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 August 22, 2007, 1:33 pm

## Judge Bags Survey in Whole Foods Case

Last month I [wrote](#) about a telephone survey commissioned by organic grocery chains Whole Foods Market and Wild Oats Markets. The survey was being used to demonstrate that shoppers near those stores have many other options — and the companies couldn't raise prices without losing customers.



The companies were wielding the survey, conducted by pollster [Kellyanne Conway](#), to fend off the Federal Trade Commission's attempt to scotch Whole Foods' planned purchase of Wild Oats on antitrust grounds. The FTC responded, with help from their expert witness [Kent Van Liere](#), who [said](#) the survey's methodology was flawed.

U.S. District Judge Paul Friedman sided with the FTC on the issue of the survey. In an opinion reached last week and made public yesterday, Judge Friedman wrote: "After reviewing Ms. Conway's report and the survey backup materials, Dr. Van Liere concluded that her survey methodology and procedures were fundamentally flawed, which rendered her data and results unreliable. The Court agrees with Dr. Van Liere. It therefore will not give Ms. Conway's report any weight or consideration in evaluating the evidence before it." Representatives for Ms. Conway and the two companies declined to comment or didn't return requests for comment.

Although he disregarded the survey, Judge Friedman nonetheless rejected the FTC's request to block the deal. The FTC appealed and an appeals court [froze](#) the deal this week. So there may be time for either side to conduct another survey and see if it passes muster.

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No doubt about it. That judge had a closed mind before he even went into the courtroom. Why else the refusal to appeal. He has got some shaky reasoning which shows a bias. He has been overturned before on some bad reasoning.

Comment by neccabobsm - August 22, 2007 at [4:57 pm](#)

For some time Whole Foods has been pushing its role as THE mover and shaker regarding setting the standards for USDA ORGANIC. We need more competition in organic grocery chains not less. Whole foods has said that it is the only certified organic grocery store. We should not allow one company to organically devoted grocery store to then be THE company to tell the USDA what the standards should be.

Comment by Bri - August 23, 2007 at [3:22 am](#)

I'm glad organic foods are becoming so popular among the general public, this will be an important step in saving the environment. You can even buy

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organics at Vons and Wal-mart. Wal-mart is the biggest in the country, would it be okay for them to buy Wild Oats?

Comment by Lisa - August 23, 2007 at [9:28 am](#)

why was it considered flawed? more details on this point would have been helpful.

in most markets, consumers actually do have considerable choice; it's hard to think of a grocery retailer that doesn't carry organic items at this point.

Comment by john - August 23, 2007 at [3:20 pm](#)

When comes right down to it, we're talking about premium food. That's more of a luxury item than a necessity. So even if there were an "organic food monopoly", if their organic cheese is too expensive then customers will get their cheese from the regular grocery store.

Regulated competition tends not to work so well. And in this case, I think it's completely unnecessary.

Comment by Jeffrey - August 23, 2007 at [4:34 pm](#)

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The Numbers Guy examines numbers in the news, business and politics. Some numbers are flat-out wrong or biased, while others are valid and help us make informed decisions. Carl Bialik tells the stories behind the stats, in daily updates on this blog and in his column published every other Friday in The Wall Street Journal. Carl, who holds a degree in mathematics and physics from Yale University, also cowrites [The Daily Fix](#), a sports column on WSJ.com. He welcomes your comments at [numbersguy@wsj.com](mailto:numbersguy@wsj.com).

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