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## Whole Foods Ruling Appealed

FTC Asks Court To Block Merger

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Antitrust enforcers yesterday appealed a judge's ruling that would allow [Whole Foods](#) to purchase rival Wild Oats in a \$565 million deal that would herald a major expansion of the natural and organic food chain.

The [Federal Trade Commission](#) filed court papers seeking an emergency halt to the sale, which is set to close as early as Monday afternoon. U.S. District Judge Paul Friedman cleared the way for the deal Thursday, denying regulators' request for a preliminary injunction to block the transaction.

A federal appeals court in the District is considering the FTC's bid for a last-minute delay.

Thursday's order by the judge came after weeks of legal wrangling, including a two-day hearing attended by scores of lawyers and market analysts. FTC lawyers unsuccessfully sought to stop the sale on the grounds that it would lead to higher prices and fewer choices for consumers.

But in a 93-page ruling that has yet to be made public because it contains trade secrets, the judge accepted the companies' argument that the market for organic foods is expanding as traditional retailers such as [Safeway](#) and Wegmans increasingly stock their shelves with fresh fish, produce and baked goods.

Paul Denis, a lawyer for Whole Foods, yesterday called the judge's opinion "firmly grounded in both the facts and the law." In a prepared statement, Denis said he was "confident" the deal would proceed.

Whole Foods, which is based in [Austin](#), operates 15 stores in [Maryland](#), [Virginia](#) and the District. Wild Oats, of [Boulder, Colo.](#), has no local presence.

"This is a significant loss for the FTC, particularly since they felt so confident about their case," said Charles "Rick" Rule, an antitrust expert at Cadwalader, Wickersham & Taft in the District.

"The judge's refusal to grant a preliminary injunction shows the inherent difficulty of proving a narrow market that depends on excluding seemingly similar retail outlets" like Safeways that sell organic groceries. "Even the rather remarkable documents in Whole Foods' files suggesting that Wild Oats is its principal competitor apparently could not overcome the evidence that alternative grocery retailers would prevent a combined Whole Foods-Wild Oats from raising prices."

Whole Foods shares closed up \$3.13 at \$44.30, an increase of nearly 8 percent, after stock analysts

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
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predicted the deal would advance despite the FTC appeal. Wild Oats stock increased by \$2.71 to \$17.82, a rise of nearly 18 percent.

In a July 31 conference call, Whole Foods chief executive [John Mackey](#) told analysts the companies would move quickly to consummate the merger once the immediate legal hurdles were removed. "You might say once the eggs get scrambled, they're kind of hard to unscramble," Mackey said.

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