

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

AVAYA INC.,

Plaintiff/Counterdefendant,

v.

TELECOM LABS, INC.,
TEAMTLI.COM, CONTINUANT INC.,
DOUGLAS GRAHAM, SCOTT GRAHAM,
and BRUCE SHELBY,

Defendants/Counterclaimants.

HONORABLE JOSEPH E. IRENAS

CIVIL ACTION NO. 06-2490
(JEI/KMW)

VERDICT FORM

We, the Jury, find our verdict as follows:

I. PBX

A. Relevant Antitrust Aftermarket - Avaya PBX Maintenance

1. Did TLI/C prove, by a preponderance of the evidence, that there was a relevant antitrust aftermarket for post-warranty maintenance of Avaya PBXs?

Yes No

If you answered "No" to Question 1, please skip Questions 2 through 6 and go to Question 7 in Section II.

If you answered "Yes" to Question 1, please proceed to answer the following questions:

B. Monopolization - Avaya PBX Maintenance

2. Did TLI/C prove, by a preponderance of the evidence, that Avaya monopolized a relevant antitrust aftermarket for post-warranty maintenance of Avaya PBXs in violation of the antitrust laws?

Yes _____ No _____ X _____

C. Attempted Monopolization- Avaya PBX Maintenance

3. Did TLI/C prove, by a preponderance of the evidence, that Avaya attempted to monopolize a relevant antitrust aftermarket for post-warranty maintenance of Avaya PBXs in violation of the antitrust laws?

Yes _____ X _____ No _____

D. Tying - Avaya PBX Patches and Avaya PBX Maintenance

4. Did TLI/C prove, by a preponderance of the evidence, that there was a relevant antitrust aftermarket for patches for Avaya PBXs?

Yes _____ No _____ X _____

If you answered "No" to Question 4, please skip Question 5 and go to Question 6.

5. Did TLI/C prove, by a preponderance of the evidence, that Avaya, in violation of the antitrust laws, tied the availability of patches for Avaya PBXs to (i) the purchase of Avaya-brand post-warranty maintenance or (ii) an agreement not to use an ISP for such maintenance?

Yes _____ No _____

E. Business Partner Conspiracy - Avaya PBX Maintenance

6. Did TLI/C prove, by a preponderance of the evidence, that Avaya conspired with its Business Partners to unreasonably restrain trade in a relevant antitrust aftermarket for post-warranty maintenance of Avaya PBXs?

Yes _____ No _____ X _____

II. PDS

A. Relevant Antitrust Aftermarket - Avaya PDS Maintenance

7. Did Continuant prove, by a preponderance of the evidence, that there was a relevant antitrust aftermarket for maintenance of Avaya-brand dialers (PDS systems)?

Yes No

If you answered "No" to Question 7, skip Questions 8 through 13 and go to Section III.

If you answered "Yes" to Question 7, please proceed to answer the following questions:

B. Monopolization - Avaya PDS Maintenance

8. Did Continuant prove, by a preponderance of the evidence, that Avaya monopolized a relevant antitrust aftermarket for post-warranty maintenance of Avaya-brand dialers (PDS systems) in violation of the antitrust laws?

Yes No

C. Attempted Monopolization - Avaya PDS Maintenance

9. Did Continuant prove, by a preponderance of the evidence, that Avaya attempted to monopolize a relevant antitrust aftermarket for post-warranty maintenance of Avaya-brand dialers (PDS systems) in violation of the antitrust laws?

Yes No

D. Tying - Avaya PDS Patches and Avaya PDS Maintenance

10. Did Continuant prove, by a preponderance of the evidence, that there was a relevant antitrust aftermarket for patches for Avaya-brand dialers (PDS systems)?

Yes No

If you answered "No" to Question 10, please skip Question 11 and go to Question 12.

11. Did Continuant prove, by a preponderance of the evidence, that Avaya, in violation of the antitrust laws, tied the availability of patches for Avaya-brand dialers (PDS systems) to (i) the purchase of Avaya-brand post-warranty maintenance or (ii) an agreement not to use an ISP for such maintenance?

Yes No

E. Tying - Avaya PDS Upgrades and Avaya PDS Maintenance

12. Did Continuant prove, by a preponderance of the evidence, that there was a relevant antitrust aftermarket for upgrades for Avaya-brand dialers (PDS systems)?

Yes No

If you answered "No" to Question 12, please skip Question 13 and go to Section III.

13. Did Continuant prove, by a preponderance of the evidence, that Avaya, in violation of the antitrust laws, tied the availability of upgrades for Avaya-brand dialers (PDS systems) to (i) the purchase of Avaya-brand post-warranty maintenance or (ii) an agreement not to use an ISP for such maintenance?

Yes _____ No _____

III. CAUSATION AND DAMAGES

If you answered "No" to both Question 1 and Question 7, then your verdict on the antitrust claims is for Avaya. Stop and have your Foreperson date and sign this Verdict Form. Otherwise, please proceed.

If you answered "Yes" to one or more of Questions 2, 3, 5, 6, 8, 9, 11, or 13, you have found that Avaya violated the antitrust laws, and you should proceed to answer the following questions. Your answers should relate only to claims in which you have found that Avaya violated the antitrust laws.

A. Causation and Antitrust Injury

14. Did TLI/C prove the following, by a preponderance of the evidence:

- a) TLI/C was, in fact, injured by Avaya conduct;
- b) Conduct by Avaya in violation of the antitrust laws was a material cause of injury to TLI/C; and
- c) TLI/C suffered "antitrust injury," or injury of the type that the antitrust laws were intended to prevent?

Yes No _____

If you answered "No" to Question 14, you should not award any damages for any claim. Stop and have your Foreperson date and sign this Verdict Form.

If you answered "Yes" to Question 14, please proceed to Question 15.

B. Damages

15. What is the total amount of damages, if any, that you find that TLI/C has proven - by a preponderance of the evidence - were caused by Avaya's violation(s) of the antitrust laws?

\$ 20 MILLION

After the foreperson has signed and dated this special verdict form, please inform the Court that you have finished your deliberations and have a unanimous verdict.

Dated this 27 day of MARCH, 20

Foreperson