PRICE FIXING (AUCTIONS): THE CHRISTIE'S/SOTHEBY'S CASE

Subject: Price fixing
Concerted practices

Industry: Auction houses; fine art

Parties: Christie's International plc
Sotheby's Holdings, Inc

Source: Commission Statement IP/02/595, dated 19 April 2002

(Note. As yet this case is still unresolved: the Commission has stated its reasons for considering that the collusion between Christie's and Sotheby's infringed the EC rules on competition, particularly in respect of the fees and charges to sellers and buyers, and it is now for the parties to respond. In the circumstances described by the Commission, it appears that the parties have largely conceded the case and that they will rely as far as possible on the "leniency rules" to escape the more serious consequences of the alleged infringements. We will watch future developments and report on them in due course.)

The Commission has sent a Statement of Objections to Christie's and Sotheby's, setting out its preliminary conclusion that the world's two leading fine art auction houses breached the competition rules of the European Community by colluding to fix commission fees and other trading terms. The Statement is based on evidence made available to the Commission. The sending of a Statement of Objections is a procedural step in the Community's antitrust proceedings. It does not prejudge the outcome of the investigation, as the parties will have the right to reply to the Commission's objections, to have access to the file and to request a formal hearing.

In a 50-page document addressed to Christie's International plc and Sotheby's Holdings, Inc, the Commission has informed the companies that, based on the evidence in its possession, it believes that they entered into an anti-competitive cartel agreement in the course of 1993. According to the Commission's preliminary findings, the agreement affected auction sales between 1993 and early 2000, when the parties appear to have recovered their freedom to set prices independently.

The purpose of the cartel agreement was to reduce the fierce competition between the two leading auction houses which had developed during the 1980's and early 1990's. The most important aspect of the agreement consisted in an increase in the commission paid by sellers at auction (the so-called vendor's commission). But the collusive agreement concerned many other trading conditions, such as advances paid to sellers, guarantees given for auction results and payment conditions.

In the art auction market, apart from the vendor's commission, buyers also pay fees (buyers' premium). Auction houses may also compete through a number of other mechanisms such as the paying of advances on payments and providing guarantees to the sellers as to the minimum price to be achieved at auction.

According to the Statement of Objections, the information made available to the Commission indicates that the collusive behaviour originated at the top level: the two chairmen at the time, Alfred Taubman for Sotheby's and Christie's Anthony Tennant, first entered into secret discussions in 1993, meeting at their respective private residences in London or New York. These first high-level meetings were followed by regular gatherings and contacts between the companies' Chief Executive Officers.

The Commission's investigation started in January 2000, when Christie's approached both the United States Department of Justice and the Commission with proof of a cartel between itself and Sotheby's and applied for leniency in both jurisdictions. The evidence consisted mainly of documents that Christopher Davidge, former CEO of Christie's, had gathered about contacts between the two auction houses. Sotheby's subsequently also applied for leniency in Europe. The two auction houses are cooperating with the Commission's investigation.

Duopoly market

Christie's and Sotheby's are the world's leading operators in a market which can be characterised as a duopoly: their joint market share is around 90%. Christie's, which was established in 1766, has its headquarters in London, but has been a subsidiary of French company Artémis SA since 1998. Sotheby's was also founded in the 18th century but has since become a a publicly-listed company both on the New York and London stock exchanges and has its headquarters in New York. Its majority shareholder is American entrepreneur, A. Alfred Taubman, who was also its chairman during the entire period of the suspected cartel activity.

Procedure

A Statement of Objections is a procedural step in proceedings under Article 81 of the EC Treaty, which bans cartels and other damaging concerted business practices. It does not prejudge the outcome of the investigation, as the companies will have the right to answer the Commission's objections, to have access to the file and to request a formal hearing. The companies have six weeks to reply in writing to the Commission's allegations. There is no fixed deadline to conclude antitrust investigations. Their duration is determined largely by the complexity of each case, by the parties' exercise of their rights of defence and by the need to comply with the Commission's internal consultation and other procedures.

In 1996 the Commission first adopted rules providing partial or full immunity from fines for companies which unveiled or provided significant information on price-fixing, market-sharing or other anti-competitive agreements. These rules were updated in February 2002. ■