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Ask The Expert - Mass High Tech

Can I set a minimum price at which distributors may resell my goods?

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Until quite recently, manufacturers and distributors were not permitted to agree upon a "floor" price for resale of the manufacturer's products. This practice, known as "resale price maintenance," was long treated as being per se unlawful under federal antitrust laws. A June 28, 2007 Supreme Court decision overturned that rule, however, and held that resale price maintenance agreements must be evaluated on a case-by-case basis. The Court stated that these agreements are only illegal if their overall impact is anti-competitive. As a result, a manufacturer may now be able to include minimum price levels in its distribution arrangements. Such arrangements will require careful legal review, however, in order to ensure that they are not viewed as having an anti-competitive effect and do not violate state or foreign antitrust or unfair competition laws.