

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	Case No. CR-2-94-019
	)	
DE BEERS CENTENARY AG,	)	JUDGE SMITH
	)	
Defendant.	)	Filed: 7/13/04
_____	)	

**PLEA AGREEMENT**

The United States of America and De Beers Centenary AG ("defendant"), a company organized and existing under the laws of Switzerland, hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."):

**RIGHTS OF DEFENDANT**

1. The defendant understands its rights:
  - (a) to be represented by an attorney;
  - (b) as a company organized and existing under the laws of Switzerland, to decline to accept service of the Summons in this case, and to contest the jurisdiction of the United States to prosecute this case against it in the United States District Court for the Southern District of Ohio;
  - (c) to plead not guilty to any criminal charge brought against it;
  - (d) to have a trial by jury, at which it would be presumed not guilty of the charge and the United States would have to prove every essential element of the charged offense beyond a reasonable doubt for it to be found guilty;
  - (e) to confront and cross-examine witnesses against it and to subpoena witnesses in its defense at trial;

- (f) to appeal its conviction if it is found guilty at trial; and
- (g) to appeal the imposition of sentence against it.

**AGREEMENT TO PLEAD GUILTY  
AND WAIVE CERTAIN RIGHTS**

2. The defendant waives the rights set out in Paragraph 1(b)-(f) above, including all jurisdictional defenses to the prosecution of this case, and agrees voluntarily to consent to the jurisdiction of the United States solely to prosecute this case against it in the United States District Court for the Southern District of Ohio. The defendant also waives the right to appeal the imposition of sentence against it, so long as the sentence imposed is consistent with the recommendation in Paragraph 8(a) of this Plea Agreement. Nothing in this paragraph, however, shall act as a bar to the defendant perfecting any legal remedies it may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct.

3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to the Indictment pending in the United States District Court for the Southern District of Ohio, No. CR-2-94-019, which charges it with forming, joining and participating in a conspiracy to raise list prices of various industrial diamonds worldwide, beginning at least as early as 1991 and continuing through at least sometime in 1992, in violation of Title 15 U.S.C. § 1, and will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

**FACTUAL BASIS FOR OFFENSE CHARGED**

4. Had this case gone to trial, the United States would have presented evidence to prove the following facts:

- (a) For purposes of this Plea Agreement, the “relevant period” is that period beginning at least as early as 1991 and continuing through at least sometime in 1992. During the relevant period, the defendant was a company organized and existing under

the laws of Switzerland. The defendant has its principal place of business in Lucerne, Switzerland. Defendant's common shares were linked with respect to certain economic rights to shares of De Beers Consolidated Mines, Ltd., a South African corporation. During the relevant period, the defendant and De Beers Consolidated Mines, Ltd., owned or controlled various companies that manufactured, distributed and sold industrial diamonds in the United States and elsewhere. Industrial diamonds are manufactured by applying extremely high pressure and temperature to carbon-rich material to transform it into diamond. Industrial diamond products are generally sold to diamond tool manufacturers. The relevant industrial diamond products are saw diamond, compacts tooling and drilling products.

(b) During the relevant period, the defendant, through its officers, employees and agents acting on its behalf, participated in a conspiracy with another manufacturer of industrial diamonds, the primary purpose of which was to raise list prices of saw diamond, compacts tooling and drilling products sold in the United States and elsewhere. In furtherance of the conspiracy, the defendant, through its officers, employees and agents acting on its behalf, had communications and discussions with, attended meetings with, and transmitted detailed future pricing information and plans to its co-conspirator. From time to time, defendant and its co-conspirator used the cover of an officer of a customer, who was actually acting on behalf of defendant, to transmit detailed future pricing information and plans to each other. Through these communications, discussions and meetings, defendant and its co-conspirator reached agreements to raise list prices of saw diamond, compacts tooling and drilling products to be sold in the United States and elsewhere.

(c) During the relevant period, industrial diamonds sold by one or more of the conspirator firms, and equipment and supplies necessary to the production and distribution of industrial diamonds, as well as payments for industrial diamonds, traveled

in interstate and foreign commerce. The business activities of the defendant and its co-conspirator in connection with the manufacture, distribution and sale of industrial diamonds affected by this conspiracy were within the flow of, and substantially affected, interstate and foreign trade and commerce.

(d) Acts in furtherance of this conspiracy were carried out within the Southern District of Ohio, Eastern Division. Conspiratorial communications described above originated in, or terminated in, this District.

#### **POSSIBLE MAXIMUM SENTENCE**

5. The defendant understands that the maximum penalty which may be imposed against it upon conviction for a violation of Section One of the Sherman Antitrust Act is a fine in an amount equal to the greatest of:

- (a) \$10 million (15 U.S.C. § 1);
- (b) twice the gross pecuniary gain the conspirators derived from the crime (18 U.S.C. § 3571(c) and (d)); or
- (c) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (18 U.S.C. § 3571(c) and (d)).

6. In addition, the defendant understands that:

- (a) pursuant to § 8B1.1 of the United States Sentencing Guidelines ("U.S.S.G."), the Court may order it to pay restitution to the victims of the offense;
- (b) pursuant to 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G. § 8E1.1, the Court is required to order the defendant to pay a \$200 special assessment upon conviction for the charged crime; and
- (c) pursuant to 18 U.S.C. § 3561(c)(1), the Court may impose a term of probation of at least one year, but not more than five years.

### **SENTENCING GUIDELINES**

7. Sentencing for the offense to be charged will be conducted pursuant to the U.S.S.G. Manual in effect on the day of sentencing.

### **SENTENCING AGREEMENT**

8. (a) Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the defendant agree that the appropriate disposition of this case is, and agree to recommend jointly that the Court impose, a sentence requiring the defendant to pay to the United States a criminal fine of \$10 million, pursuant to 18 U.S.C. § 3571 and U.S.S.G. § 8C3.1(b), payable in full before the fifteenth (15th) day after the date of judgment (“the recommended sentence”).

(b) In addition to any fine imposed, the defendant understands that the Court will order it to pay a \$200 special assessment, pursuant to 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G. § 8E1.1.

(c) The United States and the defendant will recommend against the imposition of a term of probation, but the defendant understands that the Court is free to impose a term of probation.

(d) The United States and the defendant jointly submit that this Plea Agreement, together with the record that will be created by the United States and the defendant at the plea and sentencing hearings, will provide sufficient information concerning the defendant, the crime charged in this case, and the defendant’s role in the crime to enable the meaningful exercise of sentencing authority by the Court under 18 U.S.C. § 3553. The United States and defendant agree to request jointly that the Court accept the defendant’s guilty plea and impose sentence on an expedited schedule as early as the date of arraignment, based upon the record provided by the defendant and the United States, under the provisions of Fed. R. Crim. P. 32(c)(1)(A)(ii) and U.S.S.G. § 6A1.1. The Court’s denial of the request to impose sentence on an expedited schedule will not void this Plea Agreement.

9. The United States and the defendant understand that the Court retains complete

discretion to accept or reject the recommended sentence provided for in Paragraph 8(a) of this Plea Agreement.

(a) If the Court does not accept the recommended sentence, the United States and the defendant agree that this Plea Agreement, except for Paragraph 9(b) below, shall be rendered void.

(b) If the Court does not accept the recommended sentence, the defendant will be free to withdraw its guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)). If the defendant withdraws its plea of guilty, this Plea Agreement, the guilty plea, and any statement made in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty plea or this Plea Agreement or made in the course of plea discussions with an attorney for the government shall not be admissible against the defendant in any criminal or civil proceeding, except as otherwise provided in Fed. R. Evid. 410. In addition, the defendant agrees that, if it withdraws its guilty plea pursuant to this subparagraph of the Plea Agreement, the statute of limitations period for any offense referred to in Paragraph 10 of this Plea Agreement will be tolled for the period between the date of the signing of the Plea Agreement and the date the defendant withdrew its guilty plea or for a period of sixty (60) days after the date of the signing of the Plea Agreement, whichever period is greater.

#### **GOVERNMENT'S AGREEMENT**

10. Upon acceptance of the guilty plea called for by this Plea Agreement and the imposition of the recommended sentence, the United States agrees that it will not bring further criminal charges against the defendant, related companies as listed on pages 113 and 116 of the 2000 De Beers Annual Report, or any of their current or former directors, officers, employees and agents for any act or offense committed in furtherance of the antitrust conspiracy charged in the Indictment. The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence.

11. In light of the court-approved settlement by defendant's affiliate of In re Industrial Diamonds Antitrust Litigation, No. MDL-948 (WCC), (S.D.N.Y., Oct. 19, 2001), a class action brought on behalf of purchasers of relevant industrial diamond products in the United States during the relevant period, the United States agrees that it will not seek a restitution order with respect to the offense charged.

#### **REPRESENTATION BY COUNSEL**

12. The defendant has been represented by counsel and is fully satisfied that its attorneys have provided competent legal representation. The defendant has thoroughly reviewed this Plea Agreement and acknowledges that counsel has advised it of the nature of the charge, any possible defenses to the charge, and the nature and range of possible sentences.

#### **VOLUNTARY PLEA**

13. The defendant's decision to enter into this Plea Agreement and to tender a plea of guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement. The United States has made no promises or representations to the defendant as to whether the Court will accept or reject the recommendations contained within this Plea Agreement.

#### **VIOLATION OF PLEA AGREEMENT**

14. The defendant agrees that, should the United States determine in good faith that the defendant has violated any provision of this Plea Agreement, the United States will notify counsel for the defendant in writing by personal or overnight delivery or facsimile transmission and may also notify counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and the defendant shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, the substantive offenses charged in the Indictment resulting in this Plea Agreement.

#### **ENTIRETY OF AGREEMENT**

15. This Plea Agreement constitutes the entire agreement between the

United States and the defendant concerning the disposition of the criminal charge in this case.

This Plea Agreement cannot be modified except in writing, signed by the United States and the defendant.

16. The undersigned is authorized to enter this Plea Agreement on behalf of the defendant as evidenced by the Resolution of the Board of Directors of the defendant attached to, and incorporated by reference in, this Plea Agreement.

17. The undersigned attorneys for the United States have been authorized by the Attorney General of the United States to enter this Plea Agreement on behalf of the United States.

18. A facsimile signature shall be deemed an original signature for the purpose of executing this Plea Agreement. Multiple signature pages are authorized for the purpose of executing this Plea Agreement.

DATED: July 13, 2004

Respectfully submitted,

BY: \_\_\_\_\_/s/\_\_\_\_\_  
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De Beers Centenary AG

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