

Whole Foods Bid For Wild Oats Temporarily Blocked

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Monday, Aug 20, 2007 --- A federal appeals court temporarily stopped Whole Foods from completing a deal to purchase Wild Oats Markets Inc on Monday, saying it needs more time to hear arguments that it should block the deal, according to the Associated Press.

The U.S. Court of Appeals for the D.C. Circuit halted any further steps by Whole Foods “to acquire the stocks, assets or any other interest in Wild Oats,” until the three judge panel makes a further ruling, but cautioned that the decision “should not be construed in any way as a ruling on the merits” of the case, according to the AP.

In response, Whole Foods issued a statement saying it would extend the expiration date for its offer to purchase outstanding shares of Wild Oats Markets to 5:00 p.m. Eastern time, on Monday, Aug. 27, 2007.

“The purpose of the stay ordered is to give the court sufficient opportunity to consider the merits of the motion for an injunction and should in no way be construed as a ruling on the merits,” said Paul Denis of Dechert LLP, lead litigation counsel on behalf of Whole Foods Market. “We will file our responsive brief by Wednesday afternoon and the FTC has until noon, Eastern time Thursday, to file their response. We will then hope for a quick ruling that legally clears the way for the merger to move forward.”

The Federal Trade Commission on Friday challenged a district judge's ruling denying the commissions demand for a preliminary injunction on the merger, and appealed the decision to the U.S. Court of Appeals.

In February, Whole Foods and Wild Oats announced that they had signed a merger agreement for Whole Foods to acquire Wild Oats' outstanding common stock in a cash tender offer of \$18.50 a share, or about \$565 million. Whole Foods would also assume Wild Oats existing net debt, which was reported to be about \$106 million in September 2006.

The FTC sued to block the merger in early June on antitrust grounds, saying that the merger would allow the company to dominate the growing natural and organic foods market. Among the claims contained in the FTC's complaint is that Whole Foods intends to fold Wild Oats into it, and then sell and close numerous Wild Oats Stores.

Its complaint was chock full of comments from Whole Foods CEO John Mackey, who also blogged about the merger on the company's Web site.

According to the FTC complaint, Mackey told the company's board of directors "By buying [Wild Oats]...we eliminate forever the possibility of Kroger, Super Value or Safeway using their brand equity to launch a competing national natural/organic food chain to rival us...[Wild Oats] may not be able to defeat us but they can still hurt us. [Wild Oats] is the only existing company that has the brand and number of stores to be a meaningful springboard for another player to get into this space. Eliminating them means eliminating this threat forever, or almost forever."

The stores have argued throughout the case that their formats are not so distinguishable from traditional supermarkets, and that if Wild Oats and Whole Foods are distinct companies, nothing prevents conventional stores from repositioning to become more like them.

Whole Foods is represented in this matter by Dechert LLP and Vinson & Elkins LLP. Wild Oats is represented by Skadden, Arps, Slate, Meagher & Flom LLP.

The FTC's appeal is filed in the U.S. Court of Appeals for the D.C. Circuit, case number: 07-5276.

The original case is Federal Trade Commission v. Whole Foods Market Inc. et al., case number 07-cv-01021, in the U.S. District Court for the District of Columbia.

-- Additional Reporting by Erin Coe and Shannon Henson.