

Sarah Velody

Friday, March 13, 2009

UPDATED

VIA U.S. Mail & Email to: DCLARK@ftc.gov

Donald S. Clark

Secretary

Federal Trade Commission

Room H-135 (Annex N)

600 Pennsylvania Avenue, N.W.

Washington, D.C. 20580

Re: Public Comment on FTC's Proposed Consent Order Settlement with Whole Foods Market, Inc.

Dear Secretary Clark:

I am writing to comment on and object to the proposed Consent Order between FTC and Whole Foods Market, Inc. I chiefly object to said Consent Order because I think it victimizes Wild Oats

employees (the innocent party in this affair and therefore the least deserving of abuse) while at the same time letting Whole Foods off the hook. I suggest an alternative solution, outlined more fully at the conclusion of this letter that essentially forces Whole Foods to retain all the Wild Oats stores in good running condition for at least 5 years. It is the least the employees deserve after all they have been put through.

First and most importantly, FTC's position is supposed to be punitive against Whole Foods. I would like to respectfully point out that if it's supposed to be punitive action that FTC is imposing on Whole Foods then why is FTC allowing Whole Foods to get rid of the stores that I think they probably don't want? In my opinion, it would be far more punitive to force Whole Foods to get rid of some of their own top grossing stores. As the proposed Consent Order stands: a) Not only does Whole Foods get rid of stores that I believe it doesn't particularly want but also b) Whole Foods gets to have broken the back of Wild Oats which I think was doing quite nicely before its acquisition by Whole Foods - For in my view it is highly unlikely that Wild Oats will ever fully recover from Whole Foods' subsequent closing down of the Wild Oats stores after the acquisition. I also feel that the variety and quality of goods at some of the Wild Oats stores have been reduced since said acquisition which has probably had the effect of reducing Wild Oats' margins, thereby probably making Wild Oats less valuable and therefore probably more desirable for Whole Foods to get rid of - *just as the proposed Consent Order allows them to do!* To me, this hardly seems like a punishment for Whole Foods having been caught acquiring its rival Wild Oats for anticompetitive ends.

My second point concerns the employees of the Wild Oats stores. I have gotten to respect many of them over the past 20 years of shopping in Santa Fe and Albuquerque. It is easy for FTC to overlook the workers when FTC lawyers meet with Whole Foods lawyers. All too often, the workers, with no one to truly represent them, are left out of the equation. In particular, at the Wild Oats store on St. Francis where I shop most, there are employees that because of their loyalty over the years tend to be older. Not only have they had to put up with the stress and turmoil caused by the Whole Foods acquisition of Wild Oats 2 years ago, including the possibility of being forced to close as happened to 2 of the Wild Oats stores in nearby Albuquerque - now they are facing more upheaval: The proposed Consent Order targets 13 Wild Oats stores for divestment by Whole Foods (of which the Wild Oats on St. Francis Drive in Santa Fe, NM, is one) . If they are taken over by a new store these longtime workers will likely have to reapply for their old jobs (common practice with a takeover) and additionally, lose ALL the benefits that I assume they have built over the years - for some that's almost 20 years of benefits! For the FTC to do this to Wild Oats employees in this present economic climate is I believe wrong and damaging to their rights. But worse, is the fact that FTC is kicking them twice - once in not being timely in

preventing the Whole Foods acquisition of Wild Oats in the first place - and a second time by now exposing them to potential (let's be blunt, *likely*) loss of jobs and definite loss of built up benefits. As you know, right now especially, unemployment is rampant. Age discrimination is difficult to fight particularly in a tight job market. Another issue facing these older workers can be summed up in 3 words: "Preexisting Medical Conditions". If any of them have developed health problems how on earth are they going to get medical coverage at their new job, if they can *find* a new job? At their present stores they may be older but they are proven in the experience and knowledge that they bring to their positions. It is just common logic that another entity taking over these Wild Oats stores, per the direction of the proposed Consent Order, will probably not know the value of these older employees and so will be less likely to rehire them and certainly not at the same pay levels they deservedly reached over the years. I just wanted to point out what FTC is forcing these employees to face. And I wish to emphasize that these are the *Wild Oats* employees - they are the **innocent party** which FTC is supposed to protect, not punish. In short, I feel that the Consent Order as it now stands, gives a particularly vulnerable section of the workforce i.e. the veteran employee, a raw deal.

Still on the subject of Wild Oats employees, consider the ones I met at the Wild Oats store in Santa Fe who are actually "refugees" from 2 Wild Oats stores in Albuquerque that were closed down by Whole Foods over the past 2 years (one store was on Juan Tabo, the other on San Mateo if I recall correctly). These dedicated workers were absorbed into the Wild Oats at St. Francis Drive store in Santa Fe and have been driving 120 miles roundtrip almost daily in order to keep their jobs and benefits intact! Yet if I am interpreting this correctly, it sounds like this proposed Consent Order will just permit Whole Foods to cut them loose should another entity decide to buy the store and not rehire the employees. Surely a better solution can be found and certainly not at the further expense and suffering of Wild Oats employees.

My third and last point is that FTC's reasoning for permitting 13 Wild Oats stores to be divested is fundamentally flawed, particularly concerning the Wild Oats store on St. Francis Drive in Santa Fe, New Mexico. Allow me to point out why: FTC bases their divestment choice on the fact that Whole Foods has gained an unfair competitive edge against other natural foods stores by dominating the area with their stores. What FTC fails to realize, since they do not live in Santa Fe, is that within a 1.5 mile radius there are in fact 6 other different natural foods stores! These are: Trader Joes, La Montanita Co-op, Vitamin Cottage, Ticos and also not 1 but 2 Sunflower stores due to open in a few months. That doesn't include Kaunes (1/2 gourmet), nor the regular grocery chain stores such as Albertsons and Smiths that have aisles dedicated just to natural foods. So, the anticompetitive argument falls apart in the case of this particular Wild Oats store - so *why* is it

being targeted for divestment?

In sum, I object to the proposed Consent Order because in my view it is overtly unjust: It targets the original Wild Oats employees instead of protecting them; it does not involve too much sacrifice on the part of Whole Foods because it would require Whole Foods to shed stores that in my opinion it has either run down (or outright closed down!) or that possibly don't bring in as much money as their Whole Foods stores. The proposed Consent Order is just a little too sweet for Whole Foods for my liking and FTC alarm bells should be going off at the prospect of such a deal being struck. The terms of the Consent Order need to be rethought and should not involve the divestment of Wild Oats stores. An alternative Consent Order could include: 1) A requirement that Whole Foods pay a heavy fine for its anticompetitive practices, and 2) Whole Foods be forced to retain the Wild Oats stores in good working condition and agree to keep them open for at least another 5 years thereby ensuring some degree of stability and security for its employees.

Thank you for your time.

Sincerely Yours,

Sarah Velody (Loyal, longtime Wild Oats customer)