

Toronto, Ontario, August 28, 2006

Date: 20060828

PRESENT: The Honourable Madam Justice Hansen

Court File No. T-1529-06

**FEDERAL COURT**

**IN THE MATTER OF** an application by the Attorney General of Canada for a Prohibition Order pursuant to subsections 34(2) and 34(2.1)(b) of the *Competition Act*, R.S.C. 1985, c. C-34

**BETWEEN:**

**HER MAJESTY THE QUEEN** upon the Information  
of the **ATTORNEY GENERAL OF CANADA**

**Applicant****-and-****SOTHEBY'S AND SOTHEBY'S (CANADA) INC.****Respondents**

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**PROHIBITION ORDER**

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**UPON APPLICATION** of the Attorney General of Canada this day for an Order prohibiting certain conduct of the Respondents, Sotheby's and Sotheby's (Canada) Inc., pursuant to subsections 34(2) and 34(2.1)(b) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended, (the "Act");

**AND UPON** reading the consent of the parties to the issuance of this Order;

**AND UPON** reading the waiver of dispute of jurisdiction by Respondent Sotheby's with respect to the enforcement of this Order;

**AND UPON** reading the Statement of Admitted Facts;

**AND UPON** hearing the submissions of counsel for the Attorney General of Canada and counsel for the Respondents:

1. **THIS COURT DOES PROHIBIT** for a period of five years from the date of this Order, the commission by the Respondents, including each and every of the Respondents' affiliates, successors, assigns, directors, officers and employees, of an offence contrary to sections 45(1)(c) and 46 of the Act, or the doing of any act or thing directed towards the commission of the said offence.

- 2. AND THIS COURT DOES FURTHER PROHIBIT** for a period of five years from the date of this Order, the commission of any disciplinary or materially discriminating acts of retaliation by the Respondents, including each and every of the Respondents' affiliates, successors, assigns, directors, officers and employees, against any person due to that person having revealed the commission or any act or thing directed towards the commission, of an offence contrary to sections 45(1) (c) and 46 of the Act or by reason of having co-operated with the Commissioner under the Act in the course of her inquiry.
- 3. AND THIS COURT DOES DIRECT** the Respondents to indemnify the Commissioner for the cost and disbursements incurred during the course of the Commissioner's investigation into this matter (which costs shall include any costs incurred by the Attorney General of Canada) up to and including the date of this Order, which shall not exceed \$800,000.
- 4. AND THIS COURT DOES DIRECT** the Respondents to:
- (a) Provide on or before 60 (sixty) days from the issue of this Order to the extent that it has not already done so, to each of its directors, officers and employees responsible for the distribution, marketing and supply of services to Canadian sellers in relation to auctions held outside of Canada by Sotheby's and its subsidiaries:
- i. a copy of this Order;
  - ii. a current copy of the relevant provisions of the Act, and
  - iii. a written statement:
    - that it is company policy to require compliance with the Competition Act and this Order;
    - that failure to comply would result in appropriate disciplinary action which may include termination of employment;
    - that failure to comply with, or contravention of, this Order is punishable under subsection 34(6) of the Act,
    - that the corporate legal advisors are available to confer about any compliance questions.
- (b) for the period of five years after the date of this Order, provide a copy of each of the materials described in paragraph (a) to everyone who attains the status described in that paragraph within sixty days of attaining such status;
- (c) for the period of five years after the date of this Order, submit to the Commissioner, on or before 31 December of each year, a written statement verified by a senior officer setting out the facts and the manner of compliance with paragraphs (a) and (b); including confirmation that each person identified in paragraphs (a) and (b) has acknowledged their awareness of the materials set out in paragraph (a) and that the acknowledgement is recorded on the personnel file of each such person; and

(d) provide to the Commissioner, for a period of five years after the date of this Order and within sixty days of receipt of a written request from the Commissioner, such non-privileged information or records as she may reasonably request for the purpose of monitoring compliance with this Order.

5. **AND THIS COURT DOES DIRECT** for a period of five years after the date of this Order, Sotheby's (Canada) Inc. ("Sotheby's Canada") to maintain a Corporate Compliance Program ("Compliance Program") the goal of which is to promote the compliance of the Respondents' business with the Act generally, and specifically, the criminal provisions under sections 45(1)(c) and 46 of the Act. The Compliance Program shall be generally consistent with the Compliance Program provided to representatives of the Commissioner on July 26, 2006, which Compliance Program is framed and shall be implemented in a manner consistent with the Commissioner's Information Bulletin on "Corporate Compliance Program" published on the Competition Bureau's website at [www.cb-bc.gc.ca](http://www.cb-bc.gc.ca). The Compliance Program shall be distributed to and reviewed by Sotheby's Canada's personnel and such personnel will be required to attend an annual refresher session wherein the Compliance Program will be reviewed. Nothing in this order shall prevent Sotheby's Canada from updating and revising its Compliance Program to reflect any changes in the law or its business, subject only to Sotheby's Canada giving the Commissioner at least thirty (30) days advance notice and an opportunity to comment where any such update and revision concerns sections 45(1)(c) and 46 of the Act.
6. **AND THIS COURT DOES FURTHER DIRECT** that the Commissioner or her authorized representative shall, on an annual basis, be entitled to require Sotheby's Canada to confirm in writing that it is complying with paragraph 5 of this Order. Any such written confirmation shall be submitted under oath or affirmation of an officer of Sotheby's Canada within thirty (30) days of the request being made.
7. **AND THIS COURT DOES FURTHER DIRECT** the Respondent, Sotheby's, to post a notice of this Order on the page of its website related to Canada for a period of 120 (one-hundred and twenty) days of the day this Order comes into effect. Furthermore, in respect of all consignment transactions within 120 (one-hundred and twenty) days of the date of this Order by Canadian consignors in Canada that consign property for auctions outside of Canada, the Respondents shall, in writing, direct them to the existence of the Order on Sotheby's website or otherwise advise them in writing of the existence and content of the Order.
8. **AND THIS COURT DOES FURTHER ORDER** that each and every paragraph of this Order that applies to the Respondents shall be applicable to the Respondents' respective corporate successors.
9. **AND THIS COURT SHALL** retain jurisdiction over the parties to this proceeding for the purposes of interpreting, varying or rescinding any of the

