
Second Circuit Weighs In On Extraterritorial Reach of U.S. Antitrust Law

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On June 4, 2014, in *Lotes Co., Ltd. v. Hon Hai Precision Co.*, the U.S. Court of Appeals for the Second Circuit concluded that the requirements of the Foreign Trade Antitrust Improvements Act (“FTAIA”), a law that defines the extraterritorial reach of U.S. antitrust law, are “substantive and nonjurisdictional,” going to the merits of the claim rather than the adjudicative power of the court, which has significant, but mostly procedural effects. In addition, the decision, authored by Judge Katzmann, clarified that in the Second Circuit, foreign anticompetitive conduct has the requisite “direct, substantial, and reasonably foreseeable effect” on U.S. commerce needed to give rise to an antitrust claim where there is a “reasonably proximate causal nexus” between the alleged foreign conduct and the harm to U.S. commerce, disagreeing with the Ninth Circuit’s more stringent standard. The court declined to apply the “causal nexus” standard to the facts of the case because the plaintiff did not meet a second, independent prong of the FTAIA.