

**ACQUISITION BY BREEDON GROUP PLC OF CERTAIN ASSETS OF CEMEX INVESTMENTS LIMITED**

**Undertakings given by Breedon to the Competition and Markets Authority pursuant to section 73 of the Enterprise Act 2002**

**Whereas:**

- (a) Breedon completed the acquisition of a portfolio of assets, together with associated freehold property, employees, inventory, contracts, intellectual property and permits (the **Target Business**) from Cemex Investments Limited (**Cemex**) on 31 July 2020 by way of asset purchase (the **Transaction**) such that Breedon and the Target Business ceased to be distinct for the purposes of the Enterprise Act 2002 (the **Act**);
- (b) Under section 22(1) of the Act the Competition and Markets Authority (**CMA**) has a duty to refer a relevant merger situation for a Phase 2 investigation where it believes that it is or may be the case that the creation of that merger situation has resulted or may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services;
- (c) Under section 73 of the Act the CMA may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept undertakings to take such action as it considers appropriate, from such of the parties concerned as it considers appropriate. In particular, the CMA shall have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;
- (d) As set out in the CMA's decision of 26 August 2020 (the **Decision**), the CMA believes that, in the absence of appropriate undertakings, it would be under a duty to refer the Transaction for a Phase 2 investigation;
- (e) The CMA considers that the undertakings given below by Breedon are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which has or may have resulted from the Transaction, or may be expected to result from it, as specified in the Decision;
- (f) Prior to the acceptance of these undertakings by the CMA, Breedon entered into a legally binding agreement of 7 November 2020 to divest the Divestment Business as a going concern to a Proposed Purchaser on terms approved by the CMA. This agreement was conditional only on formal CMA approval of the Proposed Purchaser and acceptance by the CMA of these undertakings. This agreement

includes a warranty that the Proposed Purchaser has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the Divestment Business as part of a viable and active business in competition with Breedon and other competitors in the local areas in which the Divestment Business is active; and

- (g) The CMA made an Initial Enforcement Order (the **IEO**) applying to Breedon and Breedon Southern Limited on 31 July 2020 in respect of the Transaction pursuant to section 72 of the Act for the purposes of preventing pre-emptive action. Pursuant to section 72(6)(b) of the Act, this IEO ceases to be in force on the acceptance by the CMA of the undertakings given below by Breedon.

NOW THEREFORE Breedon hereby gives to the CMA the following undertakings for the purpose of remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect which has or may have resulted from it or may be expected to result from it.

## **1 EFFECTIVE DATE OF THE UNDERTAKINGS**

- 1.1 These undertakings shall take effect from the date that, having been signed by Breedon, they are accepted by the CMA.

## **2 DIVESTMENT OF THE DIVESTMENT BUSINESS**

- 2.1 Breedon shall ensure that the completion of the divestment of the Divestment Business to the Proposed Purchaser contemplated by the agreement referred to in recital (f) of these undertakings takes place within a period not exceeding one month from the date these undertakings take effect.
- 2.2 Breedon shall use all reasonable endeavours to ensure the transfer of Key Staff with the divestment of the Divestment Business.
- 2.3 Where Breedon divests a Divestment Business over which it holds, or the Target Business held, a freehold interest by way of the grant of a long lease on normal commercial terms to the Proposed Purchaser, Breedon shall:
- (a) ensure that the lease is of not less than 25 years duration;
  - (b) not enter at any time into actual occupation of the Divestment Business for carrying on a business or for any other purpose; and
  - (c) effect a new divestment of the Divestment Business in accordance with the provisions of paragraph 11 if Breedon becomes subject to an Occupation Interest;

provided that, if required by the CMA, but with the exception of those divestment sites where Breedon retains other business activities at the relevant site, Breedon will in the alternative sell the freehold interest in the Divestment Business to a person independent of and unconnected to Breedon and the Group of

Interconnected Bodies Corporate to which Breedon belongs and any Associated Person or Affiliate of Breedon or such Group of Interconnected Bodies Corporate, within a period not exceeding three months from the date of the commencement of the lease.

- 2.4 In the event that Breedon fails to complete the divestment of the Divestment Business in accordance with paragraphs 2.1, 2.2 and 2.3 above, the CMA may, whether or not initiating the Trustee Functions as set out in paragraph 4 below, require Breedon to divest the Divestment Business as a going concern at no minimum price to a purchaser or purchasers approved by the CMA.

### **3 APPROVAL OF PURCHASER AND TERMS OF DIVESTMENT**

- 3.1 For the purposes of the CMA approving a Proposed Purchaser and the terms of the divestment of the Divestment Business in accordance with these undertakings, Breedon shall, save as required or permitted by the CMA, satisfy the CMA that:
- (a) the acquisition by the Proposed Purchaser of the Divestment Business, on the terms set out above, remedies, mitigates or prevents the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it, or may be expected to result from it, in particular having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;
  - (b) the Proposed Purchaser is independent of and unconnected to Breedon and the Group of Interconnected Bodies Corporate to which Breedon belongs and any Associated Person or Affiliate of Breedon or such Group of Interconnected Bodies Corporate;
  - (c) the Proposed Purchaser has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the Divestment Business as a viable and active business in competition with Breedon and other competitors in the relevant Market from the date of completion of the divestment of the Divestment Business;
  - (d) the Proposed Purchaser is reasonably to be expected to obtain all necessary approvals, licences and consents from any regulatory or other authority, including (where applicable) landlord's consent to the transfer of any leasehold interest; and
  - (e) the acquisition by the Proposed Purchaser of the Divestment Business does not create a realistic prospect of a substantial lessening of competition within any market or markets in the UK.

3.2 The CMA may require Breedon to provide it with such information and documentation as it may reasonably require to satisfy the CMA that the Proposed Purchaser will fulfil the requirements in paragraph 3.1 above.

#### **4 APPOINTMENT OF A TRUSTEE**

4.1 The provisions of paragraph 4.2 to paragraph 4.7 below shall apply only as long as Breedon has not satisfied, or where the CMA has reasonable grounds for believing that Breedon will not satisfy, all or any part of the obligation to divest the Divestment Business in accordance with paragraph 2 above.

4.2 Within 5 Working Days of the CMA notifying Breedon in writing that it must do so, Breedon shall propose to the CMA for approval:

- (a) the names of at least two individuals to exercise the Trustee Functions; and
- (b) the full terms of a mandate in accordance with which the Trustee shall carry out the Trustee Functions.

4.3 Breedon and/or any individuals nominated pursuant to paragraph 4.2 shall satisfy the CMA that, save as required or permitted by the CMA:

- (a) such nominated individuals have the necessary qualifications to carry out their mandates, and are employees or partners of an investment bank, retail bank, commercial property agent, building society or law firm or accountancy firm with an established reputation either nationwide or in a substantial part of the UK or in another EU member state;
- (b) such nominated individuals are each independent of Breedon and of the Group of Interconnected Bodies Corporate to which Breedon belongs and of any Associated Person or Affiliate of Breedon or of such Group of Interconnected Bodies Corporate and of any Proposed Purchaser of the Divestment Business to be sold pursuant to these undertakings, and, in the reasonable opinion of Breedon, are appropriate to be appointed as Trustee; and
- (c) such nominated individuals neither are, nor are likely to become, exposed, either directly or indirectly, to a conflict of interest that impairs or may be likely to impair their objectivity or independence in discharging the Trustee Functions.

4.4 Within 2 Working Days of the CMA approving, at its discretion, one or more of the persons nominated by Breedon and their proposed mandates pursuant to paragraph 4.2 above, and subject to any modifications the CMA deems necessary for the Trustee to carry out the Trustee Functions, Breedon shall use its best endeavours to appoint from the persons so approved one person to carry out the Trustee Functions in accordance with the mandate approved by the CMA pursuant to paragraph 4.2 above.

4.5 In the event that:

- (a) Breedon fails to propose any person or persons in accordance with paragraph 4.2 above; or
- (b) none of the persons proposed by Breedon pursuant to paragraph 4.2 is approved by the CMA; or
- (c) Breedon is unable for any reason to appoint within the time limit stipulated in paragraph 4.4 above any such person following approval by the CMA,

Breedon shall use its best endeavours to appoint from persons nominated by the CMA one person to carry out the Trustee Functions on the terms of a mandate approved by the CMA. Breedon shall use its best endeavours to make such appointment within 5 Working Days of receiving the nominations from the CMA.

4.6 The appointment of the Trustee pursuant to paragraph 4.4 or paragraph 4.5 above shall be irrevocable unless:

- (a) a conflict of interest that impairs or may be likely to impair the objectivity or independence of the Trustee in discharging the Trustee Functions arises;
- (b) the Trustee ceases to perform the Trustee Functions; or
- (c) the CMA is otherwise satisfied that there is good cause for the appointment to be terminated in advance of the satisfactory fulfilment of the Trustee Functions.

4.7 In the event that the appointment of the Trustee is terminated in accordance with paragraph 4.6 above, Breedon shall, if requested to do so in writing by the CMA, use its best endeavours to appoint from persons nominated by the CMA one person to carry out the Trustee Functions in accordance with such mandate as is approved by the CMA. Breedon shall use its best endeavours to make such appointment within seven Working Days of receiving the nominations from the CMA. Where required by the CMA, the outgoing Trustee shall continue as Trustee until a new Trustee is in place and a full handover of all relevant information has taken place.

## **5 THE MANDATE**

5.1 The terms of the mandate proposed by Breedon pursuant to paragraph 4.2 above shall, as a minimum, contain all provisions necessary to enable the Trustee to carry out the Trustee Functions including, without limitation to the generality of this paragraph:

- (a) an exclusive, irrevocable mandate to sell the Divestment Business as required by paragraph 6.1 below to a purchaser as directed or approved in writing in advance by the CMA at no minimum price and on such reasonable terms and conditions as the Trustee considers appropriate to effect an expedient sale;

- (b) a mandate to take any other steps necessary for, or incidental to, the Trustee's mandate under sub-paragraph (a) above;
- (c) a comprehensive power of attorney to the Trustee (including the authority to grant sub-powers of attorney to the Trustee's officers, employees and agents) to enable it to take all steps necessary or appropriate to effect the sale of the Divestment Business;
- (d) a mandate to comply with any orders and/or directions given by the CMA; and
- (e) a mandate to appoint at Breedon's expense such advisers as the CMA and/or the Trustee reasonably considers necessary or appropriate in connection with the performance of the Trustee Functions.

## **6 FUNCTIONS OF TRUSTEE**

- 6.1 The Trustee shall seek to procure, within such period as may be specified in writing by the CMA, the completion of the sale of the Divestment Business at no minimum price, to a purchaser or purchasers approved by the CMA in accordance with paragraph 6.3 below.
- 6.2 Without prejudice to the generality of paragraph 6.1 above, the Trustee shall take the following measures in relation to the Divestment Business to the extent to which such measures may be necessary to effect the divestment of the Divestment Business in accordance with the provisions of these undertakings:
- (a) the transfer or vesting of property, assets, rights, personnel, liabilities or obligations (including without prejudice any contracts, licences, authorisations, permits or consents);
  - (b) any other transfer of interests that will take effect with the sale;
  - (c) the adjustment of contracts, whether by discharge or reduction or assignment of any liability or obligation or otherwise;
  - (d) the creation, allotment, transfer, surrender or cancellation of any shares, stock or securities; and
  - (e) the formation or winding up of a company.
- 6.3 The Trustee shall not sell or permit the divestment of the Divestment Business to a Proposed Purchaser unless it has been directed to do so by the CMA or has obtained the CMA's prior written approval in respect of the identity of that Proposed Purchaser. The Trustee shall notify the CMA of the identity of a Proposed Purchaser as soon as reasonably practicable prior to the signing of a legally enforceable agreement and in any event at least 20 Working Days in advance of the proposed completion of the proposed sale and purchase agreement in question.

- 6.4 Pending the divestment of the Divestment Business pursuant to paragraph 6.1 above, the Trustee shall monitor Breedon's compliance with its obligations under paragraph 7.1 and paragraph 7.2 below and shall promptly take such measures as it considers necessary to ensure such compliance, as well as reporting in writing to the CMA, if the Trustee concludes on reasonable grounds that Breedon is failing or will fail to comply with such obligations.
- 6.5 The Trustee may give written directions to Breedon to take such steps as may be specified or described in the directions for the purpose of securing Breedon's compliance with its obligations under these undertakings or enabling the Trustee to carry out the Trustee Functions. The Trustee may not require Breedon to:
- (a) offer any reverse premium or similar inducement to a purchaser; or
  - (b) accept any actual or contingent liability towards a purchaser or otherwise in connection with the divestment of the Divestment Business which would be unusual in scope, duration or financially, having regard to the price and usual market practice in relation to similar disposals.
- 6.6 The Trustee shall, as soon as reasonably practicable, comply at all times with any reasonable instructions or written directions made by the CMA for the purposes of carrying out or securing compliance with the undertakings (or any matter incidental thereto) and shall provide to the CMA such information and reports in relation to the carrying out of the Trustee Functions as the CMA may require. The Trustee shall promptly report in writing to the CMA if the Trustee concludes on reasonable grounds that Breedon is failing or will fail to comply with any of its obligations under these undertakings.
- 6.7 For the purpose of fulfilling the Trustee Functions, the Trustee shall not be bound by instructions of Breedon nor shall the Trustee Functions be extended or varied in any way by Breedon save with the prior express written consent of the CMA.

## **7 OBLIGATIONS OF BREEDON FOLLOWING APPOINTMENT OF TRUSTEE**

- 7.1 Breedon shall not give any instruction or request to the Trustee which conflicts with the Trustee Functions.
- 7.2 Breedon shall take all such steps as are reasonably necessary to enable the Trustee to carry out the Trustee Functions, including but not limited to:
- (a) complying with such written directions as the Trustee may from time to time give pursuant to paragraph 6.5 above; and
  - (b) providing the Trustee with all such assistance and information as it may reasonably require in carrying out the Trustee Functions.

## **8 REMUNERATION OF TRUSTEE**

- 8.1 Breedon shall pay the Trustee a reasonable remuneration for the services it provides in carrying out the Trustee Functions, and shall pay the Trustee in a way that does not impede the independent and effective fulfilment of the Trustee Functions, which shall be set out in the Trustee's mandate referred to in paragraph 5 above.

## **9 INTERIM ACTION**

- 9.1 Pending the completion of the divestment of the Divestment Business to the satisfaction of the CMA in accordance with the provisions of these undertakings, save as otherwise agreed in advance in writing by the CMA (which, for the avoidance of doubt, includes all derogations from the IEO granted by the CMA that shall be treated as exceptions to the general obligations set out in this paragraph 9.1, unless amended or revoked by the CMA at any time), Breedon shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business and in particular ensure that:
- (a) the Target Business is carried on separately from the Breedon Business and the Target Business's separate sales or brand identity is maintained;
  - (b) the Target Business and the Breedon Business are maintained as a going concern and sufficient resources are made available for the development of the Target Business and the Breedon Business, on the basis of their respective pre-Transaction business plans;
  - (c) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the Target Business or the Breedon Business;
  - (d) the nature, description, range and quality of goods and services supplied in the UK by each of the Target Business and the Breedon Business are maintained and preserved;
  - (e) except in the ordinary course of business for the separate operation of the Target Business and the Breedon Business:
    - (i) all of the assets of the Target Business and the Breedon Business are maintained and preserved, including facilities and goodwill;
    - (i) none of the assets of the Target Business or the Breedon Business are disposed of; and
    - (ii) no interest in the assets of the Target Business or the Breedon Business is created or disposed of;
  - (f) there is no integration of the information technology of the Target Business or Breedon Businesses, and the software and hardware platforms of the



Target Business shall remain essentially unchanged, except for routine changes and maintenance;

- (g) the customer and supplier lists of the Target Business and the Breedon Business shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Target Business will be carried out by the Target Business alone and for the avoidance of doubt the Breedon Business will not negotiate on behalf of the Target Business (and vice versa) or enter into any joint agreements with the Target Business (and vice versa);
- (h) all existing contracts of the Target Business and the Breedon Business continue to be serviced by the business to which they were awarded;
- (i) no changes are made to Key Staff of the Target Business or Breedon Business;
- (j) no Key Staff are transferred between the Target Business and the Breedon Business;
- (k) all reasonable steps are taken to encourage all Key Staff to remain with the Target Business and the Breedon Business; and
- (l) no Confidential Information relating to either of the Target Business or the Breedon Business shall pass, directly or indirectly, from the Target Business (or any of its employees, directors, agents or affiliates) to the Breedon Business (or any of its employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business (for example, where required for compliance with external regulatory and/or accounting obligations) or any steps necessary in order for Breedon to comply with these undertakings, including the transfer of information necessary for the divestment process, provided that, upon divestment of the Divestment Business, any records or copies (electronic or otherwise) of Confidential Information held by Breedon or the Target Business in relation to the Divestment Business (or vice versa) shall be returned to the relevant business and any copies destroyed (except as may be necessary for the purposes of compliance with the obligations above).

9.2 At all times, Breedon will actively keep the CMA informed of any material developments relating to the Divestment Business, which includes, but is not limited to:

- (a) details of Key Staff who leave the Breedon Business or the Target Business;
- (b) any interruption of the Breedon Business or the Target Business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;

- (c) all substantial customer volumes lost by the Divestment Business; and
- (d) substantial changes in the Breedon Business's or the Target Business's contractual arrangements or relationships with key suppliers.

9.3 All directions issued in relation to or pursuant to the IEO, unless cancelled or revoked by the CMA, shall continue in force until completion of the divestment of the Divestment Business.

## **10 CONTINUED SEPARATION**

10.1 Except with the prior written consent of the CMA, for a period of 10 years following the divestment of the Divestment Business pursuant to these undertakings, Breedon, or any member of the Group of Interconnected bodies Corporate to which Breedon belongs:

- (a) shall not, directly or indirectly, hold, acquire, re-acquire or use:
  - (i) an Interest in the Divestment Business, other than:
    - (A) any freehold or leasehold interest in the property associated with the Divestment Business pending divestment of that freehold or leasehold proprietary interest pursuant to paragraph 2.3 above; or
    - (B) in circumstances where Breedon retains other existing business activities at the relevant site at the time of the divestment, any freehold or leasehold interest in the property associated with that site that is not solely related to the Divestment Business; or
  - (ii) any Interest in any company carrying on or having Control of the Divestment Business (other than any investments made in the ordinary course of the operation of any of the employee benefit and pension schemes of Breedon or of any members of the Group of Interconnected Bodies Corporate to which Breedon belongs of not more than three per cent in aggregate of the issued equity share capital in any such company, whose shares are listed or dealt with on any recognised investment exchange, which carries no more than three per cent of the voting rights exercisable at meetings of such company); or
  - (iii) other than in the normal course of business, any of the assets of the Divestment Business;
- (b) shall procure that no employee or director of Breedon or any member of the Group of Interconnected Bodies Corporate to which Breedon belongs for as long as they are an employee or director of Breedon or any member of the Group of Interconnected Bodies Corporate to which Breedon belongs holds or is nominated to any directorship or managerial position in the Divestment

Business or directorship or managerial position in any company or other undertaking carrying on or having control of the Divestment Business without the CMA's prior written consent;

- (c) shall not participate in the formulation of, or (other than in the ordinary course of business) influence or attempt to influence, the policy of the Divestment Business or any company or other undertaking carrying on or having control of that Divestment Business; and
- (d) shall not enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result or will result in any Associated Person or Affiliate of Breedon or of any member of the Group of Interconnected Bodies Corporate to which Breedon belongs directly or indirectly acquiring the Divestment Business or doing any of the things listed in sub-paragraphs 10.1(a), 10.1(b) and 10.1(c) above.

10.2 Where Breedon (or any member of the Group of Interconnected Bodies Corporate to which Breedon belongs) divests a Divestment Business by way of granting a sub-lease and remains the landlord of the purchaser of the Divestment Business, then for the duration of the lease or sub-lease, Breedon shall within 10 Working Days of being requested to do so (unless agreed otherwise by the CMA:

- (a) consent to any matter requiring landlord's approval under the terms of the lease between Breedon and the purchaser of the Divestment Business (except where Breedon is required to obtain such consent from another person); and/or
- (b) pass on any request for consent to the freehold owner of the property or relevant third party, as appropriate.

## **11 NEW DIVESTMENT IF BREEDON OBTAINS POSSESSION OF A DIVESTMENT BUSINESS PROPERTY**

11.1 In the event that, following divestment of a Divestment Business in a manner that has involved Breedon granting a lease, assigning an existing lease or granting a sub-lease to the purchaser of the Divestment Business, Breedon benefits from or becomes subject to an Occupation Interest (so long as Breedon so benefits or becomes so subject during the term of the lease assigned or sub-lease granted by Breedon as part of such divestment), Breedon shall:

- (a) within 10 Working Days of becoming aware that it is so benefitting or is so subject inform the CMA in writing of that fact; and
- (b) using its best endeavours and acting in good faith comply with such written directions as the CMA may give to Breedon to effect a new divestment of the Occupation Interest to a new purchaser approved by the CMA in accordance with the provisions of these undertakings, provided always that such written directions must be of a similar nature to those contained in

these undertakings with regard to the original divestment of the Divestment Business.

- 11.2 In determining, for the purposes of sub-paragraph 11.1(b) above, whether to require Breedon to effect a new divestment of the Occupation Interest to a new purchaser approved by the CMA in accordance with the provisions of these undertakings, the CMA may have regard to any change of circumstances since the Decision.
- 11.3 In the event that Breedon fails to divest the Occupation Interest in accordance with paragraph 11.1 above, the CMA may, whether or not initiating the Trustee Functions set out in these undertakings, require Breedon to divest the Occupation Interest at no minimum price to a purchaser approved by the CMA.
- 11.4 Breedon shall notify the CMA in writing of the identity of each proposed purchaser that makes an offer for the Occupation Interest together with the value and terms of such offers as soon as reasonably practicable following the receipt of such offers and in any event within 10 Working Days of receipt of such offers.
- 11.5 In the event that the CMA gives written directions under paragraph 11.1 above for Breedon to effect a new divestment of the Occupation Interest, paragraphs 3, 4, 5, 6, 7, 8 and 9 shall apply to the new divestment in the same way that they applied to the original divestment obligation save that references to 'Divestment Business' in those paragraphs shall be construed as references to 'Occupation Interest'.

## **12 COMPLIANCE**

- 12.1 Breedon shall comply promptly with such written directions as the CMA may from time to time give:
- (a) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; or
  - (b) to do or refrain from doing anything so specified or described which it might be required by these undertakings to do or to refrain from doing.
- 12.2 Breedon shall co-operate fully with the CMA when the CMA is:
- (a) monitoring compliance with the provisions of these undertakings; and
  - (b) investigating potential breaches of the provisions of these undertakings.
- 12.3 Breedon shall procure that any member of the same Group of Interconnected Bodies Corporate as Breedon complies with these undertakings as if it had given them and actions and omissions of the members of the same Group of Interconnected Bodies Corporate as Breedon shall be attributed to Breedon for the purposes of these undertakings.

12.4 Where any Affiliate of Breedon is not a member of the same Group of Interconnected Bodies Corporate as Breedon, Breedon shall use its best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them.

### **13 PROVISION OF INFORMATION**

13.1 Breedon shall furnish promptly to the CMA such information as the CMA considers necessary in relation to or in connection with the implementation and/or enforcement of and/or the compliance with these undertakings, including for the avoidance of doubt, any Confidential Information.

### **14 EXTENSION OF TIME LIMITS**

14.1 The CMA may, in response to a written request from Breedon, or otherwise at its own discretion, grant an extension to any time period referred to in these undertakings.

### **15 SERVICE**

15.1 Breedon hereby authorises Travers Smith LLP, whose address for service is 10 Snow Hill, London, EC1A 2AL (addressed for the attention of Nigel Seay (Partner) and Paul McComb (Senior Counsel)), to accept service on its behalf of all documents connected with these undertakings (including any document of any kind which falls to be served on or sent to Breedon, or any of its Subsidiaries in connection with any proceedings in Courts in the UK, orders, requests, notifications or other communications connected with these undertakings).

15.2 Unless Breedon informs the CMA in writing that Travers Smith LLP has ceased to have authority to accept and acknowledge service on its or any of its Subsidiaries' behalf, any document, order, request, notification or other communication shall be validly served on Breedon if it is served on Travers Smith LLP; and service shall be deemed to have been acknowledged by Breedon if it is acknowledged by Travers Smith LLP or such other nominee.

15.3 Paragraph 15.2 above has effect irrespective of whether, as between Breedon and Travers Smith LLP or other nominees, Travers Smith LLP or other nominees has or continues to have any authority to accept and acknowledge service on Breedon's or any of its respective Subsidiaries' behalf.

15.4 No failure or mistake by Travers Smith LLP or other nominees (including a failure to notify Breedon of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these undertakings including any proceedings or judgment.

15.5 Any communication from Breedon to the CMA under these undertakings shall be addressed to Manager, Market and Mergers Remedies Monitoring, Competition and Markets Authority, The Cabot, 25 Cabot Square, London, E14 4QZ, or such other person or address as the CMA may direct in writing.

## **16 EFFECT OF INVALIDITY**

- 16.1 Should any provision of these undertakings be contrary to law or invalid for any reason, Breedon undertakes to continue to observe the remaining provisions.

## **17 GOVERNING LAW**

- 17.1 Breedon recognises and acknowledges that these undertakings shall be governed and construed in all respects in accordance with English law.
- 17.2 In the event that a dispute arises concerning these undertakings, Breedon undertakes to submit to the courts of England and Wales.

## **18 TERMINATION**

- 18.1 Breedon recognises and acknowledges that these undertakings shall be in force until such time as they are varied, released or superseded under the Act.
- 18.2 Breedon recognises and acknowledges that the variation, release or supersession of these undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

## **19 INTERPRETATION**

- 19.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 19.2 References in these undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.
- 19.3 In these undertakings the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.
- 19.4 For the purposes of these undertakings:
- “the Act”** means the Enterprise Act 2002;
- “Affiliate”** a person is an affiliate of another person if they or their respective enterprises would be regarded as being under common control for the purposes of section 26 of the Act;
- “Associated Person”** means a person or persons associated with Breedon within the meaning of section 127(4) of the Act and includes any Subsidiary of such a person or persons;

“**Breedon**” means Breedon Group plc (incorporated in Jersey with registered number 98465), including its subsidiaries;

“**Breedon Business**” means the business of Breedon and its Group of Interconnected Bodies Corporate carried on as at 31 July 2020;

“**business**” has the meaning given by section 129(1) and (3) of the Act;

“**CMA**” means the Competition and Markets Authority or any successor body;

“**Confidential Information**” means any business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature;

“**Control**” shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

“**Decision**” means the CMA’s decision under section 22 of the Act dated 26 August 2020 in connection with the Transaction;

“**Divestment Business(es)**” means each of the following aggregates, asphalt, RMX and cement terminal sites together described below, with associated assets and certain associated transitional agreements, including an agreement for the supply of cement to the Dundee Terminal for a minimum of [X] and a maximum of [X]:

- Target Kidderminster RMX;
- Target Whisby RMX;
- Target King’s Lynn RMX;
- Target Wisbech (mothballed) RMX;
- Target Hartlepool RMX;
- Target Stockton RMX;
- Target Middlesbrough RMX;
- Target Peterborough RMX;
- Breedon Costessey RMX;
- Breedon Snetterton RMX;
- Target Collessie non-specialist aggregates;
- Target Loanleven non-specialist aggregates;
- Target Ely Asphalt; and
- Breedon Dundee Cement Terminal;

“**Divestment Business Property**” means the relevant property associated with the Divestment Business as at the date of these undertakings;

“**enterprise**” has the meaning given in section 129(1) of the Act;

**“Group of Interconnected Bodies Corporate”** has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

**“Interest”** includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders’ meetings but does not include a contract to acquire shares in the future; and for this purpose "an interest in shares" includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

**“Key Staff”** means staff that are necessary to the production and/or supply of aggregates, asphalt, RMX or cement (as applicable) at each relevant site to be divested, and which relate specifically to that site;

**“Occupation Interest”** means an interest in the Divestment Business Property by virtue of which Breedon enjoys an unconditional right or is under an unconditional obligation to occupy the Divestment Business Property provided always that: (i) the original purchaser (or its successor) is not in occupation of the Divestment Business Property; and/or (ii) before such interest in the Divestment Business Property arose, the most recent use to which the Divestment Business Property had been put was that of carrying on the production and/or supply of aggregates, asphalt, RMX or cement (as applicable);

**“Proposed Purchaser”** means Tillicoultry Quarries Limited or such other proposed purchaser for the Divestment Business;

**“Subsidiary”** shall be construed in accordance with section 1159 of the Companies Act 2006 (as amended), unless otherwise stated;

**“Target Business”** means the portfolio of assets, together with associated freehold property, employees, inventory, contracts, intellectual property and permits acquired by Breedon from Cemex on 31 July 2020;

**“the Transaction”** means the acquisition by Breedon of the Target Business from Cemex;

**“Trustee”** means the person appointed pursuant to paragraph 4.4, paragraph 4.5 or paragraph 4.7 to carry out the Trustee Functions;

**“Trustee Functions”** means the functions set out in paragraph 6;

**“UK”** means the United Kingdom of Great Britain and Northern Ireland;

**“Working Day”** means any day of the week other than a Saturday or a Sunday or any day that is a public holiday in England and Wales or Scotland (as applicable);

**“Tillicoultry”** means Tillicoultry Quarries Limited; and



unless the context requires otherwise, the singular shall include the plural and vice versa.

**Signed by Breedon Group plc and accepted by the CMA on 1 December 2020**