

**ATTACHMENT TO FTC'S DESCRIPTION OF RELIEF
SOUGHT IN REMAND PROCEEDING**



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition
Mergers IV Division

January 11, 2009

Via Electronic Mail

Paul Denis, Esq.
Dechert LLP
1775 I Street, N.W.
Washington, D.C. 20006

Re: *FTC v. Whole Foods Market, Inc.*, No. 1:07-cv-01021-PLF

Dear Paul:

Pursuant to Judge Friedman's January 8, 2009 Memorandum Opinion and Order ("Order"), we outline below the voluntary interim relief and preliminary relief the FTC intends to seek in the remand proceeding.

Interim Relief During the Pendency of the Equities Hearing

Judge Friedman ordered the parties to "discuss whether they could agree on some interim relief during the pendency of these proceedings in order to ensure that any relief obtained by the FTC would be effective." Order at 6-7. As we requested by letter dated August 11, 2008 (a copy of which is attached), we again ask that Whole Foods cease further integration activities until all Commission proceedings, and any related appeals, are concluded.

We are open to discussing the specifics of this proposal, but note at a minimum that Whole Foods would be obligated to preserve the status quo with respect to the Wild Oats assets. Thus, for example, Whole Foods would agree not to close or rebrand any store acquired from Wild Oats, and would further agree not to sell, lease, assign, transfer or otherwise dispose of or impair any assets acquired from Wild Oats, including maintaining leases for any former Wild Oats stores.

Of course, the appropriate scope of interim relief necessarily depends on the timing and length of the remand proceeding. If the remand proceeding cannot be concluded in a timely manner, additional interim relief may be required to preserve the Wild Oats assets and to enable the Commission, if necessary, to reestablish the premerger status quo.

Preliminary Relief under § 13(b)

In addition to ordering the FTC to describe its proposed interim relief, Judge Friedman ordered the FTC to “state with some specificity . . . the remedies it seeks” pursuant to the remand proceeding. Order at 6. At this time, we intend to seek the following relief from Judge Friedman if the FTC prevails in the equities hearing:

- Continued compliance with the interim relief described above.
- Rebranding as “Wild Oats” all stores that were under the “Wild Oats” banner at the time of the acquisition.
- Appointment of a trustee to oversee the acquired Wild Oats assets. The trustee shall be authorized to establish a separate management team to oversee the Wild Oats assets until completion of *In re Whole Foods Market, Inc.*, FTC Dkt. No. 9324.
- The trustee, with the management team, would be responsible for Whole Foods’ compliance with this order and would have complete managerial responsibility for the Wild Oats assets, including authority to make decisions regarding pricing, capital investment, personnel, distribution, information technology, and any other measures reasonably necessary to preserve the Wild Oats assets and to enable the Commission, if necessary, to reestablish the premerger status quo.

Conclusion

As the Court of Appeals has made clear, Judge Friedman has the power to order more significant relief, including partial or total rescission. Under the circumstances, however, we believe that the more limited relief described above is appropriate, and reasonable, to preserve the acquired assets and to permit effective relief, if necessary, after the conclusion of administrative proceedings.

Sincerely,



Matthew J. Reilly

Attachments

cc: Paul Friedman, Esq. (via e-mail)
James Fishkin, Esq. (via e-mail)

ATTACHMENT



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition
Mergers IV Division

August 11, 2008

VIA EMAIL AND U.S. MAIL

Paul T. Dennis
Dechert LLP
1775 I Street, NW
Washington, DC 20006

Re: Acquisition of Wild Oats by Whole Foods

Dear Mr. Dennis,

As you know, on July 29, 2008, the United States Court of Appeals for the District of Columbia Circuit reversed the district court's conclusion in *FTC v. Whole Foods Market, Inc.*, 502 F. Supp 2d 1,28 (D.D.C. 2007) that the Commission failed to show a likelihood of success in an eventual Part 3 proceeding and remanded the matter back to the district court to address the equities. In order to preserve any Commission remedy should the Commission conclude that the transaction violates the antitrust laws and to minimize any harm to interim competition, we respectfully request that Whole Foods immediately cease any further integration activities and commit to hold the Wild Oats' assets separate from Whole Foods until all Commission proceedings, and any appeals related to the acquisition of Wild Oats by Whole Foods, are concluded. We are open to discuss how best to structure a stay on further integration activities and the hold separate.

Please let us know as soon as possible whether you agree to the above request.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt", with a long horizontal flourish extending to the right.

Matthew J. Reilly
Assistant Director
Bureau of Competition
Federal Trade Commission
(202) 326-2350