to the finding of a realistic prospect of an SLC. As such, for each Divestment Site, the Proposed Undertakings constitute divestment of the full increment in the share of supply of the relevant product resulting from the Merger in the Relevant Local Areas. 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 as a result of unilateral effects; and
  - (b) with regard to bulk cement, by divesting the Dundee import terminal, Breedon will be divesting the entirety of its pre-Merger cement supply assets in the East of Scotland. The Proposed Undertakings should therefore replace the competitive constraint that would otherwise be lost following the Merger as a result of coordinated effects.
10. The CMA also considers that the Proposed Undertakings would be capable of ready implementation, because the Divestment Assets are readily capable of being sold and, are capable of operating as stand-alone businesses such that Tillicoultry should be able to operate each divested plant, quarry or terminal as a competitor to the merged entity immediately.

### ***Suitability of the proposed purchaser***

11. In approving a purchaser, the CMA's starting position is that it must be confident without undertaking a detailed investigation that the proposed purchaser will restore pre-merger levels of competition. The CMA therefore seeks to ensure that:

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<sup>6</sup> [Mergers remedies](#) (CMA87), December 2018, Chapter 3, paragraph 3.28.

- (a) The acquisition by the proposed purchaser remedies, mitigates or prevents the SLC concerned and any adverse effect resulting from it, achieving as comprehensive a solution as is reasonable and practicable;
- (b) The proposed purchaser has no significant connection to the merger parties that may compromise the purchaser's incentives to compete with the merged entity (eg an equity interest, common significant shareholders, shared directors, reciprocal trading relationships or continuing financial assistance);
- (c) The proposed purchaser has sufficient capability, including access to appropriate financial resources, expertise (including managerial, operational and technical capability) and assets, to enable the divested business to be an effective competitor in the market. This access should be sufficient to enable the divestiture package to continue to develop as an effective competitor. For example, a highly leveraged acquisition of the divestiture package which left little scope for competitive levels of capital expenditure or product development is unlikely to satisfy this criterion. The proposed purchaser is expected to obtain in advance all necessary approvals, licences and consents from any regulatory or other authority;
- (d) The proposed purchaser is committed to, and has an appropriate business plan and objectives for competing in, the relevant markets, and that the purchaser has the incentive and intention to maintain and operate the relevant business as part of a viable and active business in competition with the merged party and other competitors in the relevant market; and
- (e) The acquisition by the proposed purchaser does not create a realistic prospect of further competition or regulatory concerns.<sup>7</sup>

12. Subject to the responses to this consultation, and having regard in particular to the criteria set out in paragraph 11 above, the CMA currently considers Tillicoultry to be a suitable purchaser of the Divestment Assets for the following reasons:

- (a) The CMA currently considers that the acquisition by Tillicoultry of the Divestment Assets would remedy, mitigate or prevent the SLCs concerned and any adverse effect resulting from them, achieving as comprehensive solution as is reasonable and practicable. This is because it would allow the Divestment Assets to compete in the Relevant Local

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<sup>7</sup> CMA87, paragraphs 5.20 to 5.27.

Areas, fully replacing the competitive constraint previously provided by either Breedon or the Target business. The divestment of the Dundee import terminal would also replace the competitive constraint that would otherwise be lost following the Merger as a result of coordinated effects.

- (b) The evidence available to the CMA indicates that Tillicoultry, its parent company (Tillicoultry Quarries 1931 Ltd) and its ultimate owner Mr Wallace Menzies are independent of and unconnected to Breedon.
- (c) The evidence available to the CMA indicates that Tillicoultry is capable of, and has access to appropriate financial resources, to acquire and operate the Divestment Assets as an effective competitor:
  - (i) In relation to its relevant expertise in RMX, asphalt and aggregates, Tillicoultry began trading as an aggregates producer and supplier in 1931. In 1963, it entered into the production and supply of RMX, and in 1978, it entered into the production and supply of asphalt. It currently operates ten aggregates quarries as well as five RMX plants and seven asphalt plants in Scotland. Tillicoultry also has previous experience of acquiring asphalt and aggregates assets and integrating them successfully into its business. In this context, the CMA notes that while the aggregate quarries being acquired are close to current Tillicoultry operations in Scotland, the RMX and asphalt assets being sold by Breedon are in England, where Tillicoultry is not currently present. Tillicoultry told us that it had been looking to expand its geographical coverage into England but that previously only single plants had become available which did not offer the scale to make such expansion attractive. Tillicoultry told us that the Divestment Assets provide the necessary scale to warrant expansion into England. As such, the CMA considers that Tillicoultry has the appropriate managerial, operational and technical expertise to operate the RMX, asphalt and aggregates Divestment Assets as effective competitors in the market.
  - (ii) In relation to its relevant expertise in the supply of bulk cement, Tillicoultry does not and has not previously produced, supplied or imported cement either into Scotland or elsewhere. Tillicoultry told us that it had previously considered entering into the supply of cement in Scotland in 2017 and 2018. At that time, it entered into discussions and tested products with two European cement producers. It also had discussions with two port operators in Scotland about using their facilities to import cement. It put its previous plans to enter the supply of cement on hold as it prioritised a separate business acquisition.

However, Tillicoultry told us that it had gained valuable knowledge of cement importation from this experience. The CMA considers that these detailed discussions and planning for entry in 2017 and 2018 demonstrate that Tillicoultry has previously taken steps towards competing in the supply of bulk cement. As noted above, Tillicoultry is also active in the downstream RMX market and has broader industry knowledge and experience. As such, the CMA considers that Tillicoultry has the appropriate managerial, operational and technical expertise to operate the Dundee import terminal as an effective competitor in the market.

- (iii) In relation to financial resources, Tillicoultry is a profitable and growing business. In the year ended 31 March 2019, Tillicoultry Quarries 1931 Limited had group turnover of £61 million (2018: £53.7 million) with an operating profit of £5.5 million (2018: £4.1 million). Tillicoultry provided the CMA evidence of its financial resources, which show that it is capable of financing the acquisition, the ongoing development of the Divestment Assets and its existing business from internal funds.
- (d) Tillicoultry has discussed its plans for the Divestment Assets with the CMA and provided initial financial projections. While the plans are still in development, these and the associated financial projections are based on Tillicoultry's previous acquisition experience. Tillicoultry separately also provided the CMA with details of its management plans and overall strategy for operating the RMX and asphalt plants located in England (where Tillicoultry is not currently active). The plans, financial projections, management plans and overall strategy indicate that Tillicoultry has the necessary understanding of the Divestment Assets' operational dynamics and is committed to operating them as viable and active sites in competition with Breedon and other competitors in the Relevant Local Areas and, in respect of cement, in the East of Scotland. In relation to bulk cement, the CMA also notes that Tillicoultry intends to enter into a transitional supply agreement pursuant to which Breedon would supply cement to Tillicoultry in Scotland. This non-exclusive transitional supply agreement will have an initial term of at least [X] with the possibility for Tillicoultry to extend by [X] to a total of [X]. The CMA considers that this transitional arrangement should support the viability of the Dundee cement terminal by guaranteeing continuity in the supply of cement to the terminal immediately following the divestment.

- (e) The evidence available to the CMA indicates that the acquisition of the Divestment Assets by Tillicoultry should not create a realistic prospect of further competition concerns for the following reasons:
- (i) Tillicoultry is not currently present in any of the Relevant Local Areas in which the CMA found an SLC with respect to either RMX or asphalt;
  - (ii) While one of Tillicoultry's existing aggregates quarries overlaps with the Relevant Local Area around Breedon Shierglas, the CMA does not consider that the divestment to Tillicoultry of Target Collessie and Target Loanleven in this Relevant Local Area should raise further competition concerns, as a large number of credible competitors remain in the area that the CMA believes will exercise a sufficient competitive constraint on Tillicoultry; and
  - (iii) Tillicoultry is not currently active in the supply of bulk cement and would therefore be a new entrant in the East of Scotland.
- (f) The CMA is not aware of any approvals, licences and consents from any regulatory or other authority required for Tillicoultry to acquire the Divestment Assets and commence trading.

13. Therefore, subject to the responses to this consultation, the CMA currently considers Tillicoultry to be a suitable purchaser of the Divestment Assets.

## **Proposed decision and next steps**

14. For the reasons set out above, the CMA currently considers that the Proposed Undertakings and the purchase of the Divestment Business by Tillicoultry are, in the circumstances of this case, appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision and form as comprehensive a solution to these concerns as is reasonable and practicable.
15. The CMA therefore gives notice that it proposes to accept the Proposed Undertakings in lieu of a reference of the Merger for a phase 2 investigation. The text of the Proposed Undertakings is available on the CMA web pages.<sup>8</sup>
16. Before reaching a decision as to whether to accept the Proposed Undertakings, the CMA invites interested parties to make their views known to it. The CMA will have regard to any representations made in response to this consultation and may make modifications to the Proposed Undertakings as a

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<sup>8</sup> See <https://www.gov.uk/cma-cases/breedon-group-plc-cemex-investments-limited>.

result. If the CMA considers that any representation necessitates any material change to the Proposed Undertakings, the CMA will give notice of the proposed modifications and publish a further consultation.<sup>9</sup>

17. Representations should be made by email only:

Email: [jonathan.akinyemi@cma.gov.uk](mailto:jonathan.akinyemi@cma.gov.uk)

Telephone: 020 3738 6257

**Deadline for comments:** 25 November 2020.

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<sup>9</sup> Under paragraph 2(4) of Schedule 10 to the Act.



## ANNEX 1: RELEVANT LOCAL AREAS AND DIVESTMENT ASSETS<sup>10</sup>

**Table 1: RMX**

No.	Relevant Local Area	Proposed divestment
1.	Stourport Concrete Plant	Target Kidderminster
2.	Kidderminster	
3.	Norton Bottoms Concrete	Target Whisby
4.	Whisby Concrete Plant	
5.	Kings Lynn Concrete Plant	Target King's Lynn and Target Wisbech (mothballed)
6.	Kings Lynn Concrete Plant	
7.	Hartlepool Concrete Plant	Target Hartlepool, Target Stockton and Target Middlesbrough
8.	West Deeping Concrete	Target Peterborough and Target Wisbech (mothballed)
9.	Peterborough Concrete Plant	
10.	Peterborough Concrete Plant	
11.	Thetford Concrete Plant	Breedon Costessey and Breedon Snetterton
12.	Snetterton Concrete Plant	
13.	Costessey Concrete Plant	

**Table 2: Non-specialist aggregates**

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

**Table 3: Asphalt**

No.	Relevant Local Area	Proposed divestment
1	Longwater Asphalt Plant	Target Ely <sup>11</sup>

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

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

<sup>10</sup> Details of the Relevant Local Areas and Divestment Assets can be found in the [Decision on relevant merger situation and substantial lessening of competition](#).

<sup>11</sup> As outlined at paragraph 7 above, Tillicoultry will also acquire the aggregates depot at Target Ely.