

LONG ALDRIDGE
& NORMAN
ATTORNEYS AT LAW

Writer's Direct Dial No.
(404) 527-8326

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

February 5, 1996

The Honorable Anne K. Bingaman
Assistant Attorney General
Antitrust Division
U.S. Department of Justice
10th Street and Pennsylvania Avenue, NW
Washington, D.C. 20530

RE: Business Review Request

Dear Ms. Bingaman:

We are writing on behalf of DataCheck, Inc., pursuant to 28 C.F.R. 50.6, to request a business review letter to determine the Antitrust Division's present enforcement intentions concerning a proposed pricing information service which DataCheck would like to implement. DataCheck is a Georgia company that has been in business for approximately one year and that is in the process of becoming incorporated. Currently DataCheck provides price auditing services for a grocery chain retailer and is in the process of expanding this service to other retailers and wholesalers. DataCheck would like to implement a service in which it electronically gathers current shelf pricing information from retailers (e.g., grocery stores, discount stores and mass merchandisers) and provides this information on a subscription basis to retailers.

Under the proposed service, a retailer's shelf pricing will be sold to DataCheck and delivered via electronic media (tape, floppy, network) on an agreed upon schedule. Once this information is received from the retailer, the information will be entered into DataCheck's own in-house proprietary database. The computer system on which this system will reside will be secured and access to it controlled through a modem setup which can only be initiated by DataCheck. This will help ensure that DataCheck's system will not be used as a communication conduit among competing retailers. DataCheck will seek only current shelf pricing information from retailers and will sell only current shelf pricing information to its clients.

DataCheck will sell current shelf pricing information in a report form to its clients either electronically, in a manner similar to that in which DataCheck originally obtained the data (e.g., tape, floppy, modem transfer) or in hard copy reports. In either case, the data will reflect only current shelf prices and will not in any way set forth, anticipate, or suggest future prices.

ONE PEACHTREE CENTER
303 PEACHTREE STREET • SUITE 5300 • ATLANTA, GEORGIA 30308
404 527-4000 • FACSIMILE 404 527-4198

WASHINGTON, D.C. OFFICE:
701 PENNSYLVANIA AVENUE, N.W. • SUITE 600 • WASHINGTON, D.C. 20004
202 624-1200 • FACSIMILE 202 624-1298

We believe the electronic gathering and distribution of current shelf pricing data will have a pro-competitive effect. It will provide participating companies with accurate pricing information in an inexpensive manner that will allow them to make better informed marketing decisions about their product. This information will allow retailers to make better decisions about how to advertise (especially local newspaper advertising) and compete in the marketplace. Moreover, the information to be provided by the service is already available to other retailers. DataCheck, other services, and many retailers utilizing internal staffs, now manually audit prices among competing retailers. This manual compiling of prices, however, is less accurate and more inefficient and costly than acquiring information directly from retailers' computers. By lowering the prices for this service, DataCheck will help make this service available to smaller retailers and not just to large chains or stores.

To ensure that future prices or pricing strategies are not reported through DataCheck, DataCheck will: (1) enter into an agreement with the supplying retailer that prohibits the retailer from providing future prices, (2) enter into an agreement with its clients that they will not seek any future pricing information from DataCheck, and (3) establish an in-house system to review the data to make certain that future prices are not inadvertently provided to clients. In addition DataCheck would be willing to allow the Antitrust Division of the United States Department of Justice, upon request, access to its computer data and price reports. Of course this information would be provided to the Antitrust Division only on a confidential basis and only to verify that the service is not being used to signal future price movements.

DataCheck is a third party and is not owned or controlled by any retailers nor does DataCheck have any financial interests in any retailers. There is no incentive to DataCheck for it to be utilized as any sort of price fixing conduit. DataCheck simply wants to utilize computer technology to more efficiently and economically provide a service that is already being provided manually to retailers. By doing this, DataCheck will be providing benefits to retailers and ultimately to their customers.

If you need any additional information about DataCheck's proposed price reporting service, please contact me at the above listed telephone number.

Sincerely,


Carl W. Mullis, III

CWM/dll
cc: John T. Orr, Esq. (certified mail
return receipt requested)