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## Give and take: Implications of the Supreme Court's price-floor ruling

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The U.S. Supreme Court's recent decision<sup>1</sup> to allow manufacturers to set and enforce minimum prices for their products has prompted predictions of disaster for American consumers.

Consumers can say goodbye to shopping around for the best price, assert the doomsayers, because there will be only one price per product. Discounting will disappear as manufacturers impose price rises across the board. What's more, there will be little possibility of redress from the lower courts. The anti-trust implications of price agreements are now subject to a case-by-case, "rule of reason" test—a recipe for legal chaos, according to critics.

These are cogent arguments—but they ignore important realities in an age of Big Box retailing and Internet-induced price transparency. In the

short term, manufacturers may well be tempted to flex their newfound muscle to attempt to set and even to force price increases at the retail level.

As the Supreme Court ruling pointed out, smaller, newer manufacturers could actually benefit from doing so, especially if they make premium products and are trying to maintain a superior brand image. In the longer run, however, over-reaching risks a backlash from retailers and consumers.

Accenture research confirms a strengthening trend toward supply chain collaboration between retailers and manufacturers as both seek to satisfy the multiple requirements of ever more powerful and demanding consumers. Preserving close relationships is in their mutual self-interest. Indeed, it has been for some time.

1. *Leegin Creative Leather Products v. PSKS, Inc.*

Many commentators agree that the recent Court ruling ended a de facto "understanding" on price that had determined relations between manufacturers and retailers for close to a century. The Court outlawed any agreement between manufacturer and retailer to set prices as an inherent violation of the Sherman Antitrust Act back in 1911. But eight years later agreed to allow the so-called Manufacturers' Suggested Retail Price (MSRP) and gave manufacturers leave to refuse sales to any retailer that violated it—so long as the two actions weren't directly tied.

The MSRP sent a strong signal to retailers and most were careful not to break it. Its strength, however, emanated from the relative strength of manufacturers compared with retailers. As retailers seeking volume efficiencies through low prices grew ever larger, their ability to glean consumer insight deepened and so did their knowledge of what prices the market would bear. Larger retailers have been able to leverage this power to wring price reductions from manufacturers and hold increasing sway over retail prices.

It seems very likely that the new ruling will strengthen the hand of manufacturers at retailers' expense—in the short term, at any rate. It should enable manufacturers to resist retailers' pricing pressures by making them more confident to withhold marketing funds, limit product shipments or otherwise "punish" retailers who break MSRP.

Another consequence of the ruling is that it may hinder the ability of retailers to gain full value from price optimization software and similar demand modeling tools increasingly utilized by Big Box retailers. If the MSRP becomes

a more rigid constraint on retailers, the econometric models that underpin these tools will be forced to optimize within a tighter price range, thereby limiting potential returns. Product assortment selections are also likely to be impacted, especially in consumer goods with very limited lifecycles. It could be tough to clear stocks of TVs with manufacturers enforcing minimum prices, for instance. However, if the problem persuades retailers to purchase a narrower product assortment, manufacturers too will feel the pinch.

It will serve no one's interest to use the Supreme Court's decision as an excuse to raise prices—and savvy manufacturers know it. Like retailers, their principal concern is to maximize revenue over the life of a product. And that means selling products at prices set by market forces in an ongoing process of give and take—just as they always have been.

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