BHP

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BHP Diamonds
BHP Minerals

Information Centre
Competition Bureau
Industry Canada
50 Victoria Street
Hull, Quebec
K1A 0C9

September 21, 2000

Attention: Johanne D'Auray
Deputy Commissioner of Competition
Fair Business Practices Branch

Dear Sirs/Mesdames;

Re: Diamonds - "Made in Canada"

By letter dated August 9, 2000 you solicited our comments on the Competition Bureau's enforcement approach under the *Competition Act* when reviewing "Made in Canada" representations used in the promotion and sale of diamonds. You attached a Notice of Consultation setting out the issues on which the Bureau wished to receive comments. As an owner and operator of Canada's first and only producing diamond mine, located in the Lac de Gras area of the Northwest Territories, we respectfully submit the following comments for your consideration:

A. Place of Origin:

Natural diamonds are created by forces of nature and discovered by man. They are not "made" by man. Man can refine the natural stone by cutting, polishing and setting it; but the stone itself always remains in substance what it was when it was first discovered – the hardest and one of the rarest mineral substances known to man.

1. Diamonds are pure carbon in a crystalline form. Natural diamonds originate far below the surface of the earth, at depths of 200 km. or more where high temperatures and deep pressures cause diamond crystallization. They are brought to the earth's surface by volcanic eruptions.

2. The majority of natural diamonds are found in deposits of a rare variety of ultrabasic igneous rock called kimberlite. On a global scale, the vast majority of kimberlites have no diamonds or so few as not to be remotely economic to mine. Less than 1% justify detailed sampling or trial mining and less than 100 deposits have been profitably exploited since the discovery of kimberlite diamonds over 125 years ago.

3. Before October 1998, the vast majority of diamonds sold in Canada originated in Africa, Australia and Russia. One lamproite and seven kimberlite deposits accounted for over 80% of the world's annual production of diamonds.

4. The discovery by BHP Diamonds Inc ("BHP") and Dia Met Minerals Ltd. of the first diamonds ever found in Canada sparked the largest mineral staking rush in North American history and fanned both the imagination and the national pride of the consuming public. A "Canadian" diamond had at last been discovered.

5. In October 1998, following a comprehensive mine approval and challenging development process, the mine opened, with the first sale occurring in January 1999. The rough diamonds were and continue to be very much sought after by the world market and are recognized for their excellent gemstone quality. The Panda pipe now in production contains a significant gem diamond fraction that is highly valued and characterized by a high portion of white gemstone quality stones.

6. Our mine produces approximately US$400 million worth of diamonds a year, or about 5% of world production, by value. With the advent of production from the Diavik mine and from DeBeer's Snap Lake property, diamonds produced in Canada are expected to exceed 10 % of world production.

7. Canada is fast becoming a major producer of diamonds and a contender in world markets for the sale of high quality rough diamonds. The demand for our rough diamonds in the industry is such that it far outstrips our ability to fully supply.

8. What makes these stones unique in the world markets? Our experience in selling rough diamonds confirms that it is the availability of a consistent supply of high quality product direct from the mine. They are generally viewed as "Canadian" diamonds – stones that have been mined from kimberlite deposits containing diamonds of a consistently high quality and purity, produced in a politically stable and technologically advanced environment.

9. For the preceding reason, should BHP decide in the future to sell polished, trade-marked diamonds from the EKATI™ Diamond Mine, it would implement a tracking system to verify that each final polished diamond sold by it had been produced from rough originating from our mine in Canada.

10. Based on the foregoing, we submit that diamonds mined in Canada are already, and will continue to be, viewed in world markets and by the consuming public as "Canadian" diamonds, just as B.C. jade, Burmese rubies and Brazilian emeralds command recognition within the gemstone and jewellery industries.

B. Processing:

A diamond does not come into being as a "new and identifiable product" when it is cut or polished; it already exists. It becomes a commodity of commerce when it is found and mined.

1. By defining a "diamond" in its 1994 Guidelines with Respect to the Sale and Marketing of Diamonds, Coloured Gemstones and Pearls (the "Diamond Guidelines") as "A naturally occurring monocrystalline pure carbon mineral in the isometric crystal system which has been polished and fashioned for personal adornment or display and which possesses beauty, rarity, durability and value", the jewellers and gemmologists participating with Industry Canada in the special committee that authored the Guidelines almost pre-empted the present debate by ignoring the fact that a "diamond" is first and foremost the stone itself.

2. Because Canada was not a producer of diamonds in 1994, little or no consideration was given by the special committee to, or value accorded, the work, risk and cost involved in exploring for, locating, financing, permitting and ultimately developing economically-viable kimberlite deposits.

3. BHP estimates that, excluding exploration, permitting and development costs, approximately 85% of all costs involved in the production of a polished stone relate to the mining and on-site processing of the kimberlite ore needed to extract the natural diamonds. Polished manufacturing makes up about 15% of the production costs. In the result, the most substantial production operation in the creation of a polished diamond – albeit, not the last operation – is the extraction of the diamond from the ore.

4. Cutting and polishing are difficult skills to learn and even more difficult skills to excel at but they are not unique to any one country. While excellent visual acuity, manual dexterity and the proper computer programming can contribute to the shape and brilliance of the finished stone, they are not the major determinants in its inherent value (which is based on each diamond's weight, clarity and colour as mined).

5. Further, the acts of cutting and polishing are multi-faceted (including the steps of sawing, bruting, cleaving, blocking, cross-working, facetting and brillianteering) which would make a determination of "substantial value added" a very difficult task to perform, especially in circumstances where one or more of the steps is completed in different countries before delivery of the diamond for sale in Canada as a polished stone.

6. While the promotion of a local spin-off industry such as the manufacture of polished diamonds in Canada is an admirable goal and one supported by BHP (as evidenced by its allocation of 10% of the value of all rough diamonds at the mine to the local secondary diamond industry), it should not occur at the expense of losing the very element that makes diamonds mined in Canada unique throughout the world – the simple fact that they were found in Canada.

7. We submit that the ordinary Canadian consumer, if asked whether a diamond mined in Canada but cut and polished elsewhere is a "Canadian diamond", will invariably answer "yes".

8. Based on the preceding analysis, we strongly oppose any proposal that would permit diamonds mined outside of Canada but wholly or substantially cut and polished within the country to bear the label of a "Canadian" diamond.

C. Recommendation:

In the spirit of compromise and with a view to avoiding the complexities inherent in advertising diamonds in the manner proposed by the Bureau in its seven examples of acceptable advertising practices, we submit the following for your consideration:

> **"Canadian Diamond"** (or branding with a recognizable Canadian logo) should be reserved and restricted for use in connection solely with diamonds mined in Canada.
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> **"Processed in Canada"** should be a term reserved and restricted to the act of performing substantial work on the diamond (such as cutting and polishing) in Canada, where "substantial" could be defined as an operation which contributes more than 80% of value added over and above the price paid for the rough diamond.

Compliance with one or both criteria should soon be easily verifiable in documentary form - which fact, in turn, would facilitate enforcement of the legislation.

Applying the preceding criteria, a jeweller selling a ring or other specific wares bearing, for example, EKATI™ diamonds could advertise such stock as containing "Canadian diamonds". A jeweller selling diamond jewellery containing stones that were mined elsewhere but substantially cut and/or polished in Canada, could sell his wares as jewellery "Processed in Canada".

We believe that this proposal both reflects the reality of the current market situation and protects the investment already made by private industry in promoting diamond exploration and mining in Canada.

Thank you for extending to us the opportunity to make submissions regarding the promotion and sale of diamonds in Canada. Should you require additional information or have any questions about the preceding submissions, please contact the undersigned.

Yours truly,
BHP Diamonds Inc.

Per:

Vaughan Williams
Vice President Marketing