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Court Hears Two Sides To Whole Foods Deal

By MARK H. ANDERSON

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WASHINGTON -- Two antitrust experts gave opposite testimony to a U.S. District Court about whether a combination of **Whole Foods Market Inc.** and Wild Oats Markets Inc. would illegally dominate the market for natural and organic groceries, as the Federal Trade Commission is seeking to stop Whole Foods' planned \$565 million purchase of its smaller rival.

During questioning from government attorneys, David Scheffman, an antitrust consultant and former FTC official, told the court the natural-foods stores don't just compete with each other, as argued by the FTC, but are part of the broader supermarket industry. "They are supermarkets. They are one-stop shopping," Mr. Scheffman said, arguing that market research shows people who shop at a Whole Foods also use grocers such as Trader Joe's Co. and **Safeway Inc.**

- **In Court:** Antitrust experts gave opposite testimony on a possible combination of Whole Foods and Wild Oats as the FTC seeks to stop the deal.
- **On One Hand:** A former FTC official said the companies are part of a broader industry.
- **Another View:** An expert testified that their competition can lead to lower prices.


Judge Paul L. Friedman, in some questions during Mr. Scheffman's testimony, indicated he is searching for the appropriate definition of the marketplace in which Whole Foods, of Austin, Texas, and Wild Oats, of Boulder, Colo., compete.

University of Chicago antitrust expert Kevin Murphy also faced hard-nosed questions from attorneys for the natural-food stores as the companies sought to expose weaknesses in the FTC's analysis that the proposed merger is anticompetitive for the narrowly defined premium natural- and organic-grocery market.

But Mr. Murphy, in oral testimony, said he found margin and pricing evidence indicating competition between the two companies can lead to lower prices in specific geographic areas. Mr. Murphy cited a "substantial decline in margins" and a 2% drop in prices at Wild Oats stores in Boulder when Whole Foods entered that market. Testimony regarding Boulder was challenged by the company attorneys and may not be considered by the court because it wasn't part of Mr. Murphy's submitted testimony.

Written statements from both experts remained under seal, despite public questioning about the underlying testimony. Wild Oats and Whole Foods have argued to keep some court materials from public view, arguing data and information contained in the documents touch on numerous trade secrets.

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Separately yesterday, Whole Foods said its profit fell in the latest quarter as it increased spending to open new stores. The company said its same-store sales rose 7% for the fiscal third quarter ended July 1, down from growth of 9.9% a year earlier, continuing a recent trend of slower growth at the retailer.

Whole Foods Chief Executive John Mackey said in a statement that same-store sales growth appears to have stabilized. Addressing the government's effort to stop the merger with Wild Oats, he said, "We believe that merger or no merger, Whole Foods Market has a very bright future."

In 4 p.m. Nasdaq composite trading, shares of Whole Foods rose 26 cents, or 0.7%, to \$37.04. After the better-than-expected earnings were announced, the shares rose 8.6% to \$40.22 in after-hours trading.

The U.S. District Court is holding two days of hearings on the FTC's request for a preliminary injunction to block the merger. A decision is expected by mid-August. The judge must decide whether to accept the government's argument that the two companies primarily compete in a narrow market that is distinctly separate from the broader U.S. grocery marketplace.

--David Kesmodel contributed to this article.

Write to Mark H. Anderson at mark.anderson@dowjones.com¹

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