

**COMPLETED ACQUISITION BY BREEDON AGGREGATES SCOTLAND LIMITED (“BREEDON SCOTLAND”) OF CERTAIN SCOTTISH ASSETS OF AGGREGATE INDUSTRIES UK LTD (“TARGET”)**

**Directions issued pursuant to paragraph 6 of the undertakings given by Breedon Aggregates Limited (“Breedon”) and Breedon Scotland to the Office of Fair Trading on 28 May 2013 and adopted by the Competition Commission on 25 September 2013 (the Undertakings)**

On 24 September 2013 the Office of Fair Trading (OFT) made a reference to the Competition Commission (CC) in accordance with section 22 of the Enterprise Act 2002 (the Act) concerning the completed acquisition by Breedon Scotland of the Target.

On 25 September 2013 the CC adopted the Undertakings in accordance with section 80(3) of the Act for the purpose of ensuring that no action is taken pending the determination of the reference which might prejudice that reference or impede the taking of any action by the CC under Part 3 of the Act which might be justified by the CC's decisions on the reference.

The CC now issues written Directions under paragraph 6 of the Undertakings that, for the purpose of securing compliance with the Undertakings, Breedon and Breedon Scotland must appoint a monitoring trustee (MT) in accordance with the terms provided for in the Annex and must comply with the obligations set out in the Annex.

*(signed)* SIMON POLITO

Group Chairman

31 October 2013

## **ANNEX**

### **Directions to appoint a monitoring trustee**

#### **Interpretation**

1. In these Directions:

The '**Act**' means the Enterprise Act 2002.

'**CC**' means the Competition Commission.

'**MT**' means the monitoring trustee appointed in accordance with paragraphs 2 and 7 below;

'**OFT**' means the Office of Fair Trading

'**Undertakings**' means the Undertakings given to the OFT by Breedon and adopted by the CC on 25 September 2013 and terms and expressions defined in the Undertakings have the same meaning in these Directions, unless the context requires otherwise

'**Breedon**' means Breedon Aggregates Limited; and

'**Breedon Scotland**' means Breedon Aggregates Scotland Limited

'**Target**' means the business together with certain Scottish assets of Aggregate Industries acquired by Breedon Scotland

#### **Appointment**

2. Breedon and Breedon Scotland must appoint an MT in order to:

- a) support the CC taking any remedial action which may be required to maintain the Target business as a viable business; and

- b) monitor compliance by Breedon with the Undertakings.
- 3. The MT must act on behalf of the CC and be under an obligation to the CC to carry out his or her functions to the best of his or her abilities.
- 4. Breedon and Breedon Scotland must cooperate fully with the MT, in particular as set out below, and Breedon and Breedon Scotland must ensure that the terms and conditions of appointment of the MT reflect and give effect to the functions and obligations of the MT and the obligations of Breedon and Breedon Scotland as set out in these Directions.

### **General**

- 5. The MT must possess appropriate qualifications and experience to carry out his or her functions.
- 6. The MT must neither have nor become exposed to a conflict of interest that impairs the MT's objectivity and independence in discharging his or her duties under these Directions, unless it can be resolved in a manner and within a timeframe acceptable to the CC.
- 7. Breedon and Breedon Scotland shall remunerate and reimburse the MT for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the MT's independence or ability to effectively and properly carry out his or her functions.
- 8. Breedon and Breedon Scotland must appoint the MT as soon as is reasonably practicable and in any event by 5pm on Thursday 7 November 2013 and the MT will continue to act until the CC has finally determined the reference (within the meaning of section 79 of the Act).
- 9. The appointment of an MT by Breedon and Breedon Scotland must be subject to

the approval of the CC as to the identity of the MT and his or her terms and conditions of appointment in their entirety.

10. Breedon and Breedon Scotland must inform the CC as soon as is reasonably practicable and in any event by [three days before date above] of the identity of the MT that Breedon and Breedon Scotland propose to appoint and provide the CC with draft terms and conditions of appointment. If Breedon and Breedon Scotland fail to so inform the CC, the CC will notify Breedon and Breedon Scotland of the identity of the MT that Breedon and Breedon Scotland must appoint.

11. Once the MT has been approved by the CC and appointed, Breedon and Breedon Scotland must provide the CC with a copy of the agreed terms and conditions of appointment.

## **Functions**

12. The functions of the MT will be to:

- a) ascertain the current level of compliance by Breedon and Breedon Scotland with the Undertakings, including the communications within and between Breedon, Breedon Scotland and the Target business, such as written and electronic communications, telephone conversations and meetings; and
- b) assess the arrangements made by Breedon and Breedon Scotland for compliance with the Undertakings and what changes to those arrangements, if any, are necessary to preserve the possibility of the CC taking any remedial action, if required.

The MT will also be required to:

- c) identify (and supervise if necessary) the arrangements made by Breedon and

Breedon Scotland for ensuring compliance with the Undertakings; and

- d) without prejudice to the right of Breedon and Breedon Scotland to contact the CC, respond to any questions which Breedon and Breedon Scotland may have in relation to compliance with the Undertakings, in consultation with the CC.

13. The MT must take such steps as he or she reasonably considers necessary in order to carry out his or her functions effectively.

14. The MT must comply with any requests made by the CC for the purpose of ensuring the full and effective compliance by Breedon and Breedon Scotland with the Undertakings.

#### **Obligations of Breedon**

15. Breedon its subsidiaries and their employees, officers, directors, advisers and consultants must cooperate fully with the MT, in particular by providing the MT with all cooperation, assistance and information as the MT may reasonably require in order to discharge his or her functions, including but not limited to:

- a) the provision of full and complete access to all personnel, books, records, documents, facilities and information of Breedon, Breedon Scotland and the Target business as the MT may reasonably require; and
- b) the provision of such office and supporting facilities as the MT may reasonably require.

16. If Breedon or any of its subsidiaries is in any doubt as to whether any action or communication would infringe the Undertakings, it is required to contact the MT for clarification.

17. If Breedon or any of its subsidiaries has any reason to suspect that the Undertakings may have been breached, it must notify the MT and the CC immediately.

### **Reporting functions**

18. The MT is required to provide an initial report to the CC no later than three weeks following the date of his appointment giving details of any arrangements which have been, or should be, put in place to ensure compliance with the Undertakings, and including among other things:

- a) details of the current extent of compliance with the Undertakings;
- b) details of the Target assets and staff transferred in the overlap areas as set out in Annex A;
- c) a description of the current arrangements made for the operation of the Target business and for the preservation of the assets required to operate the Target business; and
- d) recommendations as to what changes to those arrangements, if any, are necessary.

19. In addition to providing the initial report referred to in paragraph 16 above, the MT must report once per month thereafter (or otherwise as required by the CC) to the CC stating whether or not, in his or her view, Breedon has complied with the Undertakings. This assessment should consider the following:

- a) the basis for the MT's view that the Undertakings have or have not, as the case may be, been complied with and in particular whether:
  - i) anything has caused him or her to be concerned as to whether Breedon

has complied with the Undertakings, and if it has, whether those concerns have been resolved and why;

- ii) he or she has any remaining doubts or uncertainties as to whether Breedon has complied with the Undertakings; and
- iii) anything that causes him or her to be concerned about a possible future breach of the Undertakings (whether deliberate or inadvertent); and

b) whether appropriate steps are being taken to maintain the Target business as a going concern.

Where necessary the MT may also be required as part of this assessment to consider and report on:

- c) the extent to which Breedon and Breedon Scotland have cooperated with the MT in his or her task of monitoring its compliance with the undertakings and details of any aspects of the cooperation of Breedon and Breedon Scotland that he considers could be improved;
- d) the extent to which the MT considers that he or she is in an appropriate position to monitor the compliance with the Undertakings and details of any aspects of the cooperation of Breedon and Breedon Scotland that he considers could be improved; and
- e) any current or anticipated requests for consent to vary the Undertakings.

20. When reporting to the CC the MT must ensure that he or she does not disclose any information or documents to the CC which Breedon and Breedon Scotland would be entitled to withhold from the CC on the grounds of legal privilege.

21. The MT must immediately notify the CC in writing if he or she forms a reasonable

suspicion that the Undertakings have been breached, or if he or she considers that he or she is no longer in a position to effectively carry out his or her functions. In that situation, the MT must give reasons for this view; including any supporting evidence available (unless doing so would infringe the obligations referred to in paragraph 18 above).

22. All communications between the MT and the CC (including the statements and reports referred to in paragraph 16 and 17 above) are confidential and should not be disclosed to Breedon and Breedon Scotland, save with the prior written consent of the CC. The MT shall not disclose such communications to third parties.

23. The MT will report each month to the CC the fees that he or she has charged to Breedon and Breedon Scotland for his or her services.



## Annex A: list of overlap areas

<i>Product</i>	<i>Active</i>	<i>Inactive/occasional use</i>
Aggregates	Bablaair Quarry (Beaully in Inverness - Highlands)	Corrennie (Grampian)
	Tom's Forest Quarry (Aberdeenshire)	Kemnay (Grampian)
	Edzell (Tayside and Fife)	Ardchronie (Highlands)
	Powmyre (Tayside and Fife)	
Asphalt	Midlaings (Inverness - Highlands)	
	Tom's Forrest (Grampian)	
Asphalt units	Beaully (Highlands)	
surfacing	Tom's Forrest (Grampian)	
RMX	Beaully (Inverness - Highlands)	Perth (Tayside and Fife)
	Tom's Forrest (Grampian)	Edzell (Tayside and Fife)
	Peterhead (Grampian)	
	Dyce (Grampian)	
	Tullos (Grampian)	
	Dundee (Tayside and Fife)	