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**BLOGS**  
Antitrust

## Third Circuit Reverses Dealer’s Verdict Against Telecom Equipment Manufacturer

The United States Court of Appeals for the Third Circuit recently reversed a large antitrust jury verdict that had been entered against telecom equipment manufacturer Avaya. *Avaya Inc. v. Telecom Labs, Inc.*, 838 F.3d 354 (3d Cir. Sept. 30, 2016). After a lengthy and contentious trial, a jury had awarded a \$20 million general verdict in favor of Telecom Labs, a former Avaya dealer and maintenance provider, finding that Avaya had attempted to monopolize the aftermarket for maintenance of its specialized telephone switchboard for business organizations and had unlawfully tied software patches to its predictive dialing system. In the middle of trial, the district court dismissed Avaya’s own claims against the dealer for breach of contract.

The Third Circuit first ruled that the decision to dismiss Avaya’s contract claim was not only erroneous, but also cast doubt on the correctness of the ultimate verdict. Avaya had alleged that Telecom Labs breached a contractual agreement to not compete intrabrand by marketing its maintenance services to existing Avaya customers. Because Avaya introduced evidence supporting its claim, the court determined that it should have gone before the jury. The Third Circuit also reversed the attempted monopolization verdict against Avaya. Although there was strong competition in the primary market for Avaya’s switchboard system from companies like Cisco, Siemens, and Microsoft, Telecom Labs had argued that Avaya locked its customers in after purchasing such a system by requiring maintenance only from Avaya or its approved service providers. The Third Circuit found that, at least after 2008, all purchasers of Avaya’s system were on notice of this contractual requirement at the time of sale, and that Avaya’s practices did not constitute an unlawful restraint of a competitive market. The court concluded that evidence of exclusionary and predatory conduct before 2008 could be submitted to the jury, but the lawfulness of that conduct had to be weighed against Avaya’s defense that it was specifically combating its dealer’s own tortious behavior and breaches of contract.

Finally, the court reversed and dismissed the claim that Avaya had unlawfully tied software patches to its predictive dialing system by threatening to withhold the patches from customers who dealt with Telecom Labs instead of other approved maintenance providers. The court noted that such threats may have been a frustration to Telecom Labs, but evidence of a strongly worded letter was insufficient to expand the reach of tying liability.

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