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By HOLMAN W. JENKINS, JR.



## Whole Food Fight

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Whole Foods CEO John Mackey obviously doesn't read or doesn't heed headlines that blame his big mouth for triggering the Federal Trade Commission lawsuit to stop his merger with Wild Oats, another "natural foods" supermarket chain. Mr. Mackey might have shut up, and probably was advised to -- but instead he responded last week on his company's blog with an answer as cogent, pithy and persuasive as the FTC's complaint was shoddy and sophomoric.

The agency's plea to block the merger is replete with quotes from Mr. Mackey. In an email to his board, he's quoted saying that buying Wild Oats would end "forever, or almost forever" the possibility of another large grocery player buying an existing chain as a springboard to compete directly with Whole Foods.



**John Mackey**

Check. There's only one Wild Oats, and if Whole Foods buys it, nobody else can.

The government also quotes him saying buying Wild Oats would prevent "price wars." Check. In his blog, he sheepishly admits that his company has never actually faced a "price war" with Wild Oats, but he wouldn't welcome one.


The record is worth noting here. Wild Oats -- whose stores are much smaller and offer a shrimpier array of products -- has a history of avoiding direct confrontation with Whole Foods. Analysts have debated from time to time whether Wild Oats would be wise or foolish to invest big bucks in grander stores to compete head-on. The financial markets have answered the question in their own fashion, depriving the company of the capital to mount such a slugging match.

But our subject today is Washington disease. The FTC spent months reviewing 20 million documents. Yet it floats its adventurous claim that the "natural" groceries business is in danger of monopolization based on little more than two contextless instances of CEO bluster. Why?

Because there is no case, and that was not going to deter the FTC, which needs to bring cases.

Whole Foods deserves all the backhanded salaams for discovering Americans' willingness to

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reward a chain that caters to their confusion of "natural" with "healthy." Sales have grown from nothing to \$5 billion in 27 years. It keeps opening new stores in new markets each year. But unless its customers refrained from eating prior to its arrival, it must be taking sales away from somebody -- i.e., competition is occurring.

In a single day last November, Whole Foods' stock price plummeted 23% on news of slowing sales growth. The trend has continued downward since then. Oceans of press and analyst commentary blamed intensifying counterattacks from rival grocers, yet nary a finger was pointed at Wild Oats. Rather, the drop was attributed to the organic forays of Safeway, Kroger, Wal-Mart and other traditional supermarkets.

In the first quarter, Safeway credited its newly reformatted "Lifestyle" stores (reformatted to compete with Whole Foods, naturally) for a 22% increase in earnings. Safeway chief Steve Burd called his company a "growth machine." Is Mr. Burd crazy?

Tesco, the innovative British chain, is now spending millions to join the American fray with its forthcoming chain of "Fresh & Easy" stores. Is Tesco crazy?

What any FTC drone might have discovered by consulting his own daily experience the data also show: Consumers divide their patronage among various stores. The very nature (pun alert) of the Whole Foods business model is a wide-open invitation to its competitors. Whole Foods refuses to stock too many items that too many customers want, leaving them no choice but to look elsewhere for Diet Coke, Ritz Crackers, almost anything with artificial sweeteners, preservatives, coloring, etc.

That's the inevitable corollary of any business's strategy of differentiation. Any but the most dogmatic greenie must shop elsewhere to fill his grocery basket. Even Wal-Mart has figured out that by stocking organic milk, it can stop some of its shoppers' dollars from flowing to Whole Foods.

Oh well. Some agency must qualify as the federal government's most squalid and disreputable. The FTC in recent decades has been a catalog of bureaucratic pathology to inspire a modern-day Gogol. You can find Mr. Mackey's blog on the Whole Foods Web site and his frustration with the FTC -- its "bullying tactics," its wasting of the company's money by demanding more documents than it could ever bother to read or digest.

The agency was born in the "progressive" era, when reformers saw reason, not partisan logrolling, guiding government actions. That might work (sort of) with science-based agencies like the Food and Drug Administration. But antitrust belies any such hope -- it's an infinitely pliable tissue of myths.

Any government agency must, of necessity, drum up business for itself. But the FTC over the years has become increasingly casual as to whether any antitrust merits at all attach to the cases it brings to justify its budget. On the contrary, it congratulates itself for the novelty and inventiveness of the claims it springs on unsuspecting businesses.

Happily, the Whole Foods case has invited a wave of ridicule from editorialists and commentators around the country, the only force that might begin to right the balance. ("Why, big Republican government really does care about the price of tofu in West Hartford," satirized columnist Rick Green of the Hartford Courant.)

All that's missing from these brickbats is the naming of names, which would improve bureaucratic incentives. We hereby remedy the oversight: The five commissioners who approved the Whole Foods lawsuit are Deborah Platt Majoras, Pamela Jones Harbour, Jon Leibowitz, William E. Kovacic and J. Thomas Rosch.

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