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## Granola and Antitrust

Editorial, The Wall Street Journal  
June 19, 2007

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Boy, this is an awkward moment for Whole Foods CEO John Mackey, not to mention for the Bush Administration's antitrust policy. The Federal Trade Commission recently announced it will sue to block Whole Foods from buying Wild Oats, a competitor in the high-end, organic supermarket space.

The FTC's argument is that "premium" organic-food peddlers don't compete against regular supermarkets, and its justification reads like promotional materials from Whole Foods. The FTC waxes lyrically about "the breadth and quality of their perishables — produce, meats, fish, bakery items, and prepared foods — and the wide array of natural and organic products and services and amenities they offer," adding that Whole Foods is not so much a supermarket as a "shopping 'experience.'" Mr. Mackey, the Whole Foods CEO, would have to be tickled if the FTC weren't deploying this talk to kill the merger.

Which is where the awkwardness comes in. In order to fight the FTC, Mr. Mackey will have to argue that Whole Foods is just another supermarket. In fact, much of the "evidence" offered in the FTC's request for an injunction blocking the merger consists of redacted statements from Mr. Mackey, presumably about how special Whole Foods is. Sprinkled among those statements are more redacted remarks about Wal-Mart, Target, Trader Joe's and others, probably to the effect that none of them are competitive threats to Whole Foods.

On this basis, the FTC argues that "premium natural and organic" food stores compete mostly with each other, and not with the thousands of other supermarkets in the country. On this theory, consumers are so besotted with Whole Foods' organic tofu and its "humane animal husbandry" that Mr. Mackey will have a free hand to increase prices and decrease quality in the 21 markets in which he and Wild Oats currently compete head-to-head if the

merger is allowed.

But this is where the FTC's story gets weird. It wants to argue both that the quality, selection and "experience" make Whole Foods unique among supermarkets and that without competition from Wild Oats (in the few markets in which they overlap), Whole Foods' quality, selection and experience will worsen. Which means, we guess, that Whole Foods would look more like an "ordinary" supermarket. Which would mean, more competition for Whole Foods. Or something. We admit the FTC lost us when it started arguing that Whole Foods' evil plan is to undermine the very uniqueness on which the FTC is basing its antitrust case.

The Commission also argues that the industry is highly concentrated because "Whole Foods and Wild Oats are the only two nationwide operators of premium natural and organic supermarkets in the United States." (Our emphasis). If that sounds ominous, it is only because the organic-food business has traditionally been local. Whole Foods' innovation was not introducing the world to aisles of granola. It was trying to build a national business in a highly fragmented market. Many of those local shops are still around, but the FTC defines them out of existence for the purpose of blocking the merger.

In other words, the FTC is again playing "pick your market" to justify a dubious antitrust action. Just as Microsoft makes 100% of operating systems called Windows, Whole Foods controls most of the market segment that consists of stores that look just like Whole Foods. The public-policy principle at work here is that if you define a market narrowly enough, you can find an industry monopolist anywhere.

Maybe the FTC is responding to heat from Capitol Hill to show it's on the job, but pandering to Congress has never made for good antitrust policy. Whole Foods says it will battle the FTC in court, and the case will make for some entertaining jujitsu as Mr. Mackey argues that his stores aren't as unique as his marketing materials suggest, while the FTC pleads that the merger will make Whole Foods less unique and more expensive at the same time. Such are the absurdities of modern antitrust policy.

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