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Appeals Court Freezes Takeover of Wild Oats

 By **MARK H. ANDERSON**
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WASHINGTON -- A federal appeals court on Monday, acting in an escalating battle between two natural-foods grocers and the federal government, temporarily put on hold **Whole Foods Market Inc.**'s \$565 million purchase of **Wild Oats Markets Inc.**

In a short order, the Washington-based U.S. Circuit Court of Appeals prevented Whole Foods from "taking any further steps to acquire" Wild Oats. Just last week, a U.S. district court judge rejected a Federal Trade Commission request for an injunction blocking the merger. The FTC asked for a stay while the lower court decision is on appeal.

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The appeals court stressed in its order that it was only temporarily freezing the merger while it considers the FTC's appeal of the District Court ruling. "The purpose of this administrative injunction is to give the court sufficient opportunity to consider the merits of the motion for an injunction," the order said.

"We will file our responsive brief by Wednesday afternoon and the FTC has until noon Eastern Time Thursday to file their response," said Paul Denis of Dechert LLP, legal counsel for Whole Foods Market. "We will then hope for a quick ruling that legally clears the way for the merger to move forward."


Whole Foods, in a statement, said it has extended the deadline for the Wild Oats tender offer to next Monday.

The FTC last week immediately appealed the district court ruling that would clear the way for the merger to proceed without the government's interference. The appeals panel asked the companies to respond to the appeal by Wednesday, Aug. 22, addressing "each of eight reversible errors" the FTC alleges the lower court judge committed.

Whole Foods and Wild Oats weren't immediately available for comment.

The FTC challenged the merger earlier this year on the grounds it would illegally concentrate Whole Foods' power as the dominant premium, natural and organic grocery chain. Whole Foods

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has countered that it competes vigorously with the broader supermarket industry, rendering the FTC's arguments moot.

In trading Monday, Whole Foods shares closed down 83 cents, or 1.9%, at \$43.47, while Wild Oats shares fell 12 cents, or 0.7%, to \$17.80.

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