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Whole Foods Wins Ruling on Wild Oats

By **DAVID KESMODEL**
August 17, 2007; Page A3

A federal judge refused to temporarily block [Whole Foods Market Inc.](#)'s \$565 million purchase of rival [Wild Oats Markets Inc.](#), in a significant win for the companies.

The two natural-foods grocery chains could now consummate their deal as early as next week, although the Federal Trade Commission could file an emergency appeal of the judge's ruling or pursue its own administrative trial in a bid to scuttle the merger.

U.S. District Judge Paul L. Friedman in Washington yesterday rejected the antitrust enforcer's plea for a preliminary injunction to halt the deal pending a full review by the FTC. Such injunctions frequently put an end to merger plans.

The judge filed his 93-page opinion under seal, because it contained confidential information about the companies, so his specific conclusions on the government's case weren't immediately available for review. In a lawsuit filed June 6, the FTC argued that the combination of Whole Foods, Austin, Texas, and Wild Oats, Boulder, Colo., would stifle competition and raise prices for consumers. The agency argued that the companies vie in a distinct market for premium natural and organic foods.

The companies countered that they compete not solely against each other but in a broader grocery market that includes Wal-Mart Stores Inc. and such supermarket chains as Kroger Co. and Safeway Inc., which are increasingly stocking their shelves with similar products.

The ruling was announced after markets closed. Shares of both companies jumped in after-hours trading. Whole Foods announced plans to acquire Wild Oats in February for \$18.50 a share. Since the FTC filed its lawsuit June 6, Whole Foods' stock has risen about 5% and Wild Oats' stock has fallen about 10%.

John Mackey, chairman and chief executive of Whole Foods, hailed the decision in a statement, saying a combination of the chains "will create long-term value for customers, vendors and shareholders." Gregory Mays, chairman and interim CEO of Wild Oats, said in a statement the deal would "enhance the shopping experience for customers."

The FTC didn't immediately say whether it would file an appeal. It said its commissioners had authorized the staff to act on its administrative complaint to permanently block the merger. Unlike the Justice Department, which also reviews mergers, the FTC is empowered to pursue a separate and sometimes-lengthy administrative process that can derail a deal.

Jeffrey Schmidt, director of competition at the FTC, called Judge Friedman's ruling a loss for consumers. "We brought this challenge because the evidence before us showed that the merger would most likely result in higher prices and reduced choices for consumers who shop at premium natural and organic supermarkets," Mr. Schmidt said in a statement.

A deal between Whole Foods, the world's largest natural-foods grocer, and Wild Oats could create a more-formidable competitor to conventional supermarket chains. Whole Foods already has had a big impact on the broader market, prompting conventional chains to increase

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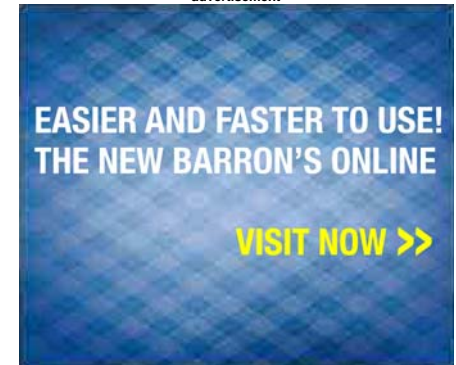
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their offerings of healthy foods and to revamp their stores to look more like Whole Foods' stores in some cases.

Whole Foods turned over about 20 million internal documents during the FTC's review of the deal, and when the government sued in June, it seized upon many statements Mr. Mackey had made to his board and others to help make its case that he viewed his market as distinct from that of conventional grocers.

The FTC revealed Mr. Mackey told fellow directors in an email that buying Wild Oats would help the company avoid "nasty price wars" in a number of markets. He also said the deal would help deter a big chain such as Kroger from creating a competing natural-foods powerhouse.

Mr. Mackey fought back with a 14,000-word entry on his blog in which he blasted the government for taking his comments out of context.

Some of Mr. Mackey's assertions cited by the FTC have gotten him into hot water because of their venue. During the FTC's review, it learned Mr. Mackey had posted anonymous comments about Whole Foods and its competitors in online stock forums for years. Those postings are the subject of a Securities and Exchange Commission informal inquiry and of an internal probe by Whole Foods' board.

Write to David Kesmodel at david.kesmodel@wsj.com

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