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Where Auction Houses and Dealers Collide

BY DON THOMPSON

Direct competition between Christie's and Sotheby's is as old as the auction houses. Direct competition between auction houses and dealers is more recent; some date it to Sotheby's taking on the sale of art from the British Rail Pension fund in 1989. Others would nominate the aggressive tactics of Sotheby's president, Diana Brooks, especially her expanded use of auction house guarantees after the art world crash of 1990.

Charles Saatchi's consignment of 133 lots of paint-barely-dry contemporary art at Christie's London on December 8, 1998 was a milestone. There were 97 artists involved. Some—Damien Hirst and Rachel Whiteread—had auction track records. Most were unknown, with no dealer representation. Works sold because Saatchi's ownership branded the art and the artists. The success of the event validated the idea of offering primary art at an evening auction; Phillips de Pury has practiced this concept on a regular basis ever since.

Then, in September 2008, Sotheby's London hosted the infamous *Beautiful Inside My Head Forever* sale, which offered 223 works of art straight from Damien Hirst's studio, produced specifically for the auction. Their first public appearance was at the auction preview; Hirst's dealers were bypassed. Two hundred and eighteen lots sold for £130 million (\$200 million).

There was speculation that the auction house had offered Mr. Hirst a share of the buyer's premium, giving him close to 85% of the selling price, rather than the 70% he received on new and secondary sales from Gagosian in New York and White Cube in London. Sotheby's also went beyond anything his dealers might, in offering very long-term payment schedules.

Current competition between auction houses and dealers arises with the former's private treaty sales of resale art. These are directly negotiated deals between buyer and seller, brokered by the auction house. Private treaty sales are just what the term implies: private, discreet and unre-



Sotheby's London, Damien Hirst, *Beautiful Inside My Head Forever*, September 15-16, 2008, Oliver Baker, Deputy Chairman, Sotheby's Europe, © 2011 Damien Hirst and Science Ltd, All rights reserved, Artists Rights Society, Courtesy Sotheby's.



Sotheby's London, Impressionism & Modern Art Evening Sale, February 3, 2010, Henry Wyndham, Chairman, Sotheby's Europe, with Alberto Giacometti, *L'Homme qui marche (Walking Man I)*, cast in 1961, bronze, © 2011 Succession Giacometti/Artists Rights Society (ARS), New York/ADAGP, Paris and Gustav Klimt, *Kirche in Cassone (Church in Cassone)*, 1913, oil on canvas, Courtesy Sotheby's.

ported. The secondary market is the mainstay of most dealers' business. Every consignment sold through an auction house's private dealing facility represents lost profit for a dealer.

The auction house, like the dealer, can be involved on one or both sides of a private transaction—sometimes being offered a work and seeking buyers, sometimes being asked by a buyer to locate or negotiate a specific work. And sometimes (think of media stories about Larry Gagosian), spotting a work in a collector's home, seeking out another who might lust after the piece, then returning to the current owner with an irresistible price or a proposed art swap. There are tales of borrowing a work of art from a client, purpose unstated, and returning later with an offer. The work is then hanging 'on temporary loan' in the potential purchaser's home.

The major auction-house players are Sotheby's and Christie's. Among dealers, L&M, Acquavella and Pace are prominent in private dealing, along with a few independent consultants. Gagosian must be an important player, given the geographic coverage of his twelve galleries, but his presence beyond the resale of his own artists' work is hard to measure.

The amounts involved are significant. Sotheby's did just under \$500 million in private treaty sales in 2010 (compared with sales at auction of \$4.3 billion). Christie's probably did a bit less (they have been quoted as saying 2009 private sales were \$417 million). If each private treaty department were ranked as a dealership, they would be something like fifth or sixth in either New York or London. New York is the center for private dealing, outselling London about two to one.

Private sales through both auction houses and dealerships showed a huge bump in 2008 and 2009 after the art market crash. Emilio Steinberger, co-director of Haunch of Venison in New York, says, "The market went down, values were uncertain, auctions were uncertain, a gamble. Auction houses stopped offering guarantees, major auctions went down-market, and private sales increased."

There also were more works (and works of higher value) being offered in '08-'09 than auction houses would accept. In the eighteen months following September 2008, probably 90 percent of the

market for Warhol and Hirst was private. "In an uncertain market, even those consignors who might have been willing to wait a year or more for their work to be auctioned, were willing to forego the upside of an auction for the security of no price downside—essentially accepting what might be the mid-point of an auction price range. The range might be \$3 to \$4 million, with a reserve price of \$2.7 million; the private treaty sale grosses \$3.6 million, with \$3.3 million to the consignor," says Stephane Cosman Connery, Director of Private Sales at Sotheby's New York.

Connery claims a high success rate on private sales over a million dollars. "The world is filled with overpriced pictures, but we transact with 90% of the works we take on because we're disciplined about price and quality."

Private treaty sales stabilized in early 2010. The turning point was thought to be Sotheby's February 2010 sale in

London of Alberto Giacometti's *L'Homme Qui Marche I* (The Walking Man), for £65 million (\$104.3 million). This was a record price for any work of art at auction, and a credible signal to the market that the art bubble had stopped deflating. Cautious consignors (in this case, Dresdner Bank) were willing to risk going to auction again, and wealthy collectors (London-domiciled Brazilian billionaire, Lily Safra) were willing to spend.

Sotheby's and Christie's private treaty departments earn a profit the same way secondary market dealers do. The profit model depends on the consignor's wishes. Usually the auction house and consignor agree on a selling price, and negotiate a percentage commission. Less often, the auction house takes a commission from both seller and buyer. Or, they agree on what price the consignor wants to achieve, and sell for whatever they can. The difference is their commission.

Sometimes there is a shared commission. A dealer brokers a Maurizio Cattelan work that is intended to sell for \$6 million; the consignor wants an advance of half the promised selling price in the form of a loan. The dealer then gives the work to an auction house—both to gain access to their database of potential buyers, and because the auction house often is the only one with the financial clout to offer the collector an advance at this level. The auction house places the Cattelan, initially asking \$7 million and negotiating to \$6.6 million. The dealer receives \$6 million, and the balance from that, minus the dealer's commission, goes to the consignor.

While auction commission rates are set out in Sotheby's and Christie's catalogues, commissions for private sales are transaction-dependent, and, of course, highly confidential. It is possible to speculate. Sotheby's 2010 annual report lists non-auction sales at \$494 million, most of those being private treaty sales. Net commission income on those sales was \$44.2 million, or about 9 percent. Since private treaty sales carry little overhead and none of the catalogue, promotion and physical overhead costs of an auction, gross commissions may be equal to or a bit lower than consignor's commissions at auction. Given that auction houses generally only accept

works valued at \$1 million and over for private treaty sales, a commission at that level is very attractive.

Sometimes the commission is fully disclosed to the consignor, sometimes not. Stephane Cosman Connery at Sotheby's, and Dominique Lévy, partner with Robert Mnuchin at L&M Arts in New York, say their firms practice total transparency in private dealing. They disclose to the consignor the total commission, whether there was another intermediary involved, and if so, what part of the commission each received.

At the other extreme, one dealer told me that his consignor only learns the net amount he will receive, and the purchaser is told the final price, but not whether the dealer acted as broker or principal in the transaction. That is pretty opaque, but realistically, does it matter much to the consignor or purchaser, so long as terms are understood and met? No dealer reveals their commission on work sold from a gallery.

Private treaty sales are primarily a mix of Impressionist and Contemporary. Connery says it used to be 80% Modern and Contemporary and 20% Impressionist and other periods. After the market downturn in 2008, there was a shift to Impressionist and other, as buyers sought the comfort of the familiar in turbulent times. Now, the trend is back to Modern and Contemporary, simply because the number of great works available from the past declines each year.

PRIVATE SALE RATHER THAN AUCTION?

Why would a consignor choose a private treaty sale, rather than sell by auction? Connery says the reasons are not financial as much as the special needs of the individual client. The great advantage of private treaty is confidentiality and anonymity. At auction, the work being sold is public. The identity of the consignor may or may not be public, but often someone recognizes the work. With a private deal, neither the work nor source is revealed—of special value to those embroiled in a financial crisis or divorce.

Another advantage is immediacy. From consignment to auction to final payment may take six months. A private transaction may be concluded in days. Heirs may want both privacy and rapid settlement.

The desire for discretion goes beyond financial or family problems. Lévy points out that in her birthplace, Switzerland, all asset management is private. Individuals are not willing to allow that the sale of an asset, or the resulting inflow of capital, become public.

Certain kinds of art make more sense for private sales. Emilio Steinberger nominates art of great importance, but with a limited overall market. He points out that Frank Stella and Dan Flavin sell less well at auction than privately. 'Commercial' Warhols sell better at auction, while non-typical ones sell better privately. Connery says that early and historically important work by an artist often sells better privately, as does work that is important because it influenced other artists (Paul Cézanne is an example).

He also offers the example of Balthus (Balthasar Klossowski de Rola, French, 1908-2001), an important artist, but one whose best work (comparable to *Girl at a Window*, 1957, collection of the Metropolitan Museum of Art) has not appeared at auction, so auction records do not reflect its real value. An early "dark" Francis Bacon is another example of a work that Connery says would sell better privately.

There are always surprises. While researching this article, several dealers told me similar versions of the same story, concerning *Three Studies for Portrait of Lucian Freud* (1964) by Francis Bacon. This would seem an ideal work for private placement; each panel shows a different angle of a distorted face. It was offered privately in 2009-10, first through a London dealer, then through Christie's, finally through Sotheby's. As the story goes, the only decent offer for the triptych was \$18 million, generated by Christie's and rejected by the consignor.

The work then was placed in Sotheby's February 2011 London auction, bringing £23 million (\$37 million) from an unnamed bidder—more than triple the low pre-auction estimate of £7 million.



Francis Bacon, *Portrait of Lucian Freud, Study in 3 parts*, 1964

Oil on canvas, 14 x 12 in. (35.6 x 30.2 cm), © 2011 The Estate of Francis Bacon, All rights reserved, ARS, New York/DACS, London.



Dominique Lévy, Richard A. Smith Photography.

Dominique Lévy offers a different example: a consignor has a major de Kooning, at a time when two other de Koonings are known to be coming up in the next major round of auctions. It may be better to offer this privately, after the auction, when interest is still high and some under-bidders are known, rather than dilute the auction offering with a competing work.

Another motive for choosing private treaty sale is the ability to withdraw a work if it fails to sell. A work offered at auction and failing to meet its reserve is 'burned,' and devalued. This has always seemed to me a strange concept, but Connery says it is very important, particularly at the higher levels of the market. "Think of real estate that has been on the market for months; everyone wonders what is wrong with it that it has not sold."

Lévy agrees: "Burned art always raises questions of condition, price or importance. When a market failure is public, as with an auction, it requires that the work be withdrawn for a period of time, which is not necessary with a private sale."

The attraction of private dealing may be that for a certain type of art, a collector wants an unrushed buying process. An auction involves one or two visits to the preview (or viewings of a image online), and the few seconds of the bidding process. A private sale may allow the potential buyer to spend a week enjoying the work at home.

In more robust economic times, private treaty offers a path to flip new art without getting caught. A speculator who has risen to the top of a waiting list for a hot artist can immediately sell the work to Japan or Russia, with minimal chance that the artist or gallery will learn of the sale and cut off further sales to the flipper.

Some collectors will stick with auctions because they are uncomfortable buying privately and are reassured by the auction process. An auction seems transparent in terms of number of bidders and size of bids. There is reassurance that so many others value the work at that level. That reassurance is not always present with a dealer simply stating, "This is an appropriate price."

If a consignor decides to sell privately, should she use an auction house rather than a dealer? Dominique Lévy, who pre-L&M Arts was the founding director of Christie's private sales department, says there is a trade-off. The auction house offers a great database of potential buyers (or sellers), but less personal service and less hand-holding. She adds that of necessity the auction house also offers a bit less discretion, because several layers of staff will be aware of the transaction.

The auction house database does provide a huge advantage in knowing who is looking for what, and who owns what (and might want to sell). Sotheby's and Christie's each have cameras recording every major auction. They know the identity (from paddle numbers and registration) of every person who has bid on a Maurizio Cattelan

over the past few years, everyone who has bid through the auction house's website or left an absentee bid, and everyone who has purchased a work by the artist at their auctions over the past decade.

If the consignor wants the work sold on another continent, the auction house database is unrivalled in spitting out the names of five collectors located in Kazakhstan, who may never have appeared at an auction or dealership in New York or London, but bid regularly on Sotheby's BidNOW or Christie's LIVE online facilities.

If a collector is looking for a specific artist and period, the auction house's database allows it to approach a collector and propose a transaction. Even if the buyer is not comfortable with the work found, the owner has started to think about selling. The specialist can propose putting the work up for auction, perhaps by guaranteeing the same price the collector was offering. Or, the specialist may call a collector to inform him of an upcoming consignment of interest, and point out that a private buyer exists for one of the collector's existing works that would help pay for a new acquisition.

Sometimes a dealer almost drives the collector into the hands of an auction house private dealing facility, particularly during an art market recession. Charles Saatchi or Jose Mugarbi may want to sell off their bulk collections of Chinese artist, Zeng Fanzhi, for financial reasons or to pay for new passions. But trading in a group of Zeng paintings is not easily done through the artist's dealer, Acquavella, who may view any disposal of his work as a glut on the market and a threat to the value of their own inventory.

Knowing he faces resistance or hostility from the dealer, Saatchi or Mugarbi have the option of going to the auction house's private dealing department, which can keep both dealers and collectors from noticing their disposal of Zeng's work.

Dominique Lévy points out another consideration: experienced collectors realize that there is always an internal tension within an auction house when it comes to auctions versus private sales. "Auctions are their major business and take precedence. There always is a question as to why an important work is being sold privately, rather than used to enhance the next auction. There also is a huge time pressure between the issuing of an auction catalogue and completion of the auction, which impacts everyone and leaves less time for private sales."

Another form of competition comes when an auction house owns a dealership. In June 2006, Sotheby's acquired Noortman Master Paintings, a Dutch gallery. Eight months later, Christie's acquired Haunch of Venison, a contemporary art gallery in London and New York. Each transaction gave the auction house access to the gallery's secondary market customers.

Initially, Christie's wanted to reposition Haunch of Venison as a primary market gallery, and fold secondary art sales into Christie's Post-War and Contemporary department. What actually happened, according to Emilio Steinberger, is that the arrangement evolved. Haunch of Venison now does secondary sales on its own, at arms-length from Christie's and without access to Christie's customer list.

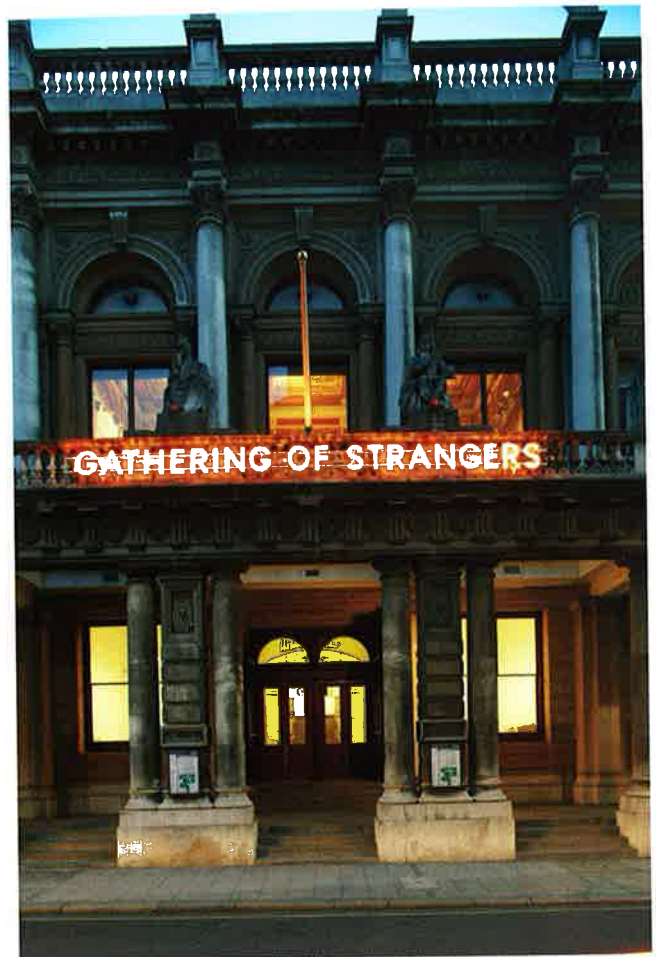
In the case of Sotheby's, Daryl Wickstrom, former Managing Director of the auction house's Global Auction Division (now Deputy Chairman, Sotheby's Asia), at the time said of the Noortman purchase, there was concern that there be no conflict of interest between the two. "We take quite a bit of effort to ensure that no additional information is available to Noortman Master Paintings than would be available to any other bidder.... If Noortman has additional information concerning a consignment, then, of course, they may not bid."

Roland Augustine, president of the Art Dealers Association of America at the time of the mergers, raised another issue regarding auction house ownership of dealers: "If one of the gallery's artists comes up for auction through the secondary market, will [the auction house's] specialists not be inclined to put a higher estimate on the work or push it harder on their clients in pre-sale discussions?" Auction house specialists say this does not happen, and is never a consideration. What is created is a situation where an auction house and its dealership may compete directly for a work. It is hard to see how that is a bad thing.

As a final form of competition, auction houses also mount selling exhibitions; Sotheby's shows up to forty sculptures a year for private sale, from January through April at the Isleworth Country Club (near Orlando, Florida), and in September and October at Chatsworth in Great Britain. These are motivated by the monumental size of the sculptures, from a Henry Moore reclining figure to Yue Minjun's set of twenty-five bronze figures entitled *Contemporary Terracotta Warriors* (last year at Chatsworth). Most of the work presented would not show well in a confined indoor setting, and in any case, it is impractical to move them to an auction room.

In 2010, Sotheby's offered a selling exhibition of modern art in New York, *Divine Comedy*, described as "an experiment," and one in Beijing called *Modern Masters*, defined as a way of raising their profile in a market where they were not permitted to auction. Each was small in the grand scheme of art marketing, but each represented one more notch in ratcheting up the competition between auction houses and dealers.

However, the dynamics of the relationship between auction houses and dealers is more complex than "auction houses always encroach." About 20 percent of the work in evening auctions is consigned by dealers—as recently as forty years ago, it was 70 percent. Dealers use auctions to dispose of unwanted inventory. Dealers



Haunch of Venison, Exterior, © Nathan Coley, Courtesy Haunch of Venison.
+1 212 259 0000

also purchase at auction, on behalf of clients, for inventory or for a feature work to display at an art fair.

Finally, prices achieved at auction are transparent, and thus become reference points for dealer pricing. The transparency also allows banks to value dealer inventory, and provide lines of credit. When auction results exceed expectations, dealer credit lines expand—or their interest rate declines. And it is auction results, not dealer performance, which determines how the health of the art market is perceived—up or down, frenzied or flat. □

DON THOMPSON IS A CONTRIBUTING EDITOR TO *THE ART ECONOMIST* AND THE AUTHOR OF *THE \$12 MILLION STUFFED SHARK: THE CURIOUS ECONOMICS OF CONTEMPORARY ART*, PUBLISHED IN THE US BY PALGRAVE MACMILLAN.