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FTC's Whole Foods Case Revealed

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By Christopher S. Rugaber, AP Business Writer

FTC Error Reveals Redacted Details of Antitrust Claims Surrounding Whole Foods-Wild Oats Deal

WASHINGTON (AP) -- Federal regulators filed court documents Tuesday outlining concerns that stores in competitive markets would close and consumers would face higher prices if Whole Foods Market Inc.'s \$565 million purchase of Wild Oats Markets Inc. is completed.

The Federal Trade Commission documents revealed that Whole Foods plans to close 30 or more Wild Oats stores, a move that the company believes would nearly double revenue for some Whole Foods stores.

The FTC also revealed how Whole Foods negotiates with suppliers to drive up costs for Wal-Mart Stores Inc. Regulators also discussed the company's closely held marketing strategies.

Regulators are trying to block the deal on antitrust grounds, arguing that it would mean higher prices for organic and natural food. A judge is considering whether to temporarily block the deal.

Many of the details in the documents, which FTC lawyers filed electronically, were not meant to be released publicly, but words intended to be redacted were actually just electronically shaded black. The words could be searched, copied, pasted and read in versions downloaded from court computer servers.

Court officials realized the mistake and replaced the filing with a version using scanned pages of the redacted documents. Like covering up parts of a page with black paper before photocopying, there is no way to remove the blacked-out portions from the final copy.

The Associated Press downloaded the document from the public server before it was replaced by a properly redacted version.

In a statement late Tuesday, Whole Foods said it was investigating the "apparent improper release by the Federal Trade Commission of confidential proprietary business information."

"All information shared with the FTC was done so with the reasonable understanding that it would be handled appropriately," the statement said.

FTC spokesman Mitchell Katz declined to comment on the matter.

While such a filing error has happened before, it comes in a particularly bad case for the government. The supermarket merger generated widespread attention from analysts and industry officials largely because the court case opened a window, ever so slightly, into the inner workings of the two companies.

With Tuesday's filing, the FTC threw open the window. Among the details cited in the government filing:

-- The opening of a Whole Foods store can cut revenue 30 percent or more in nearby Wild Oats stores.

-- Whole Foods set "ground rules" barring suppliers from selling directly to Wal-Mart. "It wants Wal-Mart to have to go through distributors because that raises Wal-Mart's costs," the document said.

-- Company documents labeled "Project Goldmine" predicted that buying Wild Oats and shutting down certain stores would increase revenue 85 percent to 90 percent at nearby Whole Foods stores.

-- Education is key to the site selection for a new Whole Foods store. "As a company, we look at college graduate density. That's one of the single most important things," the government quoted a company official as saying.

-- The takeover will send as many as 80 percent to 90 percent of Wild Oats shoppers to Whole Foods stores, according to Whole Foods documents cited by the government. "As a result, they will unambiguously be worse off," because of increased prices, the FTC argued.

Kate Lowery, a spokeswoman for Whole Foods, said the Austin, Texas-based company has "no idea how many stores" would be closed if the purchase goes through.

"There is therefore no plan at all," she said.

Sonja Tuitele, a spokeswoman for Boulder, Colo.-based Wild Oats, said the release of confidential information is "obviously unfortunate and unfair" to the companies involved.

AP Business Writer David Koenig in Dallas contributed to this report.

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