

August 18, 2007

FTC to Appeal Whole Foods Ruling

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 August 18, 2007; Page A3

The Federal Trade Commission, which was dealt a blow in its effort to scotch the merger of the nation's two largest natural-foods grocers, kept up its fight Friday.



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The agency plans to appeal a decision by a U.S. judge Thursday denying its request for a preliminary injunction that would have kept **Whole Foods Market Inc.** from buying Wild Oats Markets Inc. for \$565 million. The commission also yesterday asked an appellate court to delay the judge's order pending an appeal.

Judge Paul L. Friedman's ruling in U.S. District Court in Washington marked a significant triumph for the grocery chains, which had vigorously disputed the agency's claim that they operate in a special market for natural and organic products and that their combination would stifle competition.

Judge Friedman's opinion remained under seal. But Clifford Aronson, a lawyer for Wild Oats who read it, said the judge agreed there's no such thing as a distinct market for "premium" natural and organic groceries. The facts showed "there are firms a lot bigger and more significant than Wild Oats that directly impact Whole Foods on a day-to-day basis," he said.

Judge Friedman Friday refused to grant the FTC a stay of his decision pending an appeal. The agency made the same request to the Washington appellate court, whose decision was pending. If no stay is granted by noon EST Monday, the stores can merge.

Whole Foods, Austin, Texas, announced its plans to buy Wild Oats, Boulder, Colo., for \$18.50 a share in February. The FTC on June 6 filed a request for a preliminary injunction to halt the merger pending a full review by the agency. Such injunctions often put a stop to merger plans.


Whole Foods shares were up 7.6%, or \$3.13, at \$44.30 as of 4 p.m. in Nasdaq Stock Market composite trading Friday. Wild Oats soared 18% to \$17.92, up \$2.71 on the Nasdaq.

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