

FEDERAL COURT

IN THE MATTER OF an application by the Attorney General of Canada for a Prohibition Order pursuant to subsections 34(2) and (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

STATEMENT OF ADMITTED FACTS

The Respondents, by their counsel, hereby admit the following facts solely for the purpose of dispensing with their proof in this proceeding under subsections 34(2) and (2.1)(b) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the "Act") and for no other purpose.

THE RESPONDENTS

1. The Respondent, Sotheby's ("Sotheby's U.S.") is a U.S. corporation organized and existing under the laws of Delaware, with its principal office in New York, New York. Sotheby's U.S. is the survivor of the merger of Sotheby's Holdings, Inc. into its wholly-owned Delaware subsidiary, Sotheby's Delaware Inc. on June 30, 2006. The merger was effected to change the corporate domicile of Sotheby's Holdings, Inc. from Michigan to Delaware and to change its name to Sotheby's. Sotheby's U.S. owns and operates Sotheby's entities worldwide, including its subsidiary Sotheby's (Canada) Inc. ("Sotheby's Canada"). Sotheby's U.S., together with its subsidiaries, is among other things, an auctioneer of art, antiques and collectibles at auction houses in New York, London and elsewhere and provides advice and assistance to clients worldwide in relation to auctions.
2. Sotheby's Canada is a corporate entity incorporated under the laws of Canada with its head office located in Toronto. Sotheby's Canada is engaged in the business of supplying auction services in Canada and, among other things, provides its Canadian clients with advice and assistance in bringing their property to auctions held outside of Canada ("International Auctions"). Neither Sotheby's U.S. nor any other subsidiary of

Sotheby's U.S. holds auctions in Canada, with the exception of Sotheby's Canada (which it conducts through a joint venture with an unrelated entity).

OTHER RELEVANT CORPORATION

3. Christie's International PLC ("Christie's International") is a U.K. based corporation which maintains and operates auction houses worldwide, including in Canada. Its Canadian subsidiary, Christie's Canada Inc. ("Christie's Canada"), is based in Toronto and it is believed that it is engaged on Christie's International's behalf in providing Canadian clients with advice and assistance related to International Auctions. Christie's International and its affiliates, including Christie's Canada, do not compete against Sotheby's Canada in respect of auctions held in Canada. During the period referred to in paragraph 9 below, it is believed that neither Christie's International nor any subsidiary of Christie's International conducted auctions held in Canada.

INTERNATIONAL AUCTIONS

4. Auction houses generally accept fine art objects and other valuable articles from individuals and entities on consignment for sale at auctions. In return for services, buyers and sellers make payments to auction houses for services they receive. The sellers' payments include amounts generally known as "vendors' commissions" ("Vendors' Commissions") which are generally calculated as a percentage of the sale price of the goods sold at auction houses. The buyers' payments are generally known as "buyers' premiums" ("Buyers' Premiums").
5. Auction houses compete for consignors based on a variety of factors, including the rate of Vendors' Commissions and the availability of various financial incentives to consignors of objects and articles such as advance payments, guarantees and loans. They compete for consignors on reputation, expertise and the provision of a number of ancillary services related to auction transactions. Ancillary auction services include, for example, the production of catalogues, marketing and publicity management, showroom facilities and the arrangement of viewing opportunities.
6. International Auctions are primarily held in New York and London. These auctions specialize in objects of worldwide interest and appeal to international buyers and sellers, including to Canadian buyers and sellers. Sotheby's U.S. and Christie's International are the two largest auction houses in the world, representing, in roughly equal parts during the relevant period, over 90% of sales through International Auctions held at auction houses, which is estimated to be worth US\$ 4-5 billion in annual worldwide sales. The Commissioner of Competition (the "Commissioner") alleges that during the period referred to in paragraph 9 below, the total volume of the Vendors' Commissions generated by the participation of Canadian clients in International Auctions is estimated to be approximately \$25 million.

7. With respect to International Auctions, Sotheby's Canada may from time-to-time assist Sotheby's U.S. in Canada.

CONDUCT DIRECTED TOWARDS THE COMMISSION OF THE OFFENCE

8. The investigation against the Respondents, Sotheby's U.S. and Sotheby's Canada, concerned the supply of auction services in Canada with respect to International Auctions and alleged violations under the *Act*.
9. Beginning in April 1993 and continuing until no later than February 7, 2000, (i) the Chairman of the Board and (ii) the President and Chief Executive Officer of Sotheby's U.S. and certain senior executives of Christie's International participated in a number of meetings and contacts which resulted in an agreement whereby they would fix and implement a non-negotiable rate schedule governing Vendors' Commissions for customers at International Auctions (the "International Arrangement"). The International Arrangement did not relate to Buyers' Premiums.
10. The International Arrangement was directed at consignments for sales at International Auctions. At no time prior to the public disclosure of the International Arrangement in January 2000 did any director, officer or employee of Sotheby's Canada have knowledge of the conspiracy. The chief component of the International Arrangement was an agreement not to negotiate published Vendors' Commissions. It thereby had the potential to affect Canadians who participated as vendors in International Auctions.

THE INVESTIGATION AND INQUIRY

11. In 2000, representatives of the Commissioner commenced a preliminary investigation under the *Act* into the conduct of the Respondents with respect to the supply of international auction services to Canadian clients.
12. Different parties have come forward to cooperate with the Commissioner's investigation in providing information relating to the conspiracy agreement and its implementation. On June 18, 2003, the preliminary investigation led to a formal inquiry by the Commissioner pursuant to subparagraph 10(1)(b)(iii) of the *Act*.
13. On December 22, 2003, on application by a representative of the Commissioner, and pursuant to section 11 of the *Act*, this Court issued an Order requiring Sotheby's Canada to produce documents and written returns pursuant to paragraphs 11(1)(b), 11(1)(c) and 11(2) of the *Act* (the "December 22nd Order"). In the December 22nd Order, among other things, Sotheby's Canada was required to produce certain specific records, including those in the possession of or under the control of one or more of its U.S. affiliated corporations.
14. The December 22nd Order was the subject of a legal challenge by Sotheby's Canada, alleging that it was, among other reasons, in violation of its constitutional rights under the

Canadian Charter of Rights and Freedoms. In July 2005, the Commissioner filed her notice of motion record in response to the constitutional challenge. Subsequently, Respondents agreed to cooperate fully in the Commissioner's investigation and inquiry. Simultaneously herewith, Sotheby's Canada is discontinuing its motion without costs and by consent.

15. Before public disclosure of the International Agreement in January 2000, the only persons at Sotheby's Holdings Inc.,(which, as of June 30, 2006, has been succeeded by Sotheby's U.S.), who had knowledge of it were (i) the Chairman of the Board and (ii) the President and Chief Executive Officer of Sotheby's U.S. The evidence in the Commissioner's investigation discloses that Sotheby's Canada did not have any knowledge at all of the International Arrangement. In fact, Sotheby's Canada only became aware of the existence of the International Arrangement at the same time as did the public, namely in or around January 2000. However, Sotheby's U.S. did in the ordinary course of business issue rate schedules for Vendors' Commissions for International Auctions to Sotheby's Canada.
16. The Commissioner alleges that, during the period referred to in paragraph 9 above, the Respondents may have induced or otherwise contributed to the willingness of sellers in Canada to consign property for auctions held by Sotheby's U.S. in auction houses in New York and elsewhere outside of Canada and that such consignments were covered by the International Arrangement. To this end, any conduct by Sotheby's Canada that may have related to the International Arrangement was at all times inadvertent and without knowledge of the said arrangement. The Commissioner submits that such alleged conduct by the Respondents was directed towards the commission of an offence under sections 45(1)(c) (conspiracy to lessen competition unduly) and 46 (implementation of directives from a participant in a foreign conspiracy) of the *Act*.
17. The Commissioner's investigation also determined that the International Arrangement did not relate or apply to auctions held in Canada.

OTHER CONSIDERATIONS

18. The Respondents have co-operated in the Commissioner's investigation and inquiry to determine the facts and in acknowledging the seriousness of the issues raised by the Commissioner in seeking a resolution that was satisfactory to her.
19. The decision by the Respondents to accept the issuance of a prohibition order and for Sotheby's Canada to maintain its existing corporate compliance program to ensure that its future conduct will clearly comply with the *Act*, has saved considerable costs of further investigation and on-going legal proceedings which would otherwise have been incurred by the Government of Canada. Further, the Respondents consent to pay the costs already incurred by the Commissioner and the Attorney General of Canada with respect to investigation of this matter, up to a maximum of \$800,000.

CONCLUSION

- 20. In admitting the facts set forth herein for the purpose of this proceeding, neither the Attorney General of Canada nor the Commissioner allege that an offence was committed under the *Act*, and similarly the Respondents do not admit that their conduct constitutes an offence under the *Act*, including under sections 45(1)(c) and 46 of the *Act*. However, the Attorney General of Canada submits that the conduct engaged in by the Respondents and described above is an act or thing directed towards the commission of an offence contrary to sections 45(1)(c) and 46 of the *Act*.
- 21. In light of the foregoing, the Respondents acknowledge that there is sufficient and appropriate foundation for the basis of the allegations made by the Attorney General of Canada and consent to the imposition of a Prohibition Order pursuant to subsection 34(2) and (2.1)(b) of the *Act* in terms set out in Annex "A" to this Statement of Admitted Facts.
- 22. The Respondents acknowledge, on the basis of the admissions set out herein, that all the constituent elements for the issuance of a prohibition order pursuant to subsection 34(2) of the *Act* have been established.

Dated this ____ day of _____, 2006
at the City of _____.

SOTHEBY'S

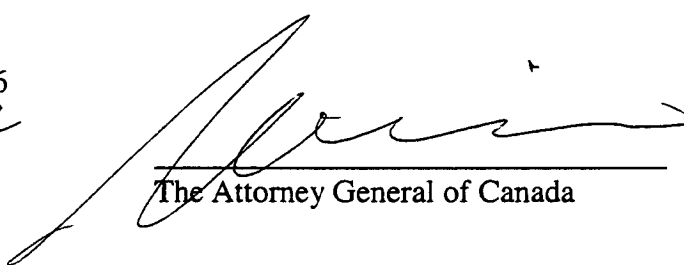
Per: _____

Dated this ____ day of _____, 2006
at the City of _____.

SOTHEBY'S (CANADA) INC.

Per: 

Dated this 23 day of August, 2006
at the City of Quebec



The Attorney General of Canada