Federal Trade Commission
Protecting America's Consumers

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FTC Consent Order Settles Charges that Whole Foods' Acquisition of Rival Wild Oats was Anticompetitive

Whole Foods Required to Sell 32 Wild Oats Stores, Intellectual Property, and Related Assets in 17 Markets

The Federal Trade Commission today announced a settlement with Whole Foods Market, Inc., that will substantially restore competition that was eliminated by Whole Foods' 2007 acquisition of its closest rival, Wild Oats Markets, Inc., and resolves agency charges that the acquisition violated federal antitrust laws. Under the consent order, Whole Foods will sell 32 premium natural and organic supermarkets and related assets.

The consent order will restore competition in 17 geographic markets that were impacted by the acquisition. In addition to requiring the transfer or divestiture of all rights to 32 stores, Whole Foods also is required to divest related Wild Oats intellectual property, including unrestricted rights to the "Wild Oats" brand, which retains significant name recognition and loyalty among consumers. These assets will allow one or more Commission-approved buyers to re-establish competition with Whole Foods in the majority of the markets in which the agency alleged the acquisition would reduce competition and harm consumers through higher prices and reduced quality and services.

"As a result of this settlement, American consumers will see more choices and lower prices for organic foods," said FTC Chairman Jon Leibowitz. "It allows the FTC to shift resources to other important matters and Whole Foods to move on with its business."

The Commission's June 6, 2007 federal court complaint for a temporary restraining order (TRO) and preliminary injunction (PI) and its subsequent June 28, 2007 administrative complaint for permanent relief charged that Whole Foods' acquisition of Wild Oats would violate federal antitrust laws. The Commission charged that Whole Foods, the largest premium natural and organic supermarket chain in the United States, would unlawfully acquire its closest competitor and longtime rival, Wild Oats. In each of the markets in which they overlapped, Whole Foods and Wild Oats were each other's closest competitor and competed directly on quality, service, and price.

"Over the past two years we never wavered in our belief that Whole Foods' acquisition of Wild Oats was anticompetitive, and we were prepared to demonstrate in court the actual, real-world consumer harm that resulted from the transaction," said David P. Wales, Acting Director of the FTC's Bureau of Competition. "The consent order announced today is a major win for consumers and is the result of the superb work done by all the FTC staff."

The 32 former Wild Oats stores that Whole Foods must divest comprise 13 currently operating and 19 formerly operating stores. These stores represent a significant portion of the Wild Oats stores that Whole Foods acquired and is currently operating, as well as all of the formerly operating Wild Oats stores for which leases still exist, within the alleged geographic markets. The divestitures will provide competitive relief in the majority of geographic markets defined in the Commission's administrative complaint and will allow consumers in these markets to once again enjoy competition among premium organic markets. The newly divested stores also could provide a "springboard" from which an acquirer might expand into other geographic markets.

The order will immediately place the responsibility for marketing and selling the stores with a divestiture trustee, who will have six months to sell the Wild Oats stores and related assets to one or more FTC-approved buyers. If the trustee has not sold the assets within six months, the Commission may extend the time provided to do so for an additional six months. The order also will require Whole Foods to maintain the viability and competitiveness of the stores until the divestiture is complete.

Case History. On February 21, 2007, Whole Foods and Wild Oats entered into a merger agreement pursuant to which Whole Foods would acquire 100 percent of the voting shares of Wild Oats. The total consideration for the transaction was approximately $700 million. At the time of the acquisition, Whole Foods operated 194 stores in 37 states and the District of Columbia, as well as in the United Kingdom, and Wild Oats had 74 stores in 24 states.

On June 6, 2007, the FTC filed an action in the U.S. District Court for the District of Columbia seeking a TRO and PI to stop the proposed transaction. The court granted the TRO on June 7, 2007, but, following a two-day hearing held on July 31 and August 1, 2007, denied the FTC motion for a PI on August 16, 2007. The Commission appealed the district court's decision, and on July 29, 2008, the U.S. Court of Appeals for the D.C. Circuit reversed the district court's opinion, finding that the FTC had demonstrated the requisite likelihood of success on the merits. On November 21, 2008, the D.C. Circuit denied Whole Foods' petition for rehearing en banc. Meanwhile, FTC administrative litigation against Whole Foods for permanent relief was proceeding. The settlement announced today concludes that administrative proceeding.

The Commission vote to accept the complaint and proposed consent order and place copies on the public record was 4-0. The FTC will publish an announcement regarding the agreement in the Federal Register shortly. The complaint, proposed consent order, and an analysis to aid public comment can be found now on the Commission's Web site at http://www.ftc.gov/os/adjpro/d9324/index.shtm.

The agreement will be subject to public comment for 30 days, beginning today and continuing through April 6, 2009, after which the Commission will decide whether to make it final. To file a public comment, please click on the following hyperlink: http://www.ftc.gov/os/2009/03/d9324publiccomment.pdf and follow the instructions at that site.

NOTE: A consent agreement is for settlement purposes only and does not constitute an admission of a law violation. When the Commission issues a consent order on a final basis, it carries the force of law with respect to future actions. Each violation of such an order may result in a civil penalty of $16,000.

Copies of the documents related to this matter are available from the FTC's web site at http://www.ftc.gov and the FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, DC 20580. The FTC's Bureau of Competition works with the Bureau of Economics to investigate alleged anticompetitive business practices and, when appropriate, recommends that the Commission take law enforcement action. To inform the Bureau about particular business practices, call 202-326-3300, send an e-mail to antitrust@ftc.gov, or write to the Office of Policy and Coordination, Room 383, Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Ave, N.W., Washington, DC 20580. To learn more about the Bureau of Competition, read "Competition Counts" at http://www.ftc.gov/competitioncounts.

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Related Items:

***In the Matter of* Whole Foods Market, Inc., and Wild Oats Markets, Inc.,** Docket No. 9324
File No. 0710114

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