

ORAL ARGUMENT HELD ON APRIL 23, 2008

No. 07-5276

**THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**FEDERAL TRADE COMMISSION,
*Appellant,***

v.

**WHOLE FOODS MARKET, INC.,
*Appellee.***

On Appeal from the United States District Court
for the District of Columbia
(Civ. No. 07-1021 (PLF), Judge Paul L. Friedman)

PETITION FOR REHEARING *EN BANC*

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EXHIBIT 3

F.3d at 1053-54; *FTC v. Univ. Health, Inc.*, 938 F.2d at 1218; *FTC v. Food Town Stores, Inc.*, 539 F.2d at 1345.

CONCLUSION

As shown above, the panel decision cannot be reconciled with prior decisions of this Court and those of other circuits. The panel decision, if allowed to stand, threatens to return antitrust merger analysis to “the bad old days when mergers were viewed with suspicion regardless of their economic benefits.” *Whole Foods III*, 2008 WL 2890688, at *20 (Kavanaugh, J., *dissenting*). This case warrants *en banc* review.

Respectfully submitted,



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