

Conclusions

The merger situation

8.1. Under the terms of the reference and the relevant sections of the Fair Trading Act 1973 we are required to investigate and report whether a merger situation qualifying for investigation will be created. Under the Act a merger situation is created if two or more enterprises, of which at least one is carried on in the United Kingdom, cease to be distinct enterprises, and either the condition referred to in section 64(1)(a) (which the reference requires us to exclude from consideration) is satisfied or the value of assets taken over exceeds £15 million.

8.2. Enterprises are deemed to cease to be distinct enterprises if they are brought under common control, and it is clear that, if the arrangements in contemplation by Mr Taubman to acquire Sotheby's shares are carried into effect, enterprises controlled by Sotheby's and the enterprises described in paragraphs 4.3 to 4.6 will be under the common control of Mr Taubman, the former through a new company to be incorporated in the United States and controlled by him, into which he will bring a number of associates.

8.3. As we have shown in paragraph 3.9 and Table 3.3, the assets of Sotheby's exceed £15 million.

8.4. We conclude therefore that if the arrangements in contemplation by Mr Taubman for the acquisition of Sotheby's shares are carried into effect a merger situation qualifying for investigation will be created.

The public interest

8.5. With the minor exception of a quite small involvement in real estate, the activities of Sotheby's are unrelated to those of Mr Taubman's businesses, and there is no question of this being a merger of companies supplying the same or similar goods or services or of companies in the relationship of customer or supplier of each other. Hence the possible restriction or distortion of competition, commonly a major issue in merger inquiries, is not an issue in this case, except in so far as it might be argued that a change of ownership could lead to the business of Sotheby's being conducted in such a way as to diminish effective competition between Sotheby's and its principal rivals in the London art market. We have examined this possibility as well as other ways in which the change of ownership might be thought to affect the public interest.

8.6. We consider first the matter of foreign ownership, and in particular United States ownership, of Sotheby's. We have not in previous merger inquiries found against any merger on the ground of foreign ownership as such, in the absence of some special circumstances. In one merger report¹ we took the view that the overseas business of a particular British

¹ *Enserch Corporation and Davy Corporation Limited—a report on the proposed merger* (Cmnd 8360, September 1981), paragraphs 9.17, 9.18 and 9.24.

company (Davy Corporation Limited) might be prejudiced if it became American owned since in some parts of the world American companies might be less welcome than British companies. It was feared that in some countries the company might, under United States ownership, fail to secure contracts it would have otherwise secured, perhaps by being excluded from tender lists or through the effects of United States legislation, and that this might be of particular importance in the case of a company which frequently took the lead in United Kingdom export consortia. These considerations were relevant because of the particular nature of the business of the company concerned. In another report¹ we reached the conclusion that the transfer overseas of control of the Royal Bank of Scotland would be against the public interest; but the reasons for this related specifically to the business of banking. In the present case there are no special circumstances to lead us to regard foreign ownership as an issue.

8.7. Of greater relevance is the question of how the business of Sotheby's would in practice be run under Mr Taubman's control. We are satisfied that Mr Taubman is a successful and highly reputable businessman, and we know of nothing in his private or business affairs which would suggest that he is an inappropriate person to control Sotheby's (see paragraph 6.4).

8.8. We were frequently told, and we accept, that the confidence of the fine art world is vital to the success of an auction house, and that confidence emanates from a reputation for expertise and integrity as well as from financial stability. We are satisfied that Mr Taubman would be buying Sotheby's as a long-term interest and not as a speculation (see paragraph 6.2). Mr Taubman told us that he would ensure that the management would be lively and effective and we have no doubt that he himself would be actively interested in the policy and commercial success of the business and that he is well aware of the necessity in this connection of retaining and making full use of the experts in the company, thus preserving the company's reputation for expertise (see paragraph 6.2). There should be no material effect on employment in the company in respect of experts or other staff.

8.9. As to Sotheby's reputation for integrity, we see no reason to suppose that this would in any way be impaired under Mr Taubman's ownership, and we would see no threat of loss of confidence in the company in this connection.

8.10. Allied to the question of integrity is the question of whether there might be a conflict of interest arising from on the one hand Mr Taubman's control of an auction house and on the other hand his position as a private collector and his association with museums or art galleries which are themselves collectors. The important point is whether there would be seen to be any conflict of interest, since if this were the case it might tend to undermine confidence in the company on the part of potential consignors and induce them to send important items for sale elsewhere. Both Sotheby's and Mr Taubman were aware of this possibility and recognised that the situation would have to be handled with care. It appears that it is not

¹ *The Hongkong and Shanghai Banking Corporation, Standard Chartered Bank Limited, The Royal Bank of Scotland Group Limited—a report on the proposed mergers* (Cmnd 8472, January 1982), paragraphs 12.24 to 12.26 and 12.39.

unusual for people associated with auction houses to be collectors, and Sotheby's has strictly enforced rules on the procedures for bidding by employees of the company which are specifically designed to protect vendors' interests. We are satisfied that Mr Taubman would see it as being in his own interest to ensure that this continues to be the case and we accept his assurances that he would conform to Sotheby's existing rules and if necessary strengthen and publicise them (see paragraph 6.5).

8.11. As to financial stability, we consider that Sotheby's financial position is sound and that there is no question of the company being in need of rescue. We understand that Mr Taubman will be financing the acquisition in part by borrowing (see paragraph 6.3), but we have obtained information (see paragraph 4.9) about Mr Taubman's personal financial resources and those available to him and his enterprises sufficient to assure us that the financial position of Sotheby's should not be impaired or put at risk if the company comes under his control.

8.12. It would, of course, be possible for Mr Taubman to use the financial resources available to him in a predatory way so as to reduce effective competition to Sotheby's. We have no reason to suppose that it would accord with Mr Taubman's intentions or interests to act in this way.

8.13. We considered the implications of Sotheby's coming under the effective control of a single individual who would not be accountable and who might in theory run the company in an eccentric way which could harm the business. This is mere speculation. Mr Taubman's purpose in acquiring the business and his intentions for its management were clearly explained to us and we have no difficulty in accepting that he would not wish to do anything that would alter the general character of the business or destroy the image of it that has been built up over the years (see paragraph 6.2). While there can be no certainty about how an individual will behave, we see no probability that the business of Sotheby's would suffer from coming under the control of Mr Taubman.

8.14. It is not, of course, possible to predict precisely what would happen to Sotheby's in the event, for example, of Mr Taubman's death, but we have ascertained that reasonable steps have been taken to provide for satisfactory management of Mr Taubman's various enterprises to continue on his death or incapacity (see paragraph 6.7).

8.15. There would, however, be a possible disadvantage in that acquisition by Mr Taubman would be likely to lead to some loss of information being provided by Sotheby's. It is intended that Sotheby's would be controlled by a United States holding company in which Mr Taubman himself, a family partnership and a few others (referred to by Mr Taubman as passive investors) would hold all the shares. Under United States law, as we understand it, such a company is not normally under any obligation to issue accounts except to shareholders themselves. Although we were told that Sotheby's activities in the United Kingdom would continue to be carried on by a company registered in England which, under United Kingdom law, would have to file accounts with the Registrar of Companies, it appears unlikely that group accounts covering the whole of Sotheby's world-wide operations would be published in the way in which they are at present.

8.16. While there are advantages to competitors, creditors and others in the disclosure of information as required under the Companies Acts in this country, we recognise that any absorption of a business into a wider group is likely to lead to some loss of information. The degree to which company information must be disclosed is a matter for Parliament to determine, and we do not consider that this particular merger should be criticised on the ground of loss of information.

8.17. On the basis of our examination of the matters set out in paragraphs 8.6 to 8.16 we conclude that the acquisition of Sotheby's by Mr Taubman (or by interests closely controlled by him and his associates) would be unlikely to have deleterious effects on the conduct of the business or on the effectiveness of competition with other auction houses. But even if we had reached the contrary conclusion it would not follow from this alone that the acquisition should be regarded as operating or likely to operate against the public interest.

8.18. It could be expected that any weakening of Sotheby's would result in increased opportunities for other auction houses or for dealers and that the operation of market forces would establish over a period a revised pattern of business. We think that in a competitive situation such as there is in this market it would be going too far to hold that a change of ownership which resulted in damage to the business concerned would necessarily operate against the public interest. But, as in any case we have found no reason to expect that the acquisition of Sotheby's by Mr Taubman or by interests controlled by him would have any deleterious effect on the management or conduct of the business, we need not pursue this argument further.

Conclusion

8.19. We conclude that the merger situation which will be created if arrangements in contemplation by Mr Taubman for the acquisition of Sotheby Parke Bernet Group PLC are carried into effect may be expected not to operate against the public interest.

ALAN NEALE (*Chairman*)

P H DEAN

R M GOODE

S R LYONS

B C OWENS

N E D BURTON (*Secretary*)

18 August 1983