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## F.T.C. to Sue In Bid to Halt Food Merger

By ANDREW MARTIN

Wild Oats Markets may not become part of the natural foods empire of Whole Foods Market, after all.

The Federal Trade Commission said yesterday that it would file a legal complaint today to block the proposed deal, arguing that the merger would ultimately lead to higher prices for natural and organic products in markets where the two chains now compete. Whole Foods announced in February that it planned to acquire Wild Oats for \$565 million.

The director of the F.T.C.'s Bureau of Competition, Jeffrey Schmidt, said in a statement: "Whole Foods and Wild Oats are each other's closest competitors in premium natural and organic supermarkets, and are engaged in intense head-to-head competition in markets across the country. If Whole Foods is allowed to devour Wild Oats, it will mean higher prices, reduced quality and fewer choices for consumers."

Executives of Whole Foods said that they were disappointed and intended to challenge the commission's action vigorously. They argued that the agency assumed that Whole Foods competed only with natural and organic food stores, when in fact most larger grocery chains now offered the same or similar products.

In a statement, John P. Mackey, the chairman and chief executive of Whole Foods, said, "The F.T.C. has failed to recognize the robust competition in the supermarket industry, which has grown more intense as competitors increase their offerings of natural, organic and fresh products; renovate their stores; and open stores with new banners and formats resembling Whole Foods Market."

Mr. Mackey also said that the agency's definition of supermarkets in previous merger reviews had included traditional stores as well as Whole Foods and Wild Oats.

The F.T.C. has posed relatively few antitrust challenges during the recent merger boom on Wall Street, but this time it is speaking up. The agency said it would seek a restraining order and injunction in United States District Court in Washington to prevent Whole Foods from buying Wild Oats. It will also seek a trial.

"If the transaction continues unopposed," it said in a statement, "the F.T.C. contends that Whole Foods is likely to raise prices and reduce quality and services unilaterally."

On the contrary, said Gregory Mays, the chairman of Wild Oats. He argued that consumers would benefit from the merger because his company's stores would be upgraded and offer better selection. "We are confident that once presented with the facts, the court will agree that this merger is procompetitive," Mr. Mays said in a press release.

Neil Currie, an analyst at UBS Investment Research, said in a note to investors that the F.T.C.'s actions were "somewhat at odds" with the recent blurring of lines between stores like Whole Foods and Trader Joe's and more conventional chains like Publix and Wegmans. He said that 74 percent of natural and organic foods were now sold through mass-market channels like conventional supermarkets.

"While we are somewhat bemused by the F.T.C.'s ruling," Mr. Currie wrote, "we feel that its lawsuit, aimed at blocking the deal, is a major obstacle that could prove difficult to overcome."

The agency's actions yesterday were not a total surprise, though. It has twice sought additional information from Whole Foods about the merger. In a conference call with analysts this month, Mr. Mackey said the agency had expressed concerns about the competitive impact of the merger.

In a statement issued early Tuesday evening, F.T.C. officials said the market for premium natural and organic groceries was different from that of conventional supermarkets because of the breadth and quality of their perishables, like fish, produce and a "wide array" of organic and natural products.

"In addition, premium natural and organic supermarkets seek a different customer than do traditional grocery stores," the F.T.C. said. "Whole Foods' and Wild Oats' customers are buying something more than just the food product -- they are seeking a shopping 'experience,' where environment can matter as much as price."

Stephen Calkins, a law professor at Wayne State University and former F.T.C. general counsel, said that the complaint called to mind a successful effort by the agency in 1997 to block a merger of Staples and Office Depot. While the stores argued that office products were widely available, the F.T.C. said that prices at both stores depended on the proximity of other office superstores.

"In terms of Whole Foods, the single most important question will be: Are the prices higher when the other store is not present?" Mr. Calkins said.

Andrew Wolf, an analyst at BB&T Capital Markets, said that the proposed merger was much more important for Wild Oats, which has struggled to compete against its larger rival, than for Whole Foods.

"For Whole Foods, their future is much more going to be about organic growth and how their new stores do in places like London and Columbus, Ohio," Mr. Wolf said. "If Whole Foods and Wild Oats never end up merging, it's not a game changer for Whole Foods. It is for Wild Oats."