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## Whole Foods, U.S. Take Fight To Courtroom

By **DAVID KESMODEL**  
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When the U.S. government goes to court this week to try to block **Whole Foods Market Inc.**'s planned purchase of **Wild Oats Markets Inc.**, the judge will wrestle with this question: Which of John Mackey's arguments is most convincing?

The Federal Trade Commission contends Whole Foods and Wild Oats operate in a distinct market for premium natural and organic groceries and the \$565 million deal would curtail competition and raise prices in that segment. To make its case, the agency is relying on comments by Mr. Mackey, the chief executive of Whole Foods, which suggest he considers his company's playing field different than that of typical grocers.

"Safeway and other conventional retailers will keep doing their thing -- trying to be all things to all people," Mr. Mackey has said, according to the FTC. "They can't really effectively focus on Whole Foods' [clientele]."

But Mr. Mackey has said Whole Foods faces competition from the conventional supermarket giants, which increasingly hawk natural and organic foods. "Whole Foods faces more competition today than ever before in our entire history!" Mr. Mackey wrote on his blog on Whole Foods' Web site last month.


Some of Mr. Mackey's assertions have gotten him into hot water because of their venue. While the FTC reviewed the merger, it learned Mr. Mackey had posted anonymous comments about his company and others in online stock forums for years. Those postings are now the subject of a Securities and Exchange Commission informal inquiry and of an internal probe by Whole Foods' board. ([Read some of the postings](#)<sup>1</sup>.)

How the judge ultimately defines the natural-foods market is central to the outcome of the antitrust case. The FTC is seeking a preliminary injunction to squelch the merger. A two-day hearing starts tomorrow in federal court in Washington, D.C.

Judge Paul L. Friedman is expected to rule within a few weeks. If he rules in the government's favor, the companies could appeal. The likely outcome is they would cancel their merger plans.

The lawsuit by the FTC, filed June 6, surprised many observers because Whole Foods and Wild

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Oats are relatively small players in the supermarket business. If they merged, the combined company would have about 300 stores in the U.S., Canada and the United Kingdom. In contrast, **Wal-Mart Stores Inc.** has about 3,000 stores in the U.S. that sell groceries.

Whole Foods, of Austin, Texas, and Wild Oats, of Boulder, Colo., compete in about 20 metropolitan areas, including Los Angeles, Chicago and Denver. The government is expected to argue that with the presence of both chains in a particular market, each keeps the other from raising prices.

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