



## DEPARTMENT OF JUSTICE

Antitrust Division

**JOEL I. KLEIN**

Acting Assistant Attorney General

---

Main Justice Building  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530-0001  
(202) 514-2401 / (202) 616-2645 (f)  
antitrust@usdoj.gov (internet)  
<http://www.usdoj.gov/atr> (World Wide Web)

January 6, 1997

Carl W. Mullis, III  
Long, Aldridge & Norman  
One Peachtree Center  
303 Peachtree Street, Suite 5300  
Atlanta, Georgia 30308

Dear Mr. Mullis:

This is in response to the request of DataCheck, Inc. for the issuance of a business review letter pursuant to the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6. You have requested a statement of the Department of Justice's antitrust enforcement intentions with respect to a proposal under which DataCheck would purchase current retail shelf price information from retailers, e.g., grocery stores, discount stores and mass merchandisers, and disseminate that information on a subscription basis to retailers and other interested purchasers.

DataCheck is a Georgia company that has provided price auditing services for a grocery chain retailer and would like to expand its operations in the following manner. DataCheck would purchase current shelf price information from various retailers who would deliver it to DataCheck via electronic media. The purchased shelf price data would be entered into DataCheck's own in-house proprietary data base and subsequently sold to subscribers in the form of either electronic or hard copy reports. As a result, any subscribing retailer could learn the current shelf prices of all retailers that sold their pricing information to DataCheck. You have asserted that DataCheck's contemplated retailer customers already have the capability of ascertaining their rivals' prices by reading their advertisements and using firms like DataCheck to do manual audits of rivals' prices, which, of course, are matters of public knowledge. In these circumstances, you have suggested that the principal effect of DataCheck's proposal will be to allow the information to be obtained more efficiently, not to dispel secrecy that might be vital to the preservation of price competition in other contexts or circumstances. DataCheck's proposed information service will not involve any direct communication between rivals or deprive any participant of the right unilaterally to change its prices or to engage in any type of discount or bonus savings program that it chooses.

DataCheck is not owned or controlled by any retailer that will participate in its proposed current price information program. Nor will it have any financial interest in any participating retailer. As a result, you assert that DataCheck has no incentive to allow its proposed price information program to be used as a conduit for any price fixing conduct by participants in the program. Moreover, DataCheck will establish an in-house system designed to make certain that no future prices are included in the information that it purchases and transmits, and the agreements that it enters into with both the suppliers and purchasers of information will clearly prohibit the transfer of future price information. In addition, you have offered the Department of Justice continued access to DataCheck's system in order to satisfy itself that it is not being used as a conduit for price fixing.

On the basis of the information and assurances that you have provided us, the Department has no current intention of instituting antitrust enforcement action against DataCheck's proposal to gather and disseminate current retail shelf prices that are public and not subject to negotiation between retailer and customers. The exchange of current pricing information among rivals under some circumstances can be used to facilitate price fixing agreements by affording rivals an otherwise unavailable means of monitoring compliance with a price fixing agreement. In such cases, price disclosure can discourage discounting since any discount is likely to be matched when rivals learn of it, thereby depriving the discounter of the advantage it sought by discounting. That risk is attenuated, however, where the prices at issue already are publicly available and generally are not subject to negotiation, as would be the case with the retail prices charged by the retail grocery chains and mass merchandisers whose price information DataCheck would purchase.

To the extent that the price information exchanged results in price reductions by retailers or enables consumers to better engage in comparative shopping, DataCheck's proposed conduct could have a procompetitive effect.

In view of the prophylactic measures that DataCheck will adopt to prevent its proposed information system from being used in any manner that would facilitate price fixing and the public and generally non-negotiable nature of the current shelf prices that will be disseminated, the Department is not presently inclined to initiate antitrust enforcement action against DataCheck's proposed conduct. This letter, however, expresses the Department's current enforcement intention. In accordance with our normal practices, the Department reserves the right to bring an enforcement action in the future if the actual operation of any aspect of the proposed information exchange program proves to be anticompetitive in purpose or effect.

This statement is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made publicly available immediately, and any supporting data will be made publicly

available within 30 days of the date of this letter, unless you request that part of the material be withheld in accordance with Paragraph 10 (c) of the Business Review Procedure.

Sincerely,

/S/

Joel I. Klein  
Acting Assistant Attorney

General

enclosures