
FTC v. Whole Foods: FTC Scores Premium Victory in DC Circuit

2008-08-06

The Federal Trade Commission (FTC) won a major victory last week when a splintered DC Circuit overturned the district court's denial of its request for a preliminary injunction against the acquisition of Wild Oats by Whole Foods. The decision provides the FTC a much-needed win in a prominent merger case. It also reaffirms both the centrality of detailed, case-specific facts and economic analysis to the antitrust analysis of mergers and the limited role for the courts in sifting through competing plausible and factually-supported theories and conclusions in preliminary injunction actions brought by the FTC. In addition, *Whole Foods* shows once again the damage that parties can do to their case by creating "hot documents" suggesting that their transaction may harm competition.

[See](#) our recent Email Alert for details on this case.