

Error by FTC Reveals Whole Foods' Trade Secrets

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Federal regulators inadvertently released dozens of trade secrets in public court documents yesterday as they tried to block [Whole Foods Market's](#) \$565 million purchase of [Wild Oats Markets](#).

The [Federal Trade Commission](#) documents revealed that Whole Foods plans to close 30 or more Wild Oats stores in competitive markets, a move that the company thinks would nearly double revenue for some Whole Foods stores.

Among other details not meant to be released, the FTC revealed how Whole Foods negotiates with suppliers to drive up costs for [Wal-Mart](#) stores. Regulators also discussed the company's closely held marketing strategies.

Regulators are trying to block the deal on antitrust grounds, arguing that it would mean higher prices for organic and natural food. A judge is considering whether to temporarily block the deal.

Lawyers for the FTC electronically filed documents as part of that court case yesterday afternoon. Court officials realized the redacted portions of the document could easily be read and blocked it from being downloaded from court computer servers. [The Associated Press](#) downloaded the document from the public server before it was replaced by a properly redacted version.

In the original version, the words looked redacted but were actually just electronically shaded black. The words could be searched, copied, pasted and read. The second version of the document was filed using scanned pages of the redacted documents. There is no way to remove the blacked-out portions from the final copy.

In a statement late Tuesday, Whole Foods said it was investigating the "apparent improper release by the Federal Trade Commission of confidential proprietary business information."

FTC spokesman Mitchell Katz declined to comment on the matter.

Although this error has happened before, it comes in a particularly bad case for the government. The supermarket merger generated widespread attention from analysts and industry officials, largely because the court case opened a window, ever so slightly, into the inner workings of the two companies.

Among the details cited in the government filing:

- The opening of a Whole Foods store can cut revenue 30 percent or more in nearby Wild Oats stores.
- Whole Foods set "ground rules" barring suppliers from selling directly to Wal-Mart. "It wants Wal-Mart to have to go through distributors because that raises Wal-Mart's costs," the document said.
- Company documents labeled "Project Goldmine" predicted that buying Wild Oats and shutting down certain stores would increase revenue 85 to 90 percent at nearby Whole Foods stores.
- The takeover will send as many as 80 to 90 percent of Wild Oats shoppers to Whole Foods stores, according to Whole Foods documents cited by the government. "As a result, they will unambiguously be worse off," because of increased prices, the FTC argued.

Kate Lowery, a spokeswoman for Whole Foods, said the company has "no idea how many stores" would be closed if the purchase goes through.

Sonja Tuitele, a spokeswoman for Wild Oats, said the release of confidential information is "obviously unfortunate and unfair" to the companies involved.

[Other FTC documents filed in the case revealed that Wild Oats may have retaliated against its former chief executive, [Bloomberg News](#) reported.

Perry Odak, who led Wild Oats until October, testified on behalf of Wild Oats in a probe that led to the FTC's suit to block the acquisition, the agency said.

"After receiving the transcript of Mr. Odak's testimony, the defendants appear to have withheld certain payments due to Mr. Odak," the FTC said.

Wild Oats management said the allegations aren't true, Tuitele said.]

http://www.washingtonpost.com/wp-dyn/content/article/2007/08/14/AR2007081401784_pf.html