

# COMMISSION

## COMMISSION DECISION

of 30 October 2002

relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement

(Case COMP/E-2/37.784 — Fine art auction houses)

(Notified under document number C(2002) 4283 final and corrigenda C(2002) 4283/7 and C(2002) 4283/8)

(Only the English text is authentic)

(Text with EEA relevance)

(2005/590/EC)

On 30 October 2002, the Commission adopted a Decision (C(2002) 4283 final) relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement. On 6 November 2002, the Commission approved by written procedure C(2002) 4283/7, a corrigendum to the C(2002) 4283/5 version of Decision C(2002) 4283 final, and C(2002) 4283/8, a corrigendum to the C(2002) 4283/6 version of Decision C(2002) 4283 final. In accordance with the provisions of Article 21 of Regulation 17<sup>(1)</sup>, the Commission herewith publishes the names of the parties and the main content of the decision, having regard to the legitimate interest of undertakings in the protection of their business interests. A non-confidential version of the full text of the decision can be found in the authentic language of the case and in the Commission's working languages at DG COMP's website at [http://europa.eu.int/comm/competition/index\\_en.html](http://europa.eu.int/comm/competition/index_en.html)

### I. SUMMARY OF THE INFRINGEMENT

#### 1. Addressees

- (1) This Decision is addressed to the following undertakings and/or associations of undertakings:

— Christie's International plc,  
— Sotheby's Holdings Inc.

two main world-wide competitors for the sale on commission by auction of so-called fine art objects, antiques, furniture, collectibles and memorabilia (hereinafter also generically referred to as: fine arts), entered into and participated in a continuing agreement and/or concerted practice contrary to Article 81(1) of the Treaty and Article 53 of the EEA Agreement, relating to prices and other conditions of sale for auctions.

#### 2. Time and nature of the infringement

- (2) From 30 April 1993 and lasting at least until 7 February 2000, Christie's International plc (hereinafter: Christie's) and Sotheby's Holdings, Inc. (hereinafter: Sotheby's), the

- (3) The companies agreed, amongst others, to adopt identical commission structures for vendors, to move to a non-negotiable scale of vendor commission rates (replacing the previously negotiable commission), to increase vendor commission charges and refrain from granting special conditions to sellers. They also fixed certain other terms and conditions of business, thereby preventing or restricting competition between them in the fine arts auction business. Furthermore they introduced a monitoring mechanism to ensure their agreement and/or concerted practice was being respected.

<sup>(1)</sup> OJ L 13, 21.2.1962, p. 204/62. Regulation as last amended by Regulation (EC) No 1216/1999 (OJ L 148, 15.6.1999, p. 5).

### 3. The market for fine arts auction services

- (4) Fine art objects, antiques, furniture, collectibles and memorabilia are commonly put up for sale at auctions. There is no particular limit as to what sort of items may be sold at auction, nor is there any particular minimum value that the goods must have. Auctions may be conducted of a particular individual collection, or centred on a particular theme, category of merchandise or period or type of art.
- (5) The principal fine art auction locations for both houses are in London and New York, but regular auctions are held in centres like Geneva, Zurich, Amsterdam, Rome, Milan, Hong Kong and Melbourne. The major fine art sales are planned and conducted as glamorous and exclusive social events frequented by wealthy individuals.
- (6) Sales are arranged well in advance according to an international 'season'. The main sales are traditionally conducted in the spring and autumn; revenues and operating income of the auction houses therefore peak in the second and fourth quarters.
- (7) The owners of the goods who wish to sell 'consign' the merchandise to the auction house, which provides selling expertise, arranges the auction, produces a catalogue and arranges advance publicity. Goods are usually offered for sale as individual items (so-called lots). Even items that form part of an entire collection are usually split up for sale into individual lots. The auction house sells the property as the agent of the consignor, billing the buyer for the goods purchased and remitting to the consignor the monies received after deduction of commission, expenses and taxes. The percent commission charged to the consignor/seller is commonly referred to as the 'vendor's commission' (or 'seller's commission'); this commission is usually calculated on the 'hammer price', the price at which the merchandise is knocked down to the final bidder. Persons buying at auctions are also charged a percentage of the hammer price (known as the 'buyer's premium').

### 4. Functioning of the cartel

- (8) From April 1993 onwards Christie's and Sotheby's entered into a common plan aiming at restricting competition on a number of competitive parameters. These were foremost related to the conditions applicable to sellers, but also included conditions for buyers, as well as other elements. The different elements of the plan were modified and enhanced in high-level management meetings during the years that followed, and lasted until February 2000.

- (9) In more detail, the agreement and/or concerted practices between Christie's and Sotheby's contained the following elements:

(a) Regarding the vendors:

- agreeing to introduce a new 'sliding scale' for the vendor's commission <sup>(1)</sup>,
- agreeing to the terms applicable to the scale, including making the scale non-negotiable, that is, to allow no exceptions (save as agreed) to the scale,
- agreeing the modalities, as well as the timing of its introduction,
- agreeing to monitor the adherence to the scale by exchanging lists of the permitted exceptions in order to monitor the implementation of the agreement and to deter and discuss any deviations,
- agreeing not to give vendors at auction guarantees as to the minimum price,
- agreeing on a formula for the sharing with vendors of the 'upside' benefit where goods are sold more than the guaranteed price,
- agreeing to make no advances to vendors on single lots,
- agreeing and/or concerting on the terms and conditions of advances for particular auction sales,
- agreeing the minimum interest rate for loans,
- agreeing to limit the commission paid to trade vendors/dealers and to restrict the practice of providing insurance for trade vendors,
- agreeing on limiting the payment of introductory commission (to 1 % of the buyer's premium in cases where there was no vendor's commission).

(b) Regarding the buyers:

- agreeing to limit credit terms to trade buyers to 90 days.

<sup>(1)</sup> A sliding scale means that the percentage that is charged to sellers as a commission on the sale is changed at certain thresholds. In practice, the higher the price obtained for a consignment, the lower the percentage that a seller has to pay.

## (c) Other elements:

- agreeing to limit their marketing efforts (avoiding claims/statements regarding market share or claiming 'leadership' in the art market or in a particular segment).

- (10) Furthermore, in order to implement and/or modify the agreements as required, the parties concerted and exchanged information during regular meetings or (telephone) contacts on any subject or matter (auctions, vendors, dealers, buyers) which might give rise to or encourage competition between them or otherwise conflict with or endanger their agreement not to compete.

## II. FINES

## 1. Basic amount of the fine

*Gravity of the infringement*

- (11) Taking into account the nature of the behaviour under scrutiny, its actual impact on the fine arts auction market, and the fact that it covered the whole of the Common market and, following its creation, the whole EEA, the Commission considers that the undertakings concerned by this Decision have committed a very serious infringement of Article 81(1) of the EC Treaty and 53(1) of the EEA Agreement.

*Nature of the infringement*

- (12) The cartel constituted a deliberate infringement of Articles 81(1) EC and 53(1) EEA. With full knowledge of the illegality of their actions, the participants combined to set up a secret and institutionalised illegal scheme designed to prevent competition between the two most important fine arts auction houses. This infringement consisted mainly of price fixing practices, which are by their very nature the worst kind of violations of Article 81(1) of the EC Treaty and 53(1) of the EEA Agreement.

- (13) The cartel arrangements involved were conceived, directed and encouraged at the highest levels in each participating company. By its very nature it leads to an important distortion of competition, which is of exclusive benefit to the companies participating in the cartel and is highly detrimental to customers.

*The impact of the infringement within the EEA*

- (14) The infringement was committed by the two most important undertakings on the market for fine arts

auctions and applied to their sales in the EEA and elsewhere. The common plan to increase revenues was implemented by both companies. Given the high market shares of the companies involved and the fact that the agreement covered all sales in the EEA by the companies, it had an actual impact on the EEA market.

*The size of the relevant geographic market*

- (15) For the purposes of calculating gravity, the Commission therefore considers the entirety of the Community and, following its creation, the EEA to have been affected by the cartel.

- (16) The Commission thus sets the starting amount of the fine for both undertakings at EUR 25.2 million.

*Duration of the infringement*

- (17) The Commission considers that the duration to be taken into account is from 30 April 1993 until 7 February 2000. The duration of the infringement therefore comprises a period of six years and nine months. As a result, the infringement can be classified as one of long duration, leading to an increase of the amount established for gravity of 65 %.

- (18) On the basis of the above, the Commission sets the basic amount of the fine as follows:

- Christie's: EUR 41,58 million,
- Sotheby's: EUR 41,58 million.

## 2. Aggravating or attenuating circumstances

- (19) The Commission does not consider that any separate aggravating or attenuating circumstances apply in this case.

## 3. Application of the 10 % turnover limit

- (20) Given that the amount thus calculated for Sotheby's exceeds 10 % of worldwide turnover in the year prior to this Decision, the basic amount for Sotheby's will be limited to EUR 34,05 million according to Article 15(2) of Regulation 17.

#### 4. Application of the '1996 Leniency Notice' <sup>(1)</sup>

- (21) Given that the applications for leniency were made in the year 2000, under the Leniency Notice then applicable, it is the 1996 Leniency Notice that applies to this case, as opposed to the revised Leniency Notice adopted in 2002.

*Non-imposition of a fine or a very substantial reduction of its amount (Section B)*

- (22) Christie's was the first to inform the Commission of the existence of the cartel and to adduce decisive evidence, without which the cartel might not have been disclosed. At the time of disclosure of this information, the Commission had not undertaken an investigation nor did it have in its possession sufficient information to establish the existence of the cartel. Further, Christie's had ended its involvement in the cartel, by confirming to the Commission that no contacts with Sotheby's were taking place in relation to the reported conduct and by issuing its public announcement about the new vendor's commission scheme only a few days after submitting the evidence to the Commission. Furthermore, it has continuously cooperated with the Commission and it has not been determined that it has compelled Sotheby's to take part in the cartel or played, as compared to the participation of Sotheby's, a determining role in the cartel.

- (23) The Commission considers that Christie's therefore does meet the relevant conditions set out in section B of the Leniency Note.

*Significant reduction in a fine (Section D)*

- (24) The Commission notes that Sotheby's has fully cooperated with the Commission in the course of the investigation. Furthermore, it provided the Commission with

information and evidence that materially contributed to establishing the existence of the infringement. Also, it did not materially contest the facts on which the Commission bases its allegations. It admitted the existence of a number of elements of the infringement as described by the Commission in this decision.

- (25) Sotheby's therefore meets the condition of section D, first and second indent, of the Notice.

*Conclusion as regards the application of the Leniency Notice*

- (26) In conclusion, with regard to the nature of their cooperation and in the light of the conditions set out in the Leniency Notice, the Commission will grant to the addressees of this Decision the following reductions of the respective fines:

— to Christie's: 100 %,

— to Sotheby's: 40 %.

#### 5. Decision

- (27) The following fines are imposed:

— Christie's International plc: EUR 0 million,

— Sotheby's Holdings Inc.: EUR 20,4 million.

- (28) The undertakings listed shall immediately bring the infringements to an end, in so far as they have not already done so. They shall refrain from repeating any act or conduct as the infringement found in this case and from adopting any measure having equivalent object or effect.

<sup>(1)</sup> Commission Notice on the non-imposition or the reduction of fines in cartel cases, OJ C 207, 18.7.1996, p. 4.