

FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
v.)	Civ. No. 1:07-cv-01021-PLF
)	
WHOLE FOODS MARKET, INC.,)	PUBLIC VERSION
)	
-and-)	
)	
WILD OATS MARKETS, INC.,)	
)	
Defendants.)	

PLAINTIFF'S MOTION FOR INJUNCTION PENDING APPEAL

Plaintiff, Federal Trade Commission moves, pursuant to Fed. R. Civ. P. 62(c), that this Court enjoin the acquisition at issue in this case, pending appeal of this Court's denial of the Commission's motion for preliminary injunction. In the alternative, the Commission moves that the Court enjoin the acquisition pending a determination by the Court of Appeals on an application for an injunction pending appeal filed by the Commission.

In support of this motion, the Court is respectfully referred to the memorandum of points and authorities filed herewith, and to the complaint, motions, memoranda, and exhibits previously filed herein.

A proposed order is attached.

Respectfully submitted,

August 17, 2007

/s/ Thomas H. Brock

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transaction do not expire until August 31, 2007, and, therefore, an injunction pending the Court of Appeals' ruling on our application to that court will not interfere with this transaction.

1 The Court's denial of a preliminary injunction against an acquisition in the

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

economic, empirical, or statistical analysis of actual loss was performed – given the well-known economic critiques of critical loss analysis that are included in the record and unrebutted.

(D.C. Cir. 1981) (R. B. Ginsburg, J.) (discussing legislative history of preliminary injunction provision).

4. An injunction stay pending appeal is necessary and in the public interest to allow meaningful appellate review on the important issues presented in this case. Without such an injunction, the merger will be consummated; the Commission will lose any chance of securing effective relief against the acquisition, and the public interest will be irreparably injured.

irreparably, injured. *See FTC v. H.J. Heinz Co.*, 2000 U.S. App. LEXIS 34474, 2000-2 Trade Cas. (CCH) ¶ 73,090 (D.C. Cir.) In *Heinz*, the trial court had denied both the FTC's motion for a

(D.C. Cir.) ("The public interest in enforcement of the antitrust laws is strong; any injury to

competition from going forward with the proposed merger is likely to be minimal.

Respectfully submitted,

August 17, 2007

/s/ Thomas H. Brock
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CERTIFICATE OF SERVICE

I certify that I caused to be served a copy of the foregoing papers on the following counsel:

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~~Office of the Clerk~~

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION

Plaintiff,)
v.) Civ. No. 1:07-cv-01021-PLF)
WHOLE FOODS MARKET, INC.,)
-and-)
WILD OATS MARKETS, INC.,)
Defendants.)

**PROPOSED ORDER GRANTING PLAINTIFF'S MOTION
FOR INJUNCTION PENDING APPEAL**

This matter is before the Court on the motion of the Plaintiff, the Federal Trade Commission, for an order granting its motion for an injunction pending appeal.

violate the antitrust laws;

(4) *defendants will not be substantially injured by the relief afforded by this Order.*

and

- (5) the questions raised in this case are sufficiently serious, substantial and difficult to warrant the relief afforded by this Order.