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UK cracks down on auction rings

Joint acquisitions aims to stop market manipulation and create headaches for dealers

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UK law: the law aims to stop dealers colluding on prices

Dealers who collude illegally on bidding at auction are more likely to face prosecution after changes to UK law that came into force on 1 April. The new law on "auction rings" aims to stop dealers from manipulating the market by keeping auction prices artificially high or low. But the new rules, which require dealers who enter into legitimate joint acquisitions to provide details of written contracts, pose problems for the art market, which is notoriously opaque and often favours verbal agreements over written contracts.

Auction rings consist of dealers who work together to keep prices artificially low by agreeing not to compete against one another in a room; one dealer will bid for a work and then a second, private bidder, carried out among members of the ring, with the lot resold to the highest bidder. The difference in price is then distributed among the members of the ring.

How it works

Individual collectors may also form auction rings to try to inflate prices for a work or a group of works by pushing bids up. "If dealers with a dominant position in a given market were found to manipulate prices, by colluding among them or otherwise, they could be held in breach of competition law," says Pierre Valentin, an art law specialist at the firm Deacons Cannon.

It is illegal to buy works jointly: if, for example, a dealer cannot afford to buy a work outright or wants to minimise the risks of full ownership. But the

Comments

Good, it's about time the English dealers played fairly. It should be a level playing field for all bidders. I have experienced English rings ...

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it must not restrict competition.

regulations, part of the Enterprise and Regulatory Reform Act that dealers who enter into a legitimate agreement must details of the contract to the auction house, including the names of the parties involved, the lots being bid on and a description of the content. This could include a percentage breakdown of the financial details. Previously, dealers only had to notify the auction house that an agreement was in place, or submit a copy of the contract. New provisions require that prosecutors no longer have to prove that members of an auction ring have acted "dishonestly" (see box).

Disclosure is difficult

The trade says that dealers may be reluctant to disclose details of agreements, particularly in the light of the encroachment of auction houses on the private sale market. "Dealers may only agree to act in concert with one another immediately before the sale, and possibly a verbal agreement, so for practical reasons it may be difficult to disclose the agreement in time," Valentin says. He says that larger dealers may be at greater risk of prosecution, because it would be more difficult for them to prove that they could not afford a work outright and so a verbal agreement might be seen as anti-competitive.

For auction houses would not be drawn on the number of joint bidding agreements they receive, but a spokesman for Bonhams said the practice is "far from unusual". Dealers contacted by *The Art Newspaper* would not comment on the matter.

It governs joint bids

Enterprise and Regulatory Reform Act 2013: A bid-rigging arrangement is defined under the Enterprise Act as an agreement that bidders will either abstain from bidding or bid in a certain way. It is an offence for any agreement to distort competition. Under the Enterprise Act, a bid-rigging agreement was legal if dealers informed the auctioneer of the arrangement before the sale, but the Enterprise and Regulatory Reform Act requires dealers to disclose the "relevant information" relating to the arrangement. Previously, under the Enterprise Act, the prosecution had to prove that members of a ring-bidding arrangement had acted dishonestly. The Enterprise and Regulatory Reform Act has removed this clause.

Competition Act 1998: This act prohibits any joint agreement that restricts or distorts competition. Dealers may have a defence if they are able to prove that they could not make a serious bid independently. Proving this could be difficult to prove. Offenders may be liable to pay a fine of up to 10% of annual turnover.

(Bidding Agreements) Acts 1927 and 1969: It is a criminal offence for dealers to give or accept a reward for abstaining from bidding. Bona fide joint acquisition agreements are allowed, provided dealers deliver a written contract to the auctioneer before the sale. The contract does not stipulate what must be included in a contract.

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TONY PHILIPS, MELBOURNE

Good, it's about time the English dealers played fairly. It should be a level playing field for all bidders. I have experienced English rings whilst bidding in London and it's very hard as an individual to purchase an item at public auction if you are bidding against the ring. One win for

common sense!! I own an Auction house and I actively tell people that collusive bidding is not tolerated or legal in Australia.

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