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

Subject: Price fixing

Industry: Auction houses

Parties: Christie's (a subsidiary of Artemis SA)
Sotheby's

Source: Commission Statement IP/02/1585, dated 30 October 2002

(Note. Where there are two leading contenders in a given market, and the competition in that market grows increasingly fierce, there is often a temptation for the two parties to come to terms. This is what happened with the two auction houses. Christie's was the first to give details to the Commission of its collusion with Sotheby's; and it escaped a fine. Sotheby's cooperated with the Commission but too late to escape a heavy, though reduced, fine.)

The Commission has found that Christie's and Sotheby's, the world's two leading fine arts auction houses, breached the EC rules on competition by colluding to fix commission fees and other trading terms between 1993 and early 2000. The Commission consequently fined Sotheby's €20.4 million, representing 6% of its worldwide turnover. Christie's, on the other hand, escaped a fine because it was the first to provide crucial evidence, which enabled the Commission to prove the existence of the cartel. The Commission noted that the case showed that illegal cartels could appear in any sector, from basic industries to high profile service markets. There was valuable cooperation between the US Department of Justice, which had pursued the same cartel for its effects in the United States, and the Commission. This cooperation was made easier by the fact that both Christie's and Sotheby's granted waivers as regards the exchange of confidential information.

Based on evidence provided by Christie's to the US and EU competition authorities and confirmed by both auction houses during the proceedings, the Commission has concluded that Sotheby's and Christie's entered into an anti-competitive cartel agreement in the course of 1993 which lasted until early 2000, when the parties recovered their freedom to set prices individually. The purpose of the cartel agreement was to reduce the fierce competition between the two leading auction houses that had developed during the 1980's and early 1990's. The most important aspect of the agreement consisted of an increase in the commission paid by sellers at auction (the so-called vendor's commission). But the collusive agreement also concerned other trading conditions, such as advances paid to sellers, guarantees given for auction results and payment conditions.

According to the Commission's findings laid down in today's decision, the collusive behaviour found its origins at the top levels of both companies. In 1993 Alfred Taubman and Anthony Tennant, the chairmen of Sotheby's and Christie's respectively, entered into secret discussions 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 at the time, D D Brooks of Sotheby's and Christopher Davidge of Christie's.

The Commission's investigation started in January 2000, when Christie's approached both the United States Department of Justice and the Commission with proof relating to 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 and provided further evidence to the Commission.

In 1996 the Commission had adopted rules providing partial or full immunity from fines for companies unveiling or providing decisive information on price-fixing, market-sharing or other anti-competitive agreements. These rules were updated in February 2002; but the old leniency rules applied to this case because the application for leniency dated from 2000. The Commission considered that, according to the 1996 guidelines, Christie's ought to benefit from full immunity because it provided decisive proof at a time when the Commission had no investigation open and because it was the first to come in with such evidence.

The cartel agreement was considered a very serious violation of Article 81(1) of the EC Treaty, banning agreements or concerted practices, which have the effect of fixing prices, limiting production or sharing out markets. The calculation of the fines for both companies took place according to the 1998 method on the calculation of fines for cartel behaviour and abuse of market power. That calculation, based on the gravity of the offence and its duration, resulted in fines close to or exceeding the maximum fine that the Commission can legally impose, namely 10% of world-wide turnover as laid down in Regulation 17/62, which sets out the rules and procedures to apply Articles 81 and 82, the latter covering abuses of dominant positions. The amount of the fine imposed on Sotheby's includes a 40% reduction for its co-operation in the investigation. Christie's received full leniency.

Christie's and Sotheby's are the world's leading players in the art auction market. Christie's was established in 1766 and 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 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. Companies fined in cartel proceedings have 3 months to pay the fines and 2 months to decide whether to appeal to the Court of First Instance, which has full discretion on the issue of the fine. If they do appeal, they may choose between paying the fine or providing a bank guarantee. If they choose the latter, interest payment is due. ■