Case No COMP/M.2333 – De Beers/LVMH

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 8(2)
Date: 25/07/2001

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.07.2001
SG (2001) D/290348-290349

PUBLIC VERSION

Commission Decision

of 25.07.2001

declaring a concentration to be compatible with the common market and the EEA Agreement

(Case No COMP/M.2333 – De Beers/LVMH)

(Only the English text is authentic)

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area, and in particular Article 57(2)(a) thereof,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings,[1] as last amended by Regulation (EC) No 1310/97,[2] and in particular Article 8(2) thereof,

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1 OJ L 395, 30.12.1989, p. 1; corrected version in OJ L 257, 21.9.1990, p. 13.

2 OJ L 180, 9.7.1997, p. 1.

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Having regard to the Commission Decision of 18 April 2001 to initiate proceedings in this case,

Having regard to the opinion of the Advisory Committee on Concentrations,[3]

Whereas:

1. On 9 March 2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Regulation (EEC) No 4064/89 ("the Merger Regulation") by which the undertaking Riverbank Investments Limited ("Riverbank"), controlled by the De Beers Group ("De Beers"), and Sofidiv UK Limited ("Sofidiv"), controlled by LVMH Moët Henessy Louis Vuitton ("LVMH") acquire joint control of a newly-formed company, Rapids World Limited ("Rapids World"), by way of purchase of shares [constituting a joint venture]*.

2. On 18 April 2001, the Commission decided, in accordance with Article 6(1)(c) of the Merger Regulation and Article 57 of the EEA Agreement, to initiate proceedings in this case.

3. The Advisory Committee discussed the draft of this Decision on 16 July 2001.

I. THE PARTIES

4. De Beers has extensive operations throughout the world. Its principal activities are in the upstream markets of the diamonds pipeline, in particular, the exploration, mining, recovery, valuation and marketing of rough diamonds. It has relatively small activities in relation to polished diamonds and is not active in the market for the retail of jewellery.

5. LVMH is principally engaged in the production and sale of luxury goods and owns various famous brands internally organised in the following sectors: wines and spirits, fashion and leather goods, fragrances and cosmetics, watches and jewellery, selective distribution, media, art and auctions.

6. Rapids World's principal activity will be in the retail of diamond jewellery. The primary focus of Rapids World will be retail of diamond jewellery with possible extension of its activities to the retail of associated luxury products.

II. THE OPERATION

7. On 16 January 2001, Riverbank and Sofidiv entered into a Shareholder's Agreement relating to the creation of a newly-formed company, Rapids World.

III. CONCENTRATION

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[3] OJ

* Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

8. The proposed operation involves the establishment of a newly created company, Rapids World.

9. De Beers and LVMH will be the parent companies of Rapids World, with [description of voting rights]* and the ability to exercise veto rights over matters which affect Rapids World's commercial policy, [description of commercial policy]*. Therefore, De Beers and LVMH will have joint control.

10. The new joint venture will source polished diamonds and other raw materials from third parties. It will control jewellery design in house, will outsource manufacturing activities and will distribute its products through its own distribution system to outlets including Rapids World-owned shops. To enable Rapids World to conduct these activities, both parents have committed significant resources to it at start-up in terms of finance, staff and assets.

11. The proposed joint venture will perform, on a lasting basis, all the functions of an autonomous economic entity. The proposed operation is therefore a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

12. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion[4] (De Beers EUR 5 171 million ; LVMH 8 547 million). They each have a Community-wide turnover in excess of EUR 250 million, (De Beers EUR [...]*million ; LVMH 2 960.9 million) but they do not both achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension within the meaning of Article 1(2) of the Merger Regulation.

V. RELEVANT MARKETS

A. Relevant product market

13. The economic sector concerned is the diamond industry. The diamond pipeline consists of several stages of production as follows:

    (i) exploration and prospecting;

    (ii) mining and recovery of rough diamonds;

    (iii) sorting, valuation and supply of rough diamonds;

    (iv) dealing;

    (v) manufacturing (i.e. cutting and polishing);

[4] Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1 January 1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

(vi) jewellery manufacturing;

(vii) jewellery wholesaling; and

(viii) jewellery retailing.

14. This pipeline can be split into three broad levels: (a) the exploration, mining and supply of rough diamonds; (b) the production and sale of polished diamonds and (c) the production and sale of diamond jewellery. Each of these levels require entirely different expertise and core competencies, as well as totally different investment requirements.

The exploration, mining and supply of rough diamonds

15. Diamond is the hardest substance occurring in natural form. Diamonds are sometimes found in kimberlite (the dominant primary host rock in South Africa) and lamproites (the main host rock in Australia). Kimberlite is intruded into the earth's crust as "pipes" (diatremes) or in fissures and sills. There are thousands of kimberlite pipes around the world but few contain diamonds and fewer than 1 in 200 kimberlite deposits will become a major mine. Of the 6 500 kimberlites which have been found around the world so far, only 50 have become sustainable diamond mines. Some diamonds, eroded from kimberlite pipes, have been transported by rivers and are concentrated in alluvial deposits. Alluvial diamond bearing gravels commonly yield diamonds that are of a predominantly high gem quality. The mining of alluvial gravel deposits initially involves the mechanised removal of overburden (usually sand and boulders) to expose the layer of diamond-bearing gravel, which is then excavated for processing. Diamonds are recovered from the sea bed by means of specially modified sea vessels or "floating mines". World production of natural diamonds has grown to about 120 million carats annually.

16. Following extraction, rough diamonds can be brought to the market in a number of ways. The majority of rough diamonds that are produced are fed through De Beers' single channel operated by De Beers' wholly owned subsidiary, the Diamond Trading Company ("DTC")[5]. The DTC markets rough diamonds produced from De Beers' wholly-owned mines, those produced from those mines in which De Beers is a joint venture partner as well as diamonds that are sold to De Beers under contract by other producers (notably Alrosa and BHP). Until recently De Beers also purchased rough diamonds on the open market which were subsequently fed through the DTC channel[6]. Producers other than De Beers can market their rough diamonds through other means. For example, rough diamonds can be sold to dealers who specialize in rough diamonds, or they can be sold directly to players downstream in the diamond pipeline, whether they be manufacturers of polished diamonds or even retailers[7]. In the last decade, an

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5 Formerly known as the Central Selling Organisation

6 De Beers has since stopped making these open market purchases in order to minimise the risk that the diamonds it sells are sourced from so-called "conflict regions".

7 For example, the diamond jewellery retailer Tiffany has recently established a joint venture with a mining company the terms of which allow Tiffany to be supplied directly a proportion of the mine's output of rough diamonds. Tiffany will contract in diamond polishers to process the rough diamonds.

increasing proportion of the world's production of rough diamonds has been sold through alternative supply channels. Despite this reduction, the DTC still sells nearly two-thirds of the world's supply of rough diamonds. The Commission does not take a position on the question whether a market exists for the exploration and production of rough diamonds, separate and upstream to that for the supply of rough diamonds, as it is not necessary to do so for the purposes of this Decision.

17. As the demand for diamonds at the polishing level is derived from consumers' demand for jewellery it is also necessary to examine the competitive conditions at the retail level before reaching conclusions about the relevant market upstream. As is shown in paragraphs 25 to 32, the retail markets are at their widest for the retailing of diamond jewellery. This confirms a preliminary conclusion that the relevant upstream market is no wider than a market for the supply of rough diamonds. It comprises the mining and marketing of rough diamonds.

18. The Commission has also explored whether there is a single relevant market for rough diamonds, or whether there are narrower relevant markets within this. In their notification the parties argued that as a result of the highly differentiated nature of the product, there is a continuum from the lowest quality to the highest quality stones, that it is not possible to break the continuum at any point and therefore that it is not possible to define separate relevant markets. In the market investigation, support for this position has not been universal. Respondents to the Commission's questionnaires, both competitors and customers, have indicated that rough diamonds can be divided into a number of different sub-groups.

19. In general, the criteria upon which rough diamonds can be categorised relate to the quality of polished diamonds that the rough can produce. For example, rough diamonds can be divided into those used in jewellery and those used for industrial purposes. A respondent also indicated that there are standard industry references based on the following categories: (i) rough that produces polished diamonds of 0.50 carats and above, white, slightly included and designated as gem material; (ii) rough that produces diamonds of between 10 points[8] and 50 points that are in the top end of colour and quality; (iii) rough that produces diamonds of less than 10 points that are in the top end of colour and quality; and (iv) rough that produces what is referred to as near gem because of the high level of labour required to remove waste material.

20. While these may represent standard industry references, the Commission does not have sufficient evidence to conclude that these represent separate relevant markets. Moreover, for the purposes of this analysis, it is not necessary to decide whether there exist narrower markets since the conclusion that De Beers is dominant remains valid, regardless of how the rough diamond market is classified.

21. In the light of the above arguments, it is concluded that the relevant upstream market is the supply of rough diamonds.

The production and sale of polished diamonds

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8 1 point = 0.01 carats

22. Before being incorporated into jewellery, rough diamonds are transformed into polished diamonds by manufacturers of polished diamonds. Due to the nature of diamonds and in particular their hardness, there are a number of highly specific skills and facilities required in order to polish the rough diamonds. For example, diamond polishers must be able to critically appraise rough diamonds before deciding how to maximise the value of the resulting polished diamonds that they can produce. It is extremely unlikely that companies which have invested in the highly specific requirements of diamond processing and polishing will switch their production facilities to polishing other gem stones.

23. Most of the world's largest diamond polishers are also De Beers' customers, the so-called "sightholders" and they are mostly based in the traditional cutting centres of Antwerp, New York, Tel Aviv and Mumbai. This stage of the diamond pipeline remains highly fragmented, with De Beers' sales, which account for nearly two-thirds of the world's supply, being sold to around 120 sightholders. De Beers also operates at this stage of the diamond pipeline through its Diamdel companies and The Polished Division.[9]

24. For the purposes of this decision it is not necessary to determine whether or not diamond polishing represents a separate relevant market as this activity is not directly affected by the operation and the assessment of the operation would remain the same, irrespective of the definition chosen.

Retail of diamond jewellery

25. In their notification, the parties argued that the relevant product market is the retail of luxury goods, including the retail of diamond jewellery and of other jewellery. Among the arguments presented by the parties in this regard are the following[10]. Creativity and imagination are the hallmarks of luxury products and designers and stylists play a fundamental role in creating distinctive products. Luxury products are highly appreciated both as product and art. Luxury products possess both tangible characteristics, such as design, quality and high price, and intangible characteristics, such as their aura of exclusivity and prestige. Luxury goods are desirable for their own sake rather than for any function they may have.

26. Furthermore, the parties argue that the purchasing decisions of luxury goods consumers are not primarily based on price but on other factors, and that "the Commission's approach to demand side substitutability insofar as it assesses functionality and price is, therefore, inappropriate in defining the luxury goods market."[11]

27. The market tests carried out by the Commission in both the initial phase of investigation and in the subsequent stage have in general shown that the degree of heterogeneity in

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[9] Rapids World will be expressly forbidden from purchasing polished diamonds from any De Beers owned company.

[10] Form CO, Section 6.B.1

[11] Form CO, Section 6.E.3.1

luxury products means that it would be inappropriate to consider diamond jewellery as part of a wider market for luxury products.

28. Moreover, during the market investigation, a minority of respondents have stated that the precise market definition could be a market for "fine jewellery" which would include jewels with precious gem set (diamond, ruby, emerald, sapphire in platinum or gold setting) differ from semi-precious jewels (such as amethyst, aquamarine, tourmaline in gold or silver setting) and costume jewellery (imitation stones in base metals, gold-plated settings). The difference is in the distribution and sales channels since fine jewellery or diamond jewellery is most exclusively sold through high-end independent sellers or exclusive jewellery chain stores.

29. The purchase of diamond jewellery is not a frequent event. For a large part due to the marketing efforts undertaken over the years by De Beers, a very significant proportion of demand for diamond jewellery relates to specific occasions in people's lives, in particular the diamond engagement ring. De Beers marketing – in particular the "A Diamond is Forever" campaign – increased the emotional imagery that is now attached to diamonds. Due to this emotional imagery of diamonds, jewellery centred on other gem-stones would be an imperfect substitute for diamond jewellery.

30. Furthermore, as Rapids World will focus on diamond jewellery manufactured using polished diamonds of higher quality, and in particular those of the best colours, it has been necessary to consider whether jewellery comprising such diamonds represents a separate relevant market within a wider market for diamond jewellery. However, the Commission does not have sufficient evidence to be able to conclude that these represent separate relevant markets.

31. Again due to the focus of the new joint venture on branded products, it has also been necessary to consider whether there exists a separate relevant market for branded diamond jewellery. Evidence provided by the parties in relation to pilot sales of branded jewellery showed that these pilots had succeeded in driving incremental demand for diamond jewellery. This provides indirect support for the existence of a separate market for branded diamond jewellery since the branded sales were additional to – and did not substitute for – sales of unbranded jewellery. By itself, this is not sufficient to conclude that there exists a separate market for branded diamond jewellery, although it is an indication that such a market may exist. The Commission has also received evidence that the geographical scope of competition for branded diamond jewellery is wider than that for unbranded jewellery (see paragraphs 35 to 39). Nevertheless, for the purposes of this case, it is not necessary to reach a decision on this point since the competition assessment would remain the same irrespective of the definition chosen.

32. In conclusion, it is concluded that the relevant product market is the retail of diamond jewellery.

B. Relevant geographic markets

The supply of rough diamonds

33. Rough diamonds are presently mined in some 25 countries around the world from underground, open-cast and offshore sites. They are processed in manufacturing operations in as many as 30 countries. The market test has shown that because of the

limited number of sellers of rough diamonds, the product's high value-to-weight ratio and the fungibility of rough diamonds expected to cut to a particular polished grade, rough diamonds trade on a world-wide basis.

The production and sale of polished diamonds

34. Concerning the production and sale of polished diamonds, there are thought to be diamond manufacturing facilities in 26 countries with four traditional diamond polishing centres (India, Israel, Belgium and the United States). The individual cutting centres have become increasingly specialised in terms of the types of goods that they will process. Nevertheless there is no need for the purpose of the present decision to decide if the geographic market is world-wide or regional since the competitive assessment would remain identical irrespective of the definition chosen.

Retail of diamond jewellery

35. The parties submit that the geographic market for the retail of jewellery is global. They consider that the prevalence of international travel and tourism means that tourists represent a target for jewellers and that the existence of relatively inexpensive and easy travel may spur consumers into "shopping sprees" in fashionable cities. They also consider that a number of retailers, such as Cartier, Tiffany & Co ("Tiffany"), Bulgari and Van Cleef & Arpels, tend to operate or have outlets in a broad spread of countries and carry out marketing on an international basis, with little or no tailoring to national characteristics. They add that the health of the world economy, the performance of the financial markets and exchange rate fluctuations have a significant impact on the jewellery market and that transportation costs are relatively low in comparison to the high price of jewellery.

36. In relation to the narrow market segment of branded diamond jewellery, the parties' arguments have been supported by respondents to the Commission's questionnaires. Branded diamond jewellery is sold with the same contents and quality in diamonds for all territories around the world. The consumer is sold a specific product made by a designer with immediate brand recognition because of its design and its look. Branded jewellery sales occur on a global basis because the brand is sold the same way in the Community as in the United States or Japan.

37. However, other than for branded diamond jewellery, the Commission's investigation has not supported a conclusion that the relevant geographic market for the retail of diamond jewellery is global. Competition amongst sellers of diamond jewellery occurs primarily on a local basis and secondly on a national basis. The purchase of a diamond requires trust in the seller and proximity to the customer is important. Therefore even small established local jewellers have the means to compete successfully if they have the merchandise to sell.

38. Price differences also exist between regional markets. For example, prices in Japan are generally higher than those in the United States and the Community. Due to the importance of price points in consumers' purchases, prices are set on a national basis and do not adjust to changes in relative prices as a result of, for example, changes in the exchange rates between two countries.

39. While the argument that the relevant geographic market for the retail of diamond jewellery is global can be rejected, for the purposes of this decision, it is not necessary to decide whether the relevant retail markets are European (that is, EEA-wide), national or local in scope. It is therefore concluded that the geographic retail market for diamond jewellery is, at the most, EEA-wide while it appears that for the narrower product segment of the retail of branded diamond jewellery the market could be global.

VI. COMPATIBILITY WITH THE COMMON MARKET

The diamond pipeline – De Beers' new strategy

40. The current operation is part of De Beers' new strategy in which it is seeking to replace its traditional monopolistic approach based on the control of supply with a strategy based on demand driven actions and the creation of a multi-brand environment. De Beers now focuses on adding value – through both marketing and branding initiatives and a strengthening of the control of the supply chain – to the diamonds it supplies.

41. For most of the 20th century, De Beers sold 85% to 90% of the diamonds mined worldwide. With this leverage, it could artificially keep diamond prices stable by matching its supply to world demand. De Beers is not abandoning its hegemony, but it is reacting to two main difficulties it has been facing for some time. The sudden emergence of several diamond producers in the 1990s meant that De Beers, in an effort to keep prices high, was forced both to hold back a large portion of its diamonds and to purchase much of the excess supply of its new competitors – often at inflated prices. The company's market share fell from [80-85]*% to [60-65]*% and its stockpile soared from USD2.5 billion to USD5 billion – tying up cash reserves and upsetting investors, with the result that its stock price fell significantly.

42. De Beers is no longer seeking to buy every diamond in the world. Instead, it is planning to add value to the [60-65]*% of the supply which it does control and to increase consumer demand for diamonds. To achieve this goal, De Beers has developed a dual-branded strategy. The new company formed with LVMH is aimed at developing a retail strategy for the De Beers brand based on the De Beers name which has a very strong consumer awareness and credibility. The DTC, the sales and marketing arm of De Beers, will [use the Forevermark icon and 'A Diamond is Forever' in its generic advertising campaign]*. The Forevermark is a proprietary [device identifying selected diamonds originating from the DTC in a way which indicates their conflict free origins]*.

43. As it seeks to leverage those brands, De Beers is taking more interest in managing its diamond pipeline – the network of sightholders, wholesalers and retailers that disseminates its diamonds. The "Supplier of Choice" programme, announced by De Beers in July 2000, is designed to encourage De Beers' sightholders to work more closely with downstream partners to stimulate demand through the creation of a multi-brand environment. De Beers intends to make sure that the diamonds it sells are put into the strongest, most effective hands. In return, the parties argue that the sightholders will get [improved]* supply and they will be entitled to use De Beers' Forevermark – together with [additional benefits associated with it]*.

44. Until recently, De Beers let everyone in the industry benefit from its advertising campaigns but from now on all that marketing will be just for De Beers' customers. In

order to allow the De Beers brand to be used exclusively by the joint venture, the company is changing its [generic advertising campaign to incorporate the Forevermark icon to signify]* its fully owned selling and marketing subsidiary DTC.

45. In summary, faced with the increasingly intractable logistical and financial realities of controlling the fate of every diamond, De Beers has set in motion a demand based strategy which is intended to drive demand for DTC .

1. Dominant position of De Beers in the market for the production and sale of rough diamonds.

1.1 De Beers has a market share of 60 to 65% whilst the rest of the market is fragmented.

46. De Beers is the self-confessed “custodian” of the diamond industry. For much of the 20th Century, De Beers has controlled 85 to 90% of the supply of rough diamonds. This share has recently been reduced by the decision taken by some competitors, namely Argyle (AESO) to leave De Beers’ single channel, and because the new entrant, BHP Diamonds Inc (“BHP”), also decided to bring at least some its diamonds to market independently. It should be noted that BHP supplies 35% of its output via De Beers’ sales channel. Regardless of these recent reductions in share of supply (see Table 1), De Beers remains the largest supplier of rough diamonds, with only two other suppliers having achieved market shares of over 10% between 1995 and 2000. Such disparity in market share provides in itself a clear indication that De Beers is dominant in the supply of rough diamonds.

Table 1: Estimated shares of Rough Diamond **supply** by value, 1995-2000

	1995	1996	1997	1998	1999	2000 (est'd)
De Beers	75-80%	65-70%	60-65%	55-60%	60-65%	60-65%
Alrosa	[1-5]*%	[10-15]*%	[10-15]*%	[10-15]*%	[10-15]*%	[5-10]*%
Angola	[1-5]*%	[5-10]*%	[5-10]*%	[5-10]*%	[1-5]*%	[5-10]*%
AESO ("Argyle")	[1-5]*%	[1-5]*%	[1-5]*%	[5-10]*%	[1-5]*%	[1-5]*%
Congo	[1-5]*%	[1-5]*%	[1-5]*%	[1-5]*%	[1-5]*%	[1-5]*%
BHP				[1-5]*%	[1-5]*%	[1-5]*%
Miba			[<1]*%	[<1]*%	[1-5]*%	[1-5]*%
SDM						[1-5]*%
Others	[5-10]*%	[5-10]*%	[1-5]*%	[5-10]*%	[5-10]*%	[5-10]*%
Total (US$m)	>5000	>7000	>7000	>5000	>8000	>8000

47. Furthermore, De Beers is able to control the rate of production of rough diamonds from those mines that it controls by means of production quotas in order to ensure that the market is not oversupplied and that downward pressures on price are limited. This explains that De Beers responds to improvements downstream by raising its prices of rough diamonds, and that it responds to a worsening situation downstream by means of a combination of production quotas and price reductions.

1.2 De Beers operates the most efficient mines and has a leading position in the exploitation of future mines.

48. Table 2 shows the mines which are wholly owned by De Beers.

Table 2

Mines	**Average Value (EUR) /Carat in 2000**	**Expected Mine Life**
Finsch	>50	2028
Kimberly	>50	2018
Kaffiefontain	>200	2013
Namaqualand	>100	2010
Venetia	>50	2018
The Oaks	>100	2009

49. Table 3 shows De Beers' joint venture mines.

Table 3

Joint Venture	**Partner**	**Stake of De Beers**	**Average Value (EUR) /Carat in 2000**	**Expected Mine Life**
Marsfontein	Local partners (29.4%), Southern Era (40%)	31%	>50	2002
Debswana	Botswana Government (50%)	50%	>50	2030
Namdeb Diamond Corporation	Namibian Government (50%)	50%	>300	2021
Williamson	Tanzania State Mining (25%)	75%	>100	2006

50. De Beers' largest source of rough diamonds is from the Debswana mines. Debswana is a joint venture between the De Beers Group and the Botswana government. Under the terms of this joint venture De Beers operates the Botswanan Orapa, Letlhakane and Jwaneng mines.

51. According to information provided to the Commission by De Beers[12], the Jwaneng is the most productive diamond mine in the world in terms of the volume of carats produced. In addition, it is also De Beers' most profitable mine and this is determined by the value per tonne of ore mined and the efficiency of production. On an annual basis, between 1995 and 2000 this mine by itself accounted for no less than 18% of the world's total production. According to profit/revenue data produced by De Beers for 2000, 55% of the world's diamond mining revenue is from eight mines where it costs less than USD0.25 to generate USD1.00 of revenue. Of this 55%, the majority (approximately 37%) is generated by mines controlled by De Beers, and the remaining 18% is generated by three mines controlled by other producers[13]. Even in the unlikely scenario that all of this remaining production to be marketed independently of the DTC's single channel, De Beers would still be better placed than any other producer to withstand a price war were one to take place.

52. The commercial advantages provided by control over these highly profitable Botswanan mines will continue for the foreseeable future. Indeed, the expected mine life of the two largest Botswanan mines (Jwaneng and Orapa) is 2030.

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12 Form CO, Annex 7.3/1, Table 4 – Estimated Share of Production by Mine, 1995-2000

13 The data did not identify which the non-De Beers mines were.

53. Furthermore, De Beers has kept pace with increases in the level of global diamond production. The level of production of rough diamonds increased from USD5 894 million in 1995 to USD7 519 million in 2000. De Beers' share of this production has remained between 41% and 47% throughout that period. Indeed, given the breadth of experience in diamond exploration, and the wealth of data it has collected in relation to its exploration activities, De Beers should be able to predict with greater accuracy the likelihood that a sampled site will lead to a productive mine. This virtuous circle should enable De Beers to retain its strong position in relation to the production of rough diamonds.

1.3 In addition to its own production, De Beers holds significant levels of stocks from which it can release rough diamonds onto the market whenever it decides appropriate

54. De Beers has maintained a level of stocks significantly over its working level. That the levels of stock have been considerably above those needed for De Beers to operate is recognised in the Form CO. The notification states that a strategic decision has been taken by De Beers as a result of which it will reduce its stockpile to no more than a working level.

55. The control of stockpiles has been done not only to enable De Beers to ensure that the market has not been oversupplied, but also to ensure that De Beers has, at any time, been able to release diamonds of any type and quality onto the market and potentially to (temporarily) flood the market.

56. Although De Beers has stated that for strategic reasons it has decided to reduce its levels of stocks, this is not an irreversible strategy and there is no reason to believe that De Beers would be unable to rebuild its stocks as quickly as it has reduced them.

1.4 De Beers maintains close economic links with many of its competitors

57. DTC is the marketing and selling arm of De Beers, formerly known as the Central Selling Organisation ('CSO'). A number of De Beers' competitors also sell a significant proportion of their output via DTC channel under contract to the DTC.

58. For example, Russia accounts for 20% of world diamond production, approximately EUR1.5 billion). But the Russian producer Alrosa only supplies half of this output on its own account (see paragraph 46). The other half is sold under a sales contract via De Beers and the DTC channel.

59. BHP is a new entrant in the diamond producing sector, making its first sales in 1998. BHP also decided to operate to a certain extent outside of the DTC channel. In 1999 it had a market share of [1-5]*%, largely produced from the Ekati mine in Canada. Yet BHP also supplies a very significant proportion of its production (35%) via the DTC channel.

60. These sales agreements significantly reduce incentives for these companies to compete actively with De Beers. This is because active competition would not only lead to lower prices for the goods that they sell directly, but would also lower the value of the sales they make to the DTC. This creates incentives for these companies to behave as price followers, with De Beers as the price leader.

1.5 De Beers customers depend on the supply by De Beers and can only switch to a very limited extent to other suppliers.

61. Some mines yield a higher percentage of larger and/or higher quality stones; other mines yield a higher percentage of smaller, coloured, and/or otherwise lower quality stones. Moreover, the footprint of a particular mines may change in time depending on variations within the ore being mined at a particular moment. The aggregation of the outputs of the numerous mines by the De Beers Group helps De Beers smooth fluctuations in the composition of its production over time. In turn, this enables De Beers to provide a more consistent product than available from other producers.

62. The significance of De Beers position in the market is reflected in the responses the Commission has received during its market investigation. In response to questions about the ease or otherwise of switching their purchases away from the DTC, many respondents highlighted that while they are able to purchase rough diamonds from other suppliers, De Beers is the only producer able to guarantee any form of consistency of supply. The fact that the other suppliers produce their rough diamonds from a limited number of mines means that they are unable to provide a consistent source of supply and they will therefore only turn to supply from other providers on an ad hoc basis. De Beers has confirmed this factor in stressing that the aggregation of the outputs of numerous mines by the De Beers Group helps smooth fluctuations in the composition of its production over time.

1.6 De Beers organises the market.

63. DTC sells its rough diamonds supplies to a carefully selected number of companies called ‘sightholders’. Sightholders are entitled to make applications, through their brokers, to purchase rough diamonds at the 10 annual ‘sights’ organised by the DTC.

64. To be selected as a sightholder by De Beers/DTC is considered to be the highest honour in the diamond industry and can generate confidence down the diamond pipeline to the levels of the jewellery manufacturers and retailers. Companies work at becoming accepted as a sightholder by the DTC for years doing their utmost to convince the DTC that their financial situation is strong enough and their reputation and clientele irreproachable. Sightholders, once selected, have to submit detailed confidential financial data to the DTC on a regular basis, as well as reports on the rough and polished diamonds they sell, their levels of stocks and so forth. The DTC will check this data unannounced at the premises of the sightholders or their manufacturing facilities or will request a discussion with their bankers.

65. There are currently about 120 sightholders appointed by the DTC. Their purchases of rough diamonds in 2000 are estimated to represent [65-75]*% of the total world market for rough diamonds. Sightholders can be traders of diamonds, cutters or polishers (manufacturers), ‘preparers’ (preparing the stones to be cut and polished by others) or any combination of these. They are located in the traditional diamond cutting centres, New York, Antwerp, Tel Aviv, Mumbai/Surat, and to some extent in South Africa and the Far East countries.

66. The Commission's investigation has shown that the DTC has complete discretion over the quantity, quality and value of diamonds it allocates to a particular sightholder at each of the ten annual sights. De Beers’ detailed knowledge of economic conditions

downstream in the diamond pipeline enables it to determine not only the volume and quality of diamonds that are released onto the market, but also the price at which these diamonds are sold.

67. For each year the DTC produces an annual sales target based on data on its share of supply available of rough diamonds and the anticipated global demand. It then uses six broad categories of rough diamonds to determine how that sales target can be realised across the range of goods it has made available. Once the DTC has determined the amount of each category it plans to sell during that year and in what proportion these categories should be allocated to what particular region or cutting centre, it then forecasts the number of boxes it plans to sell to each individual sightholder during that year.

68. When producing the annual sales target, DTC is assisted by De Beers' 'Market controllers' who have responsibility for preparing periodic reports on prevailing market conditions in the traditional cutting centres and are also responsible for the proposed allocation of particular categories of goods in adequate availability to these regions/cutting centres and for balancing against customers' needs. The market segmentation enforced by De Beers, in its role of custodian of the market, contributes to keeping the market stable by ensuring that no particular cutting centre becomes too prominent by having too large an allocation to sightholders based in that particular centre. Statistically however, over 90% of rough diamonds are cut in India.

69. The presence of De Beers downstream of its core activity through its Diamdel companies[14] and through its polished division[15], which are effectively competitors of its own clients, also contribute to the detail and depth of its market assessment. The Diamdel companies purchase rough from the DTC and sell on to the secondary market (one level down from the sightholders) in the cutting centres. De Beers' polished division also buys rough from the DTC and sells polished to wholesalers and jewellery manufacturers and, through its activities, enables the DTC to understand the polished market better. Feedback and market reports from the brokers and numerous surveys of consumer taste and demand on the market for diamond jewellery add on to this vast and detailed knowledge De Beers has of the entire diamond pipeline all over the world, 'from the mine to the consumer'.

70. For internal valuation purposes, De Beers/DTC sorts the rough diamonds by size, shape, quality and colour into 16 000 classifications, each of which refers to a price point. De Beers/DTC determines the prices of each of these classifications on the basis of its pricing model which seeks to determine the value of the polished stones it would expect a polished rough stone to produce. De Beers/DTC will use different sources to estimate the value of the polished stones such as its polished division price book, pricing information in recognised trade magazines, information it obtains from the market and so forth . By calculating the current value of the polished diamond, the DTC then calculates a price point for the rough. The DTC will change prices to reflect market

[14] based in Antwerp, Israel, India, Hong Kong and South Africa.

[15] The polished division has sales offices in London, Antwerp, Israel, Hong Kong and Russia.

conditions. Price changes need not apply equally to all categories. Changes will be made to categories to reflect movements in the value of the polished derived from that rough.

71. Once the diamonds have been sorted and graded, they are blended into a 'selling mixture' and divided into specific ranges of goods which are known as 'boxes'. De Beers/DTC maps out the sightholders' yearly allocation taking the following into account : the indicative requirements of the sightholders, the sight cycle (some periods generating more demand because of special events such as Christmas.), whether demand is strong in the consumer markets and how 'full' the pipeline is. The 'fullness' of the diamond pipeline is assessed by De Beers on a regular basis and relates to the stocks of rough and polished diamonds carried by entities that are active in the dealing and manufacturing of rough diamonds or at any other level further down the diamond pipeline. De Beers therefore assesses demand at these different stages and estimates whether further sales would be assimilated and how.

1.7 De Beers is able to control the sightholders because of their dependency on De Beers

72. The DTC allocates boxes to sightholders in response to the applications it has received. The DTC has a 'menu' of 83 categories of boxes for which it regularly specifies the minimum quantity sightholders may apply for (for example 'Indian fancies: USD 350 000'). Each category is said to have undergone statistical analysis to determine the minimum number of stones that a box must contain to guarantee a consistent assortment of rough. This minimum number of stones multiplied by the average price per carat of the component parts of the box determines the minimum value. Sightholders apply for boxes specifying the value they require by category (for example 'spotted box 2-4 cts' : USD 700 000'). Sightholders are informed in advance how much they will be allocated at a particular sight so they can make financial arrangements to that effect. Cash payments are made to De Beers before the goods are sent out.

73. Sightholders have no ability to negotiate on price. They are not even informed of the individual price points since they are purchasing a box of a selected range of goods containing a number of price points. They have to take it or leave it at the set price. Feeding in their comments for the next sight is all they can do.

74. Sightholders often do not get the quantities they have asked for and some get proportionally more or less than others, because they are allocated particular categories of diamonds they have not requested or have been suspended from getting particular categories at the discretion of the DTC from sight to sight.

75. For the year 2000, sightholders refused [a small proportion]* of the boxes allocated to them by the DTC. In part this might be due to the buoyant market that particular year but also to the fact that, being short of supply, they do not want to jeopardise their sights by risking to lose it.

76. Furthermore, De Beers has full knowledge and control over the margins sightholders can obtain on their sales of diamonds. In a presentation made by Gary Ralfe, Managing Director of De Beers, in 1999, he emphasised that an important factor was the decision De Beers took to ensure that there was going to be a proper margin in the boxes when they were sold to the sightholders.

1.8 The envisaged "Supplier of Choice" arrangement is likely to further increase De Beers' control over its customers.

77. The so-called 'Supplier of Choice' arrangements[16], which are encompassed in the strategic review De Beers started in 1999, are aimed at strengthening De Beers' control over its sightholders in order ultimately to boost demand for polished diamonds and to increase prices of rough diamonds.

78. The 'Supplier of Choice' arrangements will formalise the relationship between the DTC and its sightholders in a number of ways, ultimately making sure that De Beers is selling its rough diamonds to the strongest and most dynamic players in the market. In order to achieve this De Beers set out to select the sightholders to be part of the 'Supplier of Choice' effort by asking extremely detailed and confidential information from all its existing and a few potential sightholders. The collected information amounts to a financial audit of each sightholder combined with an assessment of its business plan. Details were requested among others on each sightholder's manufacturing ability, its sales strategy, its distribution ability, its presence and strength on particular markets, its plans to invest in promotion and marketing and its plans to become active downstream.

79. After evaluation, [description of model for assessing sightholders' relative performance]*. On the basis of [the results of the model]*, the DTC will be able to select a limited number of sightholders which it henceforth wants to do business with and determine the level of allocation each sightholder will receive. In order to keep track of the best performing sightholders at any one time, De Beers intends to update the detailed information on its sightholders [description of the frequency of updating]*, giving it *de facto* a permanent transparent view of the largest part of the market.

80. In determining eligibility to be a sightholder and in determining whether or not to meet application for boxes, in addition to the criteria described in paragraph 78, the DTC will take into account whether the sightholder complies with the DTC's Best Practice Principles. These involve a commitment not to engage in unacceptable practices such as child labour or trading in diamonds from areas in conflict or ensuring that all treatments to natural diamonds are disclosed.

81. It is understood that the mainstay of the De Beers' pricing and allocation policy will remain unchanged. De Beers, by [description of size of reduction]* reducing the number of sightholders and requesting full transparency on their activities which are not only related to the purchase of rough diamonds, but also to the sightholders' sales to their customers, will therefore strengthen its control over sightholders and its knowledge of the market even further.

82. De Beers' intention could be to [description of size of reduction]* reduce the number of sightholders, keeping the same geographic distribution, but to supply them fully, instead of supplying directly about [a large proportion]* of their requirements, thereby ensuring regularity and trust through the pipeline but also creating total dependency and thereby exclusivity. By tightening the DTC supply channel by only supplying the best sightholders, De Beers would reduce inter-client competition. By supplying fully a

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16 Which have been notified separately to the Commission (Case COMP/E-2/38139).

restricted number of sightholders, De Beers would also ensure that the selected sightholders would be able to make long term downstream supply commitments[17] without incurring financial risks linked to uncertain or irregular supply. This in turn could boost demand at the end of the pipeline.

83. This move has to be looked at in parallel with the development of the Forevermark and the resulting regained confidence in the DTC single supply channel with its renewed attractiveness to new rough diamond producers because of the increased confidence generated from upstream and the premium achieved downstream.

2. No significant strengthening of De Beers' dominant position in the market for rough diamonds through the creation of the joint venture with LVMH.

2.1 The joint venture will be able to develop and exploit the brand potential of the De Beers name as a synonym for high quality diamonds.

84. The proposed creation of the joint venture with LVMH is the result of a strategic review covering all aspects of the De Beers' business which was started in 1999. From this process, De Beers' management identified a number of initiatives including measures to increase demand for rough diamonds and opportunities to utilise the De Beers name as a diamond jewellery brand[18]. One main pillar of the "New De Beers" aims at realising the significant untapped potential in the De Beers brand through the creation of Rapids World.

85. N M Rothschild & Sons, adviser to De Beers, stated in the Confidential Information Memorandum in respect of the Project Rapids Joint Venture under Section 4, The De Beers Brand: [description of De Beers' assessment of its brand's potential and the reasons for this]*[19].

86. The De Beers brand heritage is based on the company's 112 years history as the diamond industry leader[20]. De Beers first began to build a relationship with consumers in 1939 when De Beers initiated marketing in the United States originally focussed on the diamond engagement ring (diamond engagement rings are now purchased by approximately 74% of engaged couples in the United States)[21]. Since the beginning of the consumer marketing activities in 1939, De Beers' consumer market division has successfully worked to develop the "diamond dream" based on physical attributes - such as beauty and rarity - and emotional values – such as love and romance, prestige and

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[17] Thereby effectively eliminating dealers and reducing the pipeline somewhat.

[18] De Beers Confidential Information Memorandum in respect of PROJECT RAPIDS JOINT VENTURE, Rothschild July 2000, page 7

[19] De Beers Confidential Information Memorandum in respect of PROJECT RAPIDS JOINT VENTURE, Rothschild July 2000, page 31

[20] Op. cit., The De Beers Brand, page 31-51

[21] Op. cit., page 33

status, mystique and history- supplementing these core attributes with that of eternity ("A Diamond is Forever")[22].

87. De Beers' strong relationships with consumers are a result of De Beers' communications and history which have successfully positioned the company as a "mentor" to consumers in their choice of diamond jewellery[23]. De Beers invented and globally promoted the four Cs (carat, colour, clarity, cut) to enable consumers to make more informed decisions as well as a diamond engagement ring salary guideline advertising ("How can you make two month's salary last forever? The Diamond Engagement Ring") which led to significant increase in prices for diamond engagement rings[24].

88. De Beers brand awareness and image is a result of the diamond marketing campaigns carried out by De Beers, between 1995 and 1999 cumulative marketing expenditure amounted to approximately USD[...]* million[25]. The De Beers brand commands high prompted awareness (proportion of target consumers that correctly identify De Beers as a diamond company when the name is mentioned) world-wide, in particular in the United States ([...]*%), Europe (Italy [...]*%, Germany [...]*%, United Kingdom [...]*%) and Japan ([...]*%)[26]. Consumers in both the United States and Japan associate the De Beers brand with [description of type of diamonds]*[27]. [Description of the results of De Beers' research into brand awareness showing the De Beers brand to be well known amongst consumers]*.[28]

89. The joint venture will develop the global consumer brand potential of the De Beers name. It will have the exclusive world-wide rights to use the De Beers brand for luxury goods in consumer markets. The joint venture's immediate focus will be on premium diamond jewellery.

2.2 The joint venture will be based on De Beers' unique expertise in selecting and offering diamonds.

90. Besides the De Beers name, De Beers significant accumulated diamond expertise will be the basis for the joint venture's distinctive consumer offering. De Beers through its central rough diamond trading and marketing division sells two thirds of the world's gem quality diamonds to its sightholders in cutting centres around the world. These

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[22] Op. cit., page 33-34

[23] Op. cit., page 36

[24] Op. cit., page 37-38

[25] Op. cit., page 41

[26] Op. cit., page 44

[27] Op. cit, page 45

[28] Project Rapids Business Plan, 15 December 2000, Executive Summary 1

diamonds are valued and sorted by [a number of]* experts, [description of the experts' experience]*[29].

91. Due to their technical skills and aesthetic sensitivities, De Beers' experts are able to assess the technical characteristics of each diamond, and analyse the nuances to form an ultimately subjective judgement about which diamonds produce the best balance and optimal level of fire and brilliance[30]. The joint venture will use De Beers expertise in selecting the most beautiful diamonds, alongside and yet beyond the formulaic grading of the traditional 4Cs[31] and it will develop a distinctive diamond jewellery consumer offering.

92. Under the Technical Services Agreement De Beers will transfer to the joint venture De Beers' personnel and technology [description of purpose of these transfers]*[32]. [Description of the diamond selection process, the related selection criteria and the manner in which the selected diamonds will be branded]*.

93. [Description of the objectives of the De Beers' Institute and the connection that it will have with Rapids World]*[33].

2.3 De Beers' dominant position in the market for rough diamonds and its control over its sightholders will ensure the joint venture's access to diamonds of the best quality.

94. Polished diamond supply is the most important operational issue for the joint venture since the De Beers brand will rely on delivery of the highest quality. The joint venture will enter into [description of Rapids World's expected arrangements for the supply of polished diamonds]*[34].

95. The suppliers of polished diamonds to the joint venture will be probably sightholders of De Beers since De Beers is the world's main supplier of the more expensive and better qualities of diamonds. De Beers has enormous rough diamond allocating power through the sight system. Due to the take-it-or-leave-it box allocation system, sightholders depend on De Beers providing them with grades of diamonds appropriate to their business. Since the sightholders have to provide De Beers on a regular basis with detailed information on their operations, their production, their financial performances, their polished and rough stocks and their polished customers, De Beers will know which sightholders will supply polished diamonds to the joint venture. De Beers' rough

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[29] De Beers Confidential Information Memorandum in respect of PROJECT RAPIDS JOINT VENTURE, Rothschild July 2000, page 32

[30] Project Rapids Business Plan, 15 December 2000, Executive Summary 5

[31] Idem

[32] Project Rapids Business Plan, 15 December 2000, Appendix 15.3

[33] Op. cit., De Beers Institute, 8.1, 8.2

[34] De Beers Confidential Information Memorandum in respect of PROJECT RAPIDS JOINT VENTURE, Rothschild July 2000, page 61

diamond allocating power enables it to direct high quality diamonds to those sightholders which supply the joint venture thus ensuring that the joint venture will consistently receive the highest quality.

2.4 LVMH's know how and expertise in developing luxury goods brands and managing retail networks will ensure the joint venture's success as a retailer.

96. De Beers has the brand name, the diamond expertise and dominates production and marketing of rough diamonds. However, De Beers has no retail brand management skills and retailing and merchandising expertise. Therefore, it did not consider starting jewellery retailing activities on its own, but chose a partner that would contribute know how and expertise in developing luxury goods brands and managing retail networks. LVMH, as the world's leading luxury product group, is the ideal partner for developing the consumer potential of the De Beers brand since LVMH brings extensive experience in both developing luxury brands and rolling out premium retail concepts[35].

97. LVMH has a unique portfolio of powerfully evocative brands and great names. Its activities in luxury products comprise wine and champagne (brands such as Moët & Chandon, Dom Pérignon, Veuve Clicquot, Krug, Pommery, Chateau d'Yquem, Hennessy), fashion and leather goods (brands such as Louis Vuitton, Loewe, Céline, Berlutti, Kenzo, Givenchy, Christian Lacroix, Fendi, Pucci), fragrances and cosmetics (brands such as Givenchy, Guerlain, Christian Dior, Kenzo) and watches and jewellery (brands such as TAG Heuer, Ebel, Chaumet, Zenith, Fred Joallier). In 1999, consolidated net sales of LVMH rose by 23**%** to EUR 8.5 billion[36]. In cognac and champagne, LVMH is the Number 1 world-wide with a share of 34**%** for cognac and a share of 19% for champagne[37]. Louis Vuitton is the world's leading luxury goods brand[38]. In selective fragrances and cosmetics, LVMH is the Number 3 world-wide and the Number 1 in Europe[39]. In luxury watchmaking LVMH is Number 3 world-wide[40].

98. LVMH operates and owns over 1000 retail outlets[41]. LVMH considers control over retail distribution to be the key to the success of luxury brands since it enables them to capture retail distribution margins, and to ensure that their brand image and the environment in which their products are sold of the highest quality[42]. LVMH has a separate Selective Retailing business group and is the world leader in selective retailing

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35 Joint Press Release, 16 January 2001

36 LVMH Annual Report 1999, page 8

37 Op. cit., page 7

38 Idem

39 Idem

40 Idem

41 Op. cit., page 9

42 Op. cit., 21

of luxury goods[43]. The LVMH network encompasses the exclusive boutiques and global stores of the fashion and leather goods houses, the Duty Free Shoppers (DFS) luxury goods stores, the Sephora perfumes and cosmetics stores, as well as Le Bon Marché which is positioned as the most exclusive department store in Paris[44]. DFS is the number 1 world-wide in international travel retail[45]. In 2000, LVMH acquired Miami Cruiseline Services, a US-based company, which is the world leader in duty-free luxury goods on cruise ships and which will complement the activities of DFS[46].

99. The joint venture is based in LVMH's extensive experience in both developing luxury brands and rolling out premium retail concepts. It will become a key part of the LVMH luxury goods portfolio[47].

2.5 The complementary strengths of De Beers and LVMH may enable the joint venture to achieve a leading position in retailing of higher-end (branded) diamond jewellery.

100. Diamond jewellery (all fine jewellery pieces containing diamonds) is estimated by De Beers to be approximately USD 56 billion in retail sales in 1999 on a global basis and almost USD [...]* of those sales were accounted for by diamond jewellery pieces priced at over USD1,000 per piece at retail sales level (high-end diamond pieces)[48], [description of Rapids World's product focus]*[49]. The diamond jewellery industry is still highly fragmented and the majority of sales are made by small scale independent jewellers, typically operating in traditional store format[50]. Specialists and stand-alone retailers account for 84% of total retailing of luxury jewellery in France, for 86% in Germany, for 95% in Italy, for 74% in Spain and for 63% in the United Kingdom[51]. Specialists and stand alone are also the most important distribution channel for luxury jewellery in the United States with a share of 86%[52], whereas in Japan department stores account for the majority of luxury jewellery retailing with a share of 83%[53] . Departments stores are the second important distribution channel in France (12%),

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43 Op. cit., 6

44 Op. cit., 21

45 Op. cit., 6

46 Op. cit., 4, 60

47 Joint Press Release, 16 January 2001

48 De Beers Confidential Information Memorandum in respect of PROJECT RAPIDS JOINT VENTURE, Rothschild July 2000, page 8

49 Project Rapids Business Plan, 15 December 2000, Executive Summary 3

50 Op. cit. 4

51 DATAMONITOR Luxury Goods 1998, Jewellery, page 66, 68, 69, 73, 75 - % based on value

52 Op. cit., page 64 - % based on value

53 Op. cit., page78 - % based on value

Germany (9%), Spain (7%) and the United Kingdom (22%)[54]. Duty free is the third important distribution channel. Larger players in this industry are branded high-end jewellery retailers such as Tiffany, Cartier, Bulgari and Van Cleef & Arpels.

101. Retail brands in the diamond jewellery sector are not yet substantially developed. The luxury branded jewellery segment is estimated to be USD 4.5 billion in retail value. The leading players in luxury branded jewellery are Cartier (1998 turnover USD 1 580 million) , Tiffany (1998 turnover USD 970 million) and Bulgari (1998 turnover USD 370 million). If watches are excluded, Tiffany is the number one (1998 turnover USD 860 million) and Cartier (1998 turnover USD 500 million) the number two world-wide. Tiffany is the leading jewellery goods brand in the U.S[55]. Tiffany accounts for 2% of all high-end pieces on a global scale and for 19% of branded high-end jewellery. Cartier is the leading jewellery brand in France, Germany and the United Kingdom and it is the leading Western jewellery brand in Japan[56]. Cartier accounts for 1% of all high-end pieces on a global scale and for 11% of branded high-end jewellery. Cartier and Bulgari are the leading brands in luxury jewellery in Italy and Spain[57].

102. The proposed creation of the joint venture is based on De Beers' heritage as the world's foremost diamond company, efficiencies and cost reductions in diamond production, and broad based brand equity and on LVMH's experience and support in international retail sales, operations and marketing[58]. The joint venture will sell diamond jewellery through [description of possible types of retail outlet]*. It will focus on higher-end diamond jewellery. [Details of Rapids World's focus on premium diamond jewellery]*[59].

103. [Description of the expected structure of Rapids World]*[60].

104. From 2001 to 2002 the joint venture will open [a number of]* stores in [Details of location of store openings]*. From 2003 to 2005, [a number of]* stores will be opened and by 2010, [a number of]* stores will be opened and [a number of]* boutiques will be established in [certain]* locations, The geographical breakdown of the [...]* global network will comprise [a number of]* stores in [country name]*, [a number of]* stores in [country name]*, [a number of]* stores in key countries in the rest of the world, and [a number of other]* boutiques[61].

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54 Op. cit., page 66, 68, 73, 75 - % based on value

55 DATAMONITOR Luxury Goods 1998, Jewellery, page 64

56 Op. cit., 66, 69, 76, 79

57 Op. cit. 71, 73

58 Project Rapids Business Plan, 15 December 2000, Executive Summary 2op.cit. 2

59 Idem

60 Op. cit. 13

61 Op. cit. 11

105. The combination of the De Beers brand name and its diamond expertise with LVMH's design skills, its brand management expertise and its global distribution network and know how may enable the joint venture to become a leading player in branded high-end jewellery retailing. The joint venture's net sales are projected to be USD [...]* by 2005 and USD [...]* by 2010[62]. On the basis of these projections, [description of anticipated success of Rapids World and performance relative to other jewellery retailers]* (projected operating results of USD [...]* by 2010)[63]. As a consequence of the joint venture's market position, the De Beers brand will be established as a leading brand in branded diamond jewellery.

2.6 However, the joint venture will not significantly strengthen De Beers' proprietary supply channel in the framework of the Forevermark.

106. Within its strategic review, De Beers has set out to separate the De Beers name, to be used exclusively as a brand by the Rapids joint venture, from the DTC trademark now to be associated with the Forevermark ('a diamond is forever'). The new DTC Forevermark identity has three main components: the company name (DTC), the world-famous slogan "A diamond is forever" and a visual icon (DTC logo) which is called Forevermark.

107. The Forevermark is intended to become a [proposed use of the Forevermark]* for diamonds based on DTC's Diamond Best Practice Principles. Forevermark diamonds are natural, untreated, not from areas of conflict, consistent with the best environment practices and social behaviour and are thus ethically sound. The Forevermark stands for the integrity of the diamond. It is not linked to the quality and value of the diamond measured by the traditional four Cs and thus [description of potential scope of application of the Forevermark]*. In fact, the Forevermark will represent the fifth C: Confidence.

108. By establishing the DTC "Forevermark" as a [device identifying selected diamonds originating from the DTC]*, De Beers aims at significantly increasing the demand for diamonds originating from DTC. The Forevermark is intended to become the synonym for conflict-free and legitimate diamonds. The DTC and its sightholders will be [details of proposed use of Forevermark by DTC and sightholders in showing the diamonds' confict free origins]*[64]. As the result the source of each diamond would become a greater issue for consumers who would increasingly demand conflict-free diamonds originating from the DTC.

109. De Beers' Forevermark is intended to be a proprietary product assurance which will make DTC diamonds intrinsically more valuable to clients than open market rough, thus supporting a premium price for DTC rough. De Beers aims at creating a consumer pull at the end of the pipeline towards Forevermark diamonds and thus concentrating

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62 Project Rapids Business Plan, 15 December 2000, Financial Projections, Financial Summary

63 Op. cit, Summary Financial Statements

64 "The DTC will increase expenditure on its global generic marketing campaigns to drive overall consumer demand for diamonds. It will invest approximately US $ 180 million in consumer marketing campaigns in 2001 using the world famous strapline "A Diamond is Forever"." Joint Press Release, 16 January 2001

demand on diamonds originating from DTC. As a result independent producers may, over time, decide to sell their diamonds to an even more significant extent through the DTC channel.

110. In the past, De Beers was able to convince independent producers, such as Alrosa or BHP, to devote a portion of their production to De Beers because of De Beers' role in price maintenance. In the future De Beers may be able to effect the same arrangements because of the power of the Forevermark if it has been successfully established as a synonym for conflict free diamonds. The added value with which DTC could back its rough sales would raise the cost of competition for non DTC-producers, on the one hand. On the other hand, DTC would be able to establish a premium price for DTC rough which in turn would enable the DTC to pay to the independent producers. Therefore, competitors may over time decide to sell through the DTC single supply channel with its renewed attractiveness instead of receiving an inferior price on the open market for their production.

111. The joint venture will adopt and implement policies and practices for sourcing of diamonds that adhere to the DTC Best Practice Principles[65]. [Description of terms on which Forevermark may be used]*.

112. However, the Commission's investigation has not confirmed that the creation of the joint venture is necessary for the establishment of the Forevermark or that the joint venture will lead to a significant structural change on the rough diamond market. The structural change will in essence be brought about by De Beers' branding strategy itself.

113. [Description of terms on which Forevermark may be used]*. The jewellery industry is rather fragmented (see paragraph 100). The joint venture is based on De Beers diamond industry leadership and is intended to become an authority in diamond jewellery retail which, as the industrial leader, will set standards on the retail level (see paragraph 93). [Description of terms on which Forevermark may be used]*. However, such contribution would remain very limited. The joint venture is not yet operational and will have to build up its market position as a high-end diamond jewellery brand within the next ten years. De Beers has publicly announced that the DTC will increase expenditure on its global generic marketing campaigns to drive overall consumer demand for diamonds and that it will invest approximately USD180 million in consumer marketing campaigns in 2001 using the world famous strapline "A Diamond is Forever"[66]. In view of De Beers dominant position in rough diamonds it appears very likely that the DTC and its sightholders would be able to successfully establish the Forevermark without the proposed joint venture.

114. It is therefore concluded that the proposed joint venture would not lead to a significant strengthening of De Beers' already existing dominant position in the global market for rough diamonds.

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65 Shareholders' Agreement, page 83

66 Joint Press Release, 16 January 2001

VI. SUMMARY

115. It can be concluded from the above that the proposed concentration would not lead to the strengthening of dominant positions, as a result of which effective competition would be impeded in a substantial part of the common market. The operation is therefore to be declared compatible with the common market and with the functioning of the EEA, pursuant to Article 8(2) of the Merger Regulation (and Article 57 of the EEA Agreement.

HAS ADOPTED THIS DECISION:

<u>Article 1</u>

The notified operation whereby Riverbank Investments Limited, controlled by the De Beers Group, and Sofidiv UK Limited, controlled by LVMH Moët Henessy Louis Vuitton, would acquire joint control of the newly-formed undertaking, Rapids World Limited is declared compatible with the common market and the EEA Agreement.

Article 2

This Decision is addressed to:

RIVERBANK (DE BEERS)
17 Charterhouse Street
London EC1N 6RA
United Kingdom

SOFIDIV (LVMH)
15 St George Street
London W1R 9DE
United Kingdom

For the Commission

(signed)

Mario MONTI,
Member of the Commission