



**FAX COVER SHEET**

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**NAME:** Attn: Johanne D'Auray **CC:** \_\_\_\_\_  
Deputy Commissioner, Competition Bureau, Industry Canada

**FAX NO.** (819) 997 0324

**FROM:** James Sharp, VP Commercial **DIRECT TEL:** (403) 261-6105

**DATE:** 22<sup>nd</sup> September 2000 **TOTAL NUMBER OF PAGES:** 5

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Dear Sir,

I refer to your letter dated 9<sup>th</sup> August 2000 addressed to Dr Stephen Prest and the attached Notice of Consultation.

Diavik Diamond Mines Inc. (DDMI) appreciates the opportunity to comment on the Bureau's enforcement approach to "Made in Canada" representations under the Competition Act, and looks forward to further discussions on the matter.

The underlying reality is that a "Canadian Diamond" will always be designated relative to its place of origin as a natural mineral. Therefore our basic position is that :

1. A "Canadian Diamond" is essentially one that has been mined in Canada. A diamond should only be represented as Canadian if it originated in that country and the seller can verify this to the purchaser.
2. Further representations as to additional features, such as a "Canadian Diamond cut and polished in Canada" are acceptable, provided the seller can also verify these additional features.

DDMI's comments are made as the Manager and majority owner of the Diavik Diamonds Project (the Project) in the North West Territories (NWT) of Canada. We do not require them to be treated as confidential.

We provide the background information below to assist the Bureau in its deliberations.

## **1. The Diavik Diamonds Project**

The Project is an unincorporated joint venture between DDMI, holding 60%, and Aber Diamond Mines Ltd. (Aber), holding 40%. Both companies are headquartered in Yellowknife in the NWT. DDMI is the Manager of the Project, with each joint venturer separately responsible for the marketing of its respective share of rough diamond production.

DDMI is a wholly owned subsidiary of Rio Tinto plc (Rio), of London, England. Rio also holds a 59.7% interest in the Argyle Diamonds Mine (Argyle) in Western Australia, and manages and markets 100% of its production. Argyle is the world's largest producer of rough diamonds by carats, and has been in operation since 1983.

The Project is anticipated to be in production in 2003 and has the potential to reach an annual production level of 6-8 million carats at an average value in a range of US\$60-70 per carat (based on current market prices). This would make it an important producer in its own right, and, together with the existing production from the Ekati mine, would make Canada a significant rough diamond producer in world terms (accounting for in excess of 10% of world production).

## **2. Diamond Industry Background**

While the diamond market is an international one, the origin and authenticity of rough diamonds has become of increasing importance within the international diamond industry in recent years for a variety of reasons.

These include concerns over diamonds originating from "conflict zones", treatment processes to enhance the appearance of diamonds, and a move towards branding as a marketing differentiation tool.

Within that general industry context “Canadian Diamonds” have the potential to provide a marketing advantage to sellers who are able to represent their product as such, whether the product is sold in its original form as a rough diamond or as a polished diamond after further processing. This advantage could apply to both the Canadian market and to the international diamond market.

While the specific mandate of the Bureau applies only to representations within the Canadian marketplace it is important for it to be aware of related events occurring outside Canada’s borders. There is, for example, currently a process in place involving a range of governments and diamond industry representatives which could lead to the development of an international certification scheme for rough diamonds. Canada is being represented in this process by officials from the Department of Foreign Affairs and International Trade. We consider it important for the actions the Government takes on the international stage to dovetail with those taken within the domestic market.

### **3. The DDMI Perspective**

DDMI’s perspective on this issue is primarily that of a producer and seller of rough diamonds into both the Canadian and international markets. Although we have no specific plans to ourselves engage in activities further downstream, this remains a possibility that we have not excluded.

Within Canada, DDMI has entered into a Memorandum of Understanding with the Government of the NWT aimed at exploring the potential for the development of downstream secondary diamond activities in the NWT, and has indicated a willingness to make available rough diamonds from its share of production from the Project to potential customers based in the NWT.

We have a vital interest in protecting the image of “Canadian Diamonds” and in supporting potential customers, both Canadian and international, who will add value to the rough diamonds we sell them in various ways, including processing and selling the resultant polished diamonds.

Our view is that sellers of both rough and polished diamonds originating from Canadian diamond mines who represent their products as “Canadian Diamonds” are not acting in way that is false or misleading to consumers, provided they can verify the origin of the diamond. If sellers of polished diamonds see additional value in specifying where the various steps involved in processing the diamond into a polished diamond occurred, then they should have the discretion to add to the basic description of a “Canadian Diamond” with more specific representations about this process (such as “cut and polished in Canada”), provided they can verify them.

In our view this approach is the one that is both clearest to consumers, and matches their understanding of the terms. It also best supports the sale of diamonds produced in Canada both domestically and internationally, and the small but emerging further processing diamond industry in Canada.

#### 4. Discussion

In practical terms a diamond “comes into being” in Canada when it is extracted from its geological host rock by the miner - at great cost and with significant direct Canadian labour input.

The literal meaning of a “Canadian Diamond” is therefore one that originated in Canada.

In our experience, this literal meaning is also matched by the perception of the consumer. Canadian consumers of diamond jewellery who seek out a “Canadian Diamond” are primarily looking for a diamond that originated in Canada, and are generally less sensitive to where it may have been further processed, either partially or completely.<sup>1</sup>

It is important to protect the right of the Canadian diamond producers and their customers to represent sales of rough diamonds originating from Canadian mines as “Canadian Diamonds”. This is an omission from the list of categories of representations listed on pages 3-4 of the Notice Of Consultation. It should be the first category as the production and sale of rough diamonds is the foundation of the Canadian diamond industry.

Provided the seller of a polished diamond can verify the origin of the diamond, a representation of a diamond which originated as a rough diamond in Canada and was subsequently processed into a polished diamond (irrespective of where the further processing was done) as a “Canadian Diamond” is neither false nor misleading.

It may be desirable for the seller of a polished diamond to enhance its description of a “Canadian Diamond” by describing where it was cut and polished, provided it can verify this.

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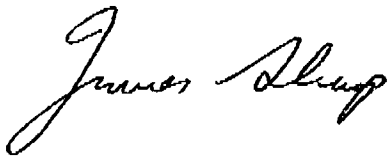
<sup>1</sup> In the international diamond market the diamond’s country of origin is also far more important than where it was further processed.

In time, as other Canadian mines come into production, some sellers may seek to further differentiate the source by reference to the specific mine from which the diamond originated.

The verification proviso is important as this protects both the bona fide seller of "Canadian Diamonds" and the consumer. It has some complexity because it is difficult to distinguish between diamonds from various sources, especially in polished form, and to "police" where the several steps involved in the cutting and polished process occur. However both industry participants and governments (including the Government of the NWT) who see value in being able to provide this verification are taking initiatives to do so. The Bureau should consult further with these parties to form its own view on what verification processes might reasonably be expected of sellers into the Canadian market.

We hope these comments will help the Bureau in its deliberations.

Yours sincerely,

A handwritten signature in cursive script that reads "James Sharp". The signature is written in black ink and is positioned above the typed name.

James Sharp

Vice President, Commercial

Diavik Diamond Mines Inc.