Commission rules against the collusive behaviour of Christie’s and Sotheby’s

Ewoud C. SAKKERS, Directorate-General Competition, unit E-2

In a decision adopted on 30 October 2002, the European Commission found that Christie’s and Sotheby’s, the world’s leading fine arts auction houses, breached European Union competition rules by colluding to fix commission fees and other trading terms between 1993 and early 2000. Both companies benefited from the application of the Commission’s leniency policy: Sotheby’s received a reduction of 40% of the fine for having co-operated with the Commission and for having provided additional evidence, leading to a final penalty of €20.4 million. Christie’s escaped a fine altogether, because it was the first to provide crucial evidence that helped the Commission to prove the existence of the cartel.

At the beginning of 2000, Christie’s provided evidence to the EU and US competition authorities about an illegal agreement between itself and Sotheby’s. Christie’s did so with the aim of benefiting from the then applicable leniency rules under the Commission’s 1996 Notice on the Non-imposition or Reduction of Fines in Cartel Cases. The information showed that Sotheby’s and Christie’s had 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 in 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, the collusive behaviour found its origins at the most senior level of both companies. In 1993, the then two chairmen of Sotheby’s and Christie’s entered into secretive discussions during meetings that took place in, amongst others, their respective private residences in London and/or New York. These first high-level meetings were followed by regular gatherings and contacts between the companies’ chief executive officers.

Co-operation with the US Department of Justice

The Commission collaborated with the US Department of Justice (USDoJ) in this case under the 1991 co-operation agreement. The collaboration between the two competition authorities was made easier by the fact that both Christie’s and Sotheby’s granted waivers as regards the exchange of confidential information. Co-operation with the USDoJ took place not only on substance, i.e. the review of particular evidence, but also on the timing of procedural steps taken by each authority. The Commission reached similar conclusions as the USDoJ in this case. In the US, Christie’s (also) received full immunity, whereas Sotheby’s was (also) subject to pecuniary sanctions following a plea agreement with the USDoJ. Furthermore, in the US the case led to a conviction in 2002 of the former chairman of Sotheby’s. His counterpart at Christie’s, a UK citizen, did not stand trial as he chose to remain outside the US.

Calculation of the fines and the application of the 1996 Leniency Notice

As mentioned, the Commission’s investigation started in January 2000, when Christie’s approached both the USDoJ 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 a former CEO of Christie’s had gathered concerning contacts between the two auction houses.

Sotheby’s subsequently also applied to the Commission for leniency. It admitted to having participated in the cartel and provided further evidence.

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 (a very serious infringement) and its duration, resulted in fines close to (for Christie’s) or exceeding (for Sotheby’s) 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 for applying Articles 81 and 82, the latter covering abuses of a dominant position.

Subsequently, in applying the 1996 Leniency Notice (which was the relevant one in this case because the request for leniency had dated from 2000, before the entry into force in 2002 of the revised Leniency Notice), the Commission considered that Christie’s ought to benefit from full immunity because it had provided decisive proof of the cartel at a time when the Commission had no investigation open and because it was the first to provide the Commission with such evidence. The fine for Sotheby’s, which includes a 40% reduction based on the 1996 Leniency Notice, was established at € 20.4 million, i.e. 6% of its world-wide turnover.