

Fourth Circuit Allows Monopolization Attack on Multi-Year Agreements

The United States Court of Appeals for the Fourth Circuit recently reversed the dismissal of a claim brought by a competing manufacturer that alleged DuPont attempted to wield, and did wield, monopoly power over the U.S. para-aramid fiber market in violation of Section 2 of the Sherman Act. *E.I. du Pont de Nemours and Co. v. Kolon Industries, Inc.*, 2011 U.S. App. LEXIS 4752 (4th Cir. March 11, 2011). DuPont had brought a trade secrets suit against Kolon, a relative newcomer to para-aramid production. Kolon counterclaimed that DuPont had monopolized and had attempted to monopolize the United States para-aramid market by illegally using multi-year supply agreements with high-volume customers. Those agreements required high-volume customers to purchase 80 to 100 percent of their para-aramid requirements from DuPont. Kolon alleged that those agreements removed substantial commercial opportunities from competition and limited other para-aramid fiber producers' ability to compete.

A federal district court in Virginia granted DuPont's motion to dismiss the claim because, in part, Kolon had inadequately pled the relevant geographic market by failing to include supplier headquarter sites, even those outside the United States. Reversing the district court's dismissal, the Fourth Circuit noted that the relevant market is a "deeply fact-intensive inquiry" and "no federal appellate court has held that supplier headquarter sites must, as a matter of law, be included in the relevant geographic market definition in Sherman Act cases." The court reminded the district court that the relevant geographic market inquiry "focuses on that geographic area within which the defendants' customers who are affected by the challenged practice can practicably turn to alternative supplies if the defendant were to raise its prices or restrict its output."