

# Antitrust & Unfair Competition Alert

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## Supreme Court Ends 96-Year-Old Ban on Manufacturers' Minimum Resale Prices

Manufacturers and distributors will have greater flexibility in setting minimum prices to be charged by retailers selling their products without violating the federal antitrust laws, as the result of a significant but widely expected 5-4 ruling by the United States Supreme Court on June 28, 2007.

The Supreme Court ruled that agreements setting minimum resale prices (known as vertical price maintenance agreements) are no longer per se illegal under the Sherman Act. For the 96 years preceding this ruling, such agreements were subjected to the "Per Se Rule," meaning that a plaintiff simply had to prove the existence of the agreement in order to establish a violation of the Sherman Act.

Such agreements will be now subjected instead to the so-called "Rule of Reason." Under that Rule, courts assess whether an agreement unreasonably restrains trade in a specific market and conduct a broad analysis considering harm to competition, interbrand and intrabrand effects, and market power.

As a result of this change, it will be more difficult and more costly to challenge such agreements, although they may still theoretically be violations of the federal antitrust laws. Although the analysis is necessarily case-specific, as a practical matter, many economists suggest that where a branded good is in intense competition with other competing brands, a vertical price restraint on a single brand will not amount to an unreasonable restraint of trade in the marketplace in which that brand competes.

Manufacturers are now likely to implement resale price maintenance agreements, and many analysts believe those agreements will lead to higher resale prices. Manufacturers of goods to be sold at retail should consider whether such an agreement could benefit their business. Retailers and distributors should ready themselves for potential major changes in pricing and buying of manufactured retail goods.

If you have any questions about these or other antitrust or unfair competition issues, please contact either Neil C. Schur at (215) 751-1944 or [ncsc@stevenslee.com](mailto:ncsc@stevenslee.com) or Joe Wolfson at (610) 205-6019 or [jwo@stevenslee.com](mailto:jwo@stevenslee.com) or your Stevens & Lee lawyer.

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