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Whole Foods' Acquisition Clears Antitrust Hurdle

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A federal judge yesterday rejected an attempt by antitrust regulators to stop [Whole Foods'](#) pending acquisition of rival Wild Oats, clearing the way for the nation's largest organic and natural food chain to expand its reach.

U.S. District Judge Paul Friedman of the District denied the [Federal Trade Commission's](#) bid for a preliminary injunction, essentially allowing the \$565 million deal to proceed. The judge's legal basis for the ruling, which contains sensitive information about the companies' operations and business prospects, remains under seal.

FTC officials have the option of appealing the decision and seeking an emergency delay, the judge noted. Earlier, Whole Foods announced that it had extended its tender offer for Wild Oats through Monday. If regulators do not act, the companies could be free to merge "at any point after noon, Eastern time" Monday, they said in a statement.

[John Mackey](#), chief executive of Whole Foods, praised the decision and said the deal would create "long-term value for customers, vendors and shareholders."

Jeffrey Schmidt, director of the FTC's competition bureau, expressed regret at the ruling and said regulators were reviewing their options.

"We brought this challenge because the evidence before us showed that the merger would most likely result in higher prices and reduced choices for consumers who shop at premium natural and organic supermarkets," Schmidt said.

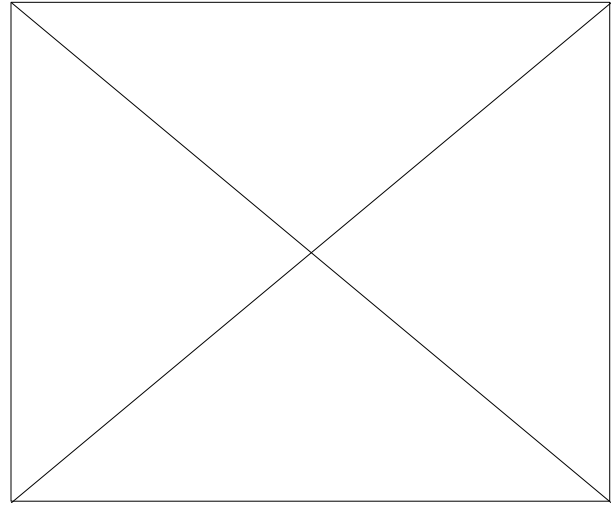
The case has been closely monitored by industry analysts and legal experts who considered it an unusually aggressive stance by the FTC, which tried to use Whole Foods' officials' bold statements to advance its case.

The FTC sued in June to block the deal, arguing that it would harm consumers by leading to fewer choices and higher prices in as many as 25 markets across the country, including the Washington area. Agency lawyer Michael J. Bloom called the transaction "unambiguously anticompetitive" in arguments before the judge this month.

Whole Foods, however, contended that many rivals, including [Safeway](#) and Wegmans, had begun to offer high-quality produce, premium baked goods and seafood, expanding options for shoppers and creating competition.

Among the central issues in the case is how antitrust officials defined the market for natural and organic

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products. During a two-day hearing this month, the judge asked whether consumers made purchases at several stores or limited their shopping at Whole Foods and Wild Oats to certain items.

Whole Foods, based in [Austin](#), operates 15 stores in [Virginia](#), [Maryland](#) and the District. Wild Oats of [Boulder, Colo.](#), has none in this area.

The case took numerous twists and turns. On Tuesday, the FTC mistakenly released trade secrets provided by Whole Foods and Wild Oats in a court filing that was later edited. Agency lawyers wrote that Whole Foods would close 30 or more Wild Oats stores if the deal were allowed to proceed, according to the [Associated Press](#), which reviewed the document before the confidential information was removed. The disclosure prompted a company spokesman to tell reporters that Whole Foods was investigating the incident, which violated a court seal.

Controversial remarks made by Whole Foods' Mackey became an issue after regulators referred to anonymous postings he had made in Internet chat rooms, where he praised Whole Foods and denigrated its competitors. Whole Foods lawyer Paul T. Denis called Mackey's online musings and his statements to the board about eliminating price wars and wiping out the competition a "sideshow issue."

Internal investigators at Whole Foods and authorities at the [Securities and Exchange Commission](#) are probing whether Mackey's postings broke federal disclosure rules. Mackey apologized and has suspended posting to his blog on the company's Web site.

Meanwhile, former Wild Oats chief executive Perry Odak, who provided analysis on which the FTC relied, is worried his former company could be retaliating against him and withholding payments because he aided regulators, the FTC said in court papers this week.

In its legal filings, Whole Foods has characterized Odak as "embittered" and "biased."

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