

June 20, 2007

## CEO's Words May Cook Whole Foods

 By **DAVID KESMODEL**  
*June 20, 2007; Page A14*

Federal antitrust officials aim to use the words of **Whole Foods Market Inc.** Chairman and Chief Executive John Mackey as a tool against the company as they move to block the natural-food chain's purchase of rival Wild Oats Markets Inc.

In its June 6 lawsuit -- a more detailed version of which became available yesterday -- the Federal Trade Commission quoted Mr. Mackey as telling fellow directors in internal documents that buying Wild Oats would enable the company to "avoid nasty price wars" that could "harm [Whole Foods'] gross margins and profitability" in Portland, Ore.; Nashville, Tenn.; Boulder, Colo.; and other cities.

The agency, in the complaint filed in a federal court in Washington, D.C., said Mr.

Mackey also told the board that the \$565 million deal would eliminate the possibility that a major conventional supermarket chain such as **Kroger Co.** would create a competing national natural-foods retailer. Wild Oats "is the only existing company that has the brand and number of stores to be a meaningful springboard for another player," he said, according to the suit.



**John Mackey**

### NATURAL-FOODS NICHE

"By buying [Wild Oats] ... we eliminate forever the possibility of Kroger, Super Value or Safeway using their brand equity to launch a competing natural/organic food chain to rival us. ... [Wild Oats] may not be able to defeat us but they can still hurt us. ... [Wild Oats] is the only existing company that has the brand and number of stores to be a meaningful springboard for another player to get into this space. Eliminating them means eliminating this threat forever, or almost forever." -- *Whole Foods CEO John Mackey, according to the FTC complaint.*



• [Read the full text of the FTC complaint.](#)<sup>1</sup>

The agency yesterday released Mr. Mackey's statements, which had been redacted from the original complaint.

The government is highlighting Mr. Mackey's comments, which it obtained from the company while reviewing the merger, to bolster its contention that the deal would reduce competition and raise prices for consumers. Among the newly disclosed material is the commission's contention that Whole Foods intends after acquiring Wild Oats to close "numerous" Wild Oats stores, sell others and operate the remainder as Whole Foods outlets.

Last night, Mr. Mackey vehemently challenged the FTC's assertions in a voluminous entry on his

[blog on the company's Web site](#)<sup>2</sup>. He accused the government of "bullying tactics" and said it was taking internal conversations -- many of them by email -- out of context in order to bolster its argument.

"They aren't going to place" internal correspondence "in their proper context," he wrote, adding that many statements by executives were merely part of brainstorming sessions or "macho posturing" common to any competitive organization.

Mr. Mackey blasted the agency for failing to "bother to actually gather any pricing information from Whole Foods or Wild Oats" as part of its critique of the merger. Mr. Mackey also wrote: "If eliminating a competitor is inherently 'bad' or 'wrong' then the FTC should probably never allow any mergers to ever occur."

In an interview, Jim Sud, executive vice president of growth and development for Whole Foods, said the company is at "a severe disadvantage" in trying to fight the FTC's stance. "They have the power to subpoena whatever documents they want," he said. "It's been very one-sided."

Comparison Shopping		
Whole Foods Market and Wild Oats Markets at a glance		
	Whole Foods	Wild Oats
CEO	John Mackey	Greg Mays
Founded	1980	1987
Headquarters	Austin, Texas	Boulder, Colo.
Revenue	\$5.6 billion <sup>*</sup>	\$1.2 billion <sup>†</sup>
Net income	\$204 million <sup>*</sup>	-\$16.6 million <sup>†</sup>
Stores	195	109
Locations	U.S., Canada, U.K.	U.S., Canada (British Columbia only)
<sup>*</sup> For the year ended Sept. 24; <sup>†</sup> For the year ended Dec. 30 Source: the companies		

Whole Foods, which has submitted more than 20 million internal documents to the agency, hasn't made any decisions about how many Wild Oats stores it might close if the deal goes through, Mr. Sud added. The company lacks financial information about the Wild Oats stores on which to base such decisions.

A Wild Oats spokeswoman declined to comment.

Other companies had worried that the commission's complaint might signal more-aggressive antitrust enforcement in Washington. But that concern could ease with the knowledge that the commission's case appears to be based largely on the companies' own words.

The core of the argument against the deal is that Whole Foods and Wild Oats are essentially the two leading competitors in a distinct market for premium organic foods. According to this argument, conventional food retailers such as **Wal-Mart Stores Inc.** and Kroger don't really count, even as they increasingly offer similar products in pursuit of higher profit margins.

For instance, the lawsuit quotes Mr. Mackey as saying that organic foods are "only one part of its highly successful business model," citing as others "superior quality, superior service ... and superior store experience." The lawsuit quotes Mr. Mackey as saying, "Wal-Mart doesn't sell high-quality perishables" and that is "why Wal-Mart isn't going to hurt Whole Foods."

Karen Burk, a Wal-Mart spokeswoman, said the company has "to be doing something right if 127 million customers shop our stores every week."

Whole Foods, of Austin, Texas, agreed in February to buy Wild Oats, of Boulder, Colo., for \$18.50 a share. Whole Foods argues the FTC is defining the natural-foods sector too narrowly, stressing that Kroger and other chains have been expanding their selection of such foods and even redesigning stores to look more like Whole Foods' locations. Whole Foods says in a document on

its Web site that it faces "substantial" competition from conventional stores and smaller natural-foods outlets.

When the government sued, it filed its complaint and supporting materials under court seal because they contained proprietary business information. The Wall Street Journal, owned by Dow Jones & Co., sent a letter to Judge Paul L. Friedman asking him to unseal many documents, saying the issues are of public interest.

June 13, the FTC sought to have the full text of its complaint released, and Monday, Whole Foods and Wild Oats said they wouldn't object.

In 4 p.m. composite trading yesterday on the Nasdaq Stock Market, shares of Whole Foods were down 56 cents, or 1.4%, to \$38.95. Shares of Wild Oats declined 17 cents, or 1%, to \$17.03 on the Nasdaq.

--Dana Cimilluca contributed to this article.

Write to David Kesmodel at [david.kesmodel@wsj.com](mailto:david.kesmodel@wsj.com)<sup>3</sup>

**URL for this article:**

<http://online.wsj.com/article/SB118227946035340856.html>

**Hyperlinks in this Article:**

(1)

<http://online.wsj.com/public/resources/documents/WholeFoodsComplaint20070619.pdf>

(2) <http://wholefoodsmarket.com/blogs/jm/>

(3) <mailto:david.kesmodel@wsj.com>

(4) <http://blogs.wsj.com/deals/2007/06/19/whole-foods-latest-organic-product-foot-in-mouth/>

(5) <http://online.wsj.com/article/SB118117835496527246.html>

(6) <http://online.wsj.com/article/SB117209195523715275.html>

**Copyright 2007 Dow Jones & Company, Inc. All Rights Reserved**

This copy is for your personal, non-commercial use only. Distribution and use of this material are governed by our [Subscriber Agreement](#) and by copyright law. For non-personal use or to order multiple copies, please contact Dow Jones Reprints at 1-800-843-0008 or visit [www.djreprints.com](http://www.djreprints.com).