Exhibit 2 to Plaintiff's
Memorandum of Points and Authorities
in Support of Its Motion for Temporary
Restraining Order and Preliminary Injunction
(PX01324)
Cited Portions of the Exhibit are Excerpted

FEDERAL TRADE COMMISSION

I N D E X

WITNESS:		EXAMINATION:
JOHN P. MACKEY		
BY MR. FRANCHAK		6

EXHIBITS	DESCRIPTION	FOR ID
Number 832	Motley Fool Transcript	223
Number 764	5/2/2006 e-mail	269
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FEDERAL TRADE COMMISSION

WHOLE FOODS MARKET, INC.,)
a corporation,)
and) File No.
WILD OATS MARKETPLACE, INC.,) 0710114
a corporation.)
------------------------------)

Friday, April 27, 2007

Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, D.C. 20580

The above-entitled matter came on for investigational hearing, pursuant to notice, at 8:05 a.m.

APPEARANCES:

ON BEHALF OF THE FEDERAL TRADE COMMISSION:
MICHAEL A. FRANCHAK, ESQ.
SAM SHEINBERG, ESQ.
Federal Trade Commission
601 New Jersey Avenue, Northwest
Washington, D.C. 20580-0000
(202) 326-3572

ON BEHALF OF WHOLE FOODS MARKET, INC.:
NEIL W. IMUS, ESQ.
Vinson & Elkins
1455 Pennsylvania Avenue, Northwest
Washington, D.C. 20004
(202) 639-6675

ALSO PRESENT:
CHETAN SANGHVI, ROBERTA LANG, ERIN DWYER-FRAZIER,
CONWAY BARKER

P R O C E E D I N G S

- - - - - - - -

VIDEO OPERATOR: The Federal Trade Commission in the matter of Whole Foods Market, Incorporated, versus Wild Oats Marketplace, Incorporated, Case Number 0710114.

This is the deposition of Mr. John Powell Mackey. Today's date is April 27, 2007. The location of the deposition is the Federal Trade Commission, 601 New Jersey Avenue, Northwest, Washington, D.C.

Will counsel please identify yourselves and state whom you represent.

MR. FRANCHAK: I'm Michael Franchak. I represent the Federal Trade Commission.

MR. SANGHVI: Chetan Sanghvi, also from the Federal Trade Commission.

MR. SHEINBERG: Sam Sheinberg, Federal Trade Commission.

MS. DWYER-FRAZIER: Erin Dwyer-Frazier, Federal Trade Commission.

MS. LANG: Roberta Lang, general counsel of Whole Foods Market.

MR. IMUS: Neil Imus, Vinson & Elkins, representing Whole Foods Market.

VIDEO OPERATOR: The court reporter is Brenda Smonskey. The video camera operator is Conway Barker, both on behalf of For the Record.

This deposition commences at 8:06:16. Please swear in the witness.

Whereupon,

JOHN P. MACKEY

was called as a witness and, having first been duly sworn, was examined and testified as follows:

VIDEO OPERATOR: You may proceed.

MR. FRANCHAK: Good morning, Mr. Mackey.

MR. IMUS: Michael, could I just state for the record that Whole Foods had no opportunity to have any input in the way the video deposition was set up or done, and I just want to record that for the record that we are not agreeing to the fact that we do have a video deposition or the process in which it is being done.

Thanks, Mike.

EXAMINATION

BY MR. FRANCHAK:

Q. Mr. Mackey, have you given testimony in a legal proceeding before?

A. Twice before.

Q. When was that?

They are just not coming quite as often to Whole Foods as they were.

Q. The competitors -- I will step back.

Very early on, I have read that you pursued an aggressive strategy of wanting to locate in very close proximity to Wild Oats. Is that fair to say?

A. That's fair to say.

Q. As Wild Oats has started to locate further outside the normal areas for national natural and organic players, you followed them as well to send a message to them. Is that fair to say?

A. No, that's not quite fair to say.

Q. Why not?

A. We don't go into a market just because Wild Oats is there. It is not -- we are trying to open stores that will create the highest long-term investment on capital, will maximize long-term EDA.

But if Wild Oats is in a market we want to go into and we -- Wild Oats has never been successful in competing against us.

Q. Not in Long Beach, where you weren't able to get real estate?

A. Well, since we are not competing with them in Long Beach --

Q. So that's how you are defining competition?

A. If we are not competing against somebody, then we are not competing against somebody.

Q. But you were competing to try to get a site there, weren't you?

A. We did sign a site there, and then ultimately the city didn't approve it. Today you have to get permission from a lot of government agencies in order to operate a business.

That retail store did not get permission from the local government to operate. It happened to us several times before.

But otherwise we would be happy to be competing against Wild Oats in Long Beach or anywhere else, because they have never been successful against us. We have always been successful against them.

Q. Wild Oats has gone into certain markets before you have gotten there throughout central United States. Is that fair to say?

A. They open locations in markets where we haven't yet opened a store, yes, sure. So has Kroger and Safeway and Trader Joe's.

We don't like Wild Oats. They are a competitor. We don't like Trader Joe's. We don't like Wegman's. We don't like HEB. We don't like

Wal-Mart. We don't like Tesco.

We don't like any of these guys. They are our competitors. They are competing against us. They are making it more difficult for us to be successful.

That's the way capitalism works. You have competition. You either get better or you fail.

Wild Oats is a great example of a business that hasn't gotten better quick enough. Basically, they haven't been successful as a business.

One of the reasons we are interested in buying Wild Oats -- there are many reasons why we want to buy Wild Oats, but one of the reasons is that they haven't -- they need an exit strategy.

These are guys that haven't been successful and they have been in business for 20 years. We competed against them for almost 20 years now. They have continued to lose money.

They don't have a CEO. They don't have a CFO, a permanent one. They need a way to get out to create value for their shareholders.

So it is either Whole Foods buy them or we potentially see someone like Kroger or Safeway or Tesco or God knows who else, a private equity firm, buy them and recapitalize them, potentially bring in new management. And we would rather not see that happen.

Q. That's a driving fear for you?

A. A driving fear? I wouldn't say it's a driving fear. But it is something that is on our radar screen.

We would rather own Wild Oats than have someone else own them. It seems sort of self-evident.

MR. FRANCHAK: Can we go off the record for a second.

VIDEO OPERATOR: This is the end of tape 1. Off the record at 9:20:23.

(Recess.)

VIDEO OPERATOR: This is the beginning of tape 2 in the deposition of John Mackey.

On the record at 9:27:22.

MR. FRANCHAK: Going back on the record.

I have distributed six e-mails that I would like to discuss with Mr. Mackey.

The first one is Bates number -- numbered PX 771. It is an e-mail from John Mackey sent January 19, 2007 to Glenda Chamberlain. The subject is --

A. 771, where I said "good list"? I will stand by that.

dollars by that store closing down.

So that has value to Whole Foods.

Q. But another reason that that would have value to Whole Foods -- and now I will refer to PX 773. This is the second sentence that you wrote there.

"By buying them" -- that's Oats -- "we will greatly enhance our comps over the next few years and will avoid nasty price wars in Portland, both Oregon and Maine, Boulder, Nashville and several other cities which will harm our gross margins and profitability."

A. Of course.

Q. So by avoiding the price competition, your profitability will increase and it will help your margin?

A. Absolutely, in the short run. You see, I think one of the assumptions you guys are making based on the line of questions you are making is that you assume sort of a static competitive model.

And the reality of the situation is that that's not the way markets work. Markets are dynamic. Markets are competitive.

So Whole Foods would have a temporary -- eliminate this immediate competitor, and we would have a temporary gain.

We are going to eliminate that competitor one way or another, because Wild Oats is not a sustainable business. That's why this whole exit strategy came up to play.

Wild Oats is a failed business. It is just a matter of time. They are going to be deconstructed.

And perhaps Whole Foods -- maybe the FTC will not let Whole Foods deconstruct Wild Oats. Maybe you would prefer Safeway or Kroger. God knows why you would prefer one of those guys to own them. But maybe one of those guys will deconstruct them, or a private equity group will come in and break them up, break out Henry's, because their business model doesn't work.

They really can't compete successfully with us. There is no evidence they have been able to compete successfully with us.

We have a ton of stores that are about to open up in Wild Oats' markets. So we are systematically -- Wild Oats cannot compete with Whole Foods.

Since we have a number of stores that are coming into new markets, their business is going to fail. It is just a matter of time.

That doesn't mean the market, therefore, is owned by Whole Foods Market. That's the way capitalism works.

The weak competitors or the ones who create less value for customers, the ones the customers vote out of office -- mind you, it might be important to add for the record that Whole Foods Market can't put Wild Oats out of business. We have never put anybody out of business.

Customers vote. They vote on which stores they want to patronize. They are not voting for Wild Oats.

When Whole Foods is there and we are competing with them, they choose us, or the great majority of them do. It's not enough for Wild Oats to have a sustainable business model.

So yes, in the short run, you guys should never approve any mergers. No vertical mergers or horizontal mergers should ever be approved by the FTC, because in the short run they always lessen competition. That's just the way business works.

There are no barriers to entry to this. Whole Foods has competitors all over the map. Our competition is increasing.

If there is a temporary gain, if there is a market opportunity, someone else comes in and fills the niche. A better player, a stronger player than Wild Oats comes in to compete.

So for the record, every single retail acquisition Whole Foods has ever done was partly done to lessen competition with that retailer.

And I suppose every retail acquisition that has ever occurred, including all the supermarket mergers you guys have approved, lessened competition to a certain degree in the short run.

But in the dynamic model, in a dynamic business environment with no barriers to entry, with no monopolies, competition evolves and you reshuffle the cards and you have new players you have to compete against.

Your business models are imitated. Your products are knocked off. Your competitors come after your competitive advantages and they erode.

Wild Oats just needs -- they have been trying and they just haven't been successful. They really need to get off the playing field.

It is just a question of whether or not Whole Foods is going to be the one to take them off or you are going to force us to compete with them and instead of $70 million in write-offs, five years from now you will be talking about the amount of $150 million of write-offs.

So they will be worth less money, and maybe they will have to file Chapter 11 or go bankrupt and someone else will have to come in and pick up the pieces.

Yes, I will stand by these e-mails. They are all true. We want to eliminate a competitor. It will in the short run help Whole Foods.

That's why we are paying $18.50 a share. They are not making any money. So how can we afford to pay anything for them?

It is for the reasons we have outlined here. We eliminate that G&A. We are able to rationalize the store base, get rid of the stores, instead of forcing them to close the stores down painfully, like they just took another write-off of stores that failed to compete with Whole Foods.

We can continue to do that and make this a very protracted death or we can create an exit for them.

Obviously they feel like it is in their best interest to take this exit right now because this maximizes their shareholder value at $18.50 a share.

When Perry Odak was brought in by Wild Oats, if you look at that guy's track record, every company he has ever worked for he has sold. He was brought in to sell Wild Oats.

Obviously they weren't able to do it or else they would have already been sold. Whole Foods is the logical buyer of Wild Oats because we don't need their corporate overhead. We don't need any of that stuff.

So we can rationalize that store base. Our sales per square foot are over 100 percent greater than theirs. So we can improve their stores that remain after we -- some stores will be closed. Some will be sold and some will be improved.

We will pour our intellectual capital into it. This will be good for customers in terms of the customers benefitting.

By Whole Foods Market intellectual capital flowing into Wild Oats, you will take stores that were doing $400 per square foot and within a couple years they will be doing 900 to $1000 per square foot.

Customers are going to be voting for those stores once Whole Foods Market injects its intellectual capital into Wild Oats in a way that they are not voting for Wild Oats right now.

They are not voluntarily shopping at Wild Oats to the same degree they are voluntarily shopping at Whole Foods Market.

Q. Those customers would also benefit from the nasty price wars you are trying to avoid, wouldn't they?

A. Temporarily they would. Again, I ask the rhetorical question. Why do you permit any mergers to happen? They also lessen competition in the short run.

This will lessen competition in the short run. But it doesn't prevent competition from occurring in this market or in the food retailing market.

There are plenty of other competitors that go out there. Your assumption is that Wild Oats is a viable competitor to Whole Foods Market. It is not. It is a failure.

It needs to be removed from the playing field. It is just a question of do you want Kroger or Safeway to be the ones to remove them.

Wild Oats doesn't want that because Kroger and Safeway will probably pay them $8 a share or $6 after Whole Foods has continued to batter them around over the next few years, as we open stores in Nashville.

In Portland, Maine they have to start reporting loss of earnings in Portland, Maine. And all the other markets that we have 90 stores in development, and a number of those are in Wild Oats market.

That is just -- I don't think they have an answer for our competitive -- our business.

Q. What I don't understand is why it isn't in our interest and consumers' interest to let that play out the way you have been competing up to this point.

A. It might be in the consumers' interest. I mean, I can't say that for sure.

But I believe that by eliminating Wild Oats off the stage, the stores that remain will definitely be improved and the consumers will benefit that way, and it creates the opportunities for Trader Joe's, for other supermarket companies to come in and vigorously compete with Whole Foods Market.

So again, I don't know why you allow any mergers. Can't you make the argument for every single merger that there is a loss of some competition that occurs when that merger happens?

Isn't that true for all mergers in the short term? I would submit it is. I would submit every merger we have ever done has temporarily lessened competition. But it hasn't lessened competition in the long run because of the dynamic nature of competitive markets, where we don't have a monopoly, we don't have a patent, there are no barriers to entry.

Q. I would like to again refer back to PX 773 --

A. It is kind of like if you want to force us to kill Wild Oats, fine. That's what's going to happen. Or there can be some value that is retained here, a lot of jobs protected.

It is like -- it just seems such a waste to have to just -- I don't know. Obviously, if I had known the FTC was going to -- we thought that this was going to be an easy, quick deal because Whole Foods has less than 1 percent of the market share of the food retailing business. You are approving supermarket mergers all the time.

This deal -- we are going to open a lot more stores. Wild Oats is just not very important to us.

In a lot of ways just being able to offer them an exit strategy so they can retain some value just seemed like almost -- it is a compassionate thing to do. It is a good thing to do for them and a good thing to do for all the different stakeholders involved.

If you want to take a very narrow focus that there could be some customers in the short run that lose, well, again, I think that's true of all mergers. So I'm not going to refute that or try to refute it.

Q. Along those lines, does that mean that we shouldn't have antitrust laws regulating mergers?

A. You are asking the wrong guy.

Q. Fair enough.

I want to direct your attention to under "reasons to do the deal," the first sentence, "elimination of an acquisition opportunity for" --

A. Which document are you looking at?

Q. I'm looking at 773. These are the reasons that I believe Glenda mentioned before and you said "good list" in one of the other e-mails.

A. Yes.

Q. The sentence reads, "Elimination of an acquisition opportunity for a conventional supermarket, Cabrito" -- and that's in reference to

Oats -- "is the only existing company that has the brand and number of stores to be a meaningful springboard for another player to get into the space. Eliminating them means eliminating this threat forever or almost forever."

What is "this threat" you are referring to there?

A. It would not be the best thing for Whole Foods Market if -- let's take a hypothetical.

Let's say Kroger said "you know what, let's just do what Whole Foods is doing completely. We have the capital, we have the resources."

If they try to do what we are doing and they started up from scratch, it is going to take them longer to harm us.

But if they do it right, if they acquire Wild Oats and they use the Wild Oats brand which already has, using those marketing buzzwords, more brand equity in the marketplace than a start-up is doing, like Super Value with their Sunflower concepts, it gives them a head start.

So we would rather that not happen. That would not be good for Whole Foods Market.

So by acquiring them, we eliminate that threat forever, at least the Wild Oats threat from somebody acquiring Wild Oats and using it kind of as a springboard to try to really hurt Whole Foods.

Q. And the sentence says "Cabrito" -- Oats -- "is the only existing company that has the brand and the number of stores to be a meaningful springboard for another player to get into the space."

The "meaningful" word there, you mentioned the Super Value example with Sunflower. That wouldn't be a meaningful entry into the space?

A. We are not happy about that either.

But Wild Oats has more intellectual capital. It has a better brand. It has been in business 20 years.

Even though it hasn't been successful, it does do over a billion dollars in sales. It has already had a lot of media attention. If you were to ask people randomly around the United States or did some kind of marketing survey, you would see that Wild Oats is far better known than Sunflower is.

So it is easier for them to use that to compete with Whole Foods than a start-up would be.

Q. And the note after those first two is that "these two alone make the deal worth doing."

Fair to say that the two reasons there, the elimination of an acquisition opportunity for a conventional supermarket and the elimination of Oats as a competitor, are the primary reasons you are pursuing this deal?

A. I think you got all the documents. We list a number of reasons why we want to do this deal.

Again, this is taken from Chamberlain's documents. I basically just copied her.

But relatively speaking, if you look at our market cap and look at what we are paying for Wild Oats, it is not a big chunk of the value of our company.

It might be a little hyperbole, since Glenda didn't try to quantify that. It is more of -- this was sent to our board.

It is more to emphasize to them that eliminating this potential threat of Kroger or Safeway or somebody else, Super Value, using this brand equity and the ability to rationalize the store base, instead of having to go through the systematic process of all of their best stores, as we open stores near them, those stores fail, and then those are the ones that are sustaining the profitability of the company, and if you keep knocking those off, eventually they have to sell themselves to somebody else or go Chapter 11.

They don't really have a choice. Wild Oats is either going to go bankrupt or be sold to someone.

It is just a question of whether Whole Foods is going to buy them, Kroger. I don't think they want to go bankrupt. I really think they want to sell themselves to somebody. We are the highest and best buyer for Wild Oats.

Q. Strategic buyers always are -- strategic buyers almost always are the highest bidder?

A. I'm sorry, who?

Q. Strategic buyers almost always are the highest bidder, typically; right?

A. This is your expertise more than me. In this particular case, we would seem to be the highest and best buyer.

Q. Our role, our job here isn't to make sure that the Oats shareholders get the best price. Our job is to make sure that competition works aggressively and for consumers.

A. Again, I go back to a rhetorical question. All mergers restrict competition in the short run. Why do you ever approve any mergers at all?

I think the real question the FTC has to ask, is there any kind of permanent restriction to competition? Does Whole Foods have some type of stranglehold or monopoly that other people can't compete against?

To me, the answer is pretty clear. We don't. That to me is a relevant question here, not whether or not in the short run us acquiring Wild Oats is going to lessen competition. Because it self evidently will lessen competition in those markets that we are competing with Wild Oats in when we are going to intend to close stores.

Again, isn't that true in every one of the acquisitions any one of these guys do? One of the motivations is to eliminate a competitor. I will not deny that. That is one of the reasons why we are doing this deal.

That is one of the reasons we are willing to pay $18.50 for a company that has lost $60 million in the last six years.

If we can't eliminate those stores, then Wild Oats, frankly, isn't worth buying.

Q. I can tell you it is not true that every example where we look at deals to examine them are we told that the deal itself will help them avoid nasty price wars in specific markets.

A. Then they are just lying to you.

Q. Okay. If there is a lessening of competition, they are not always described as nasty. The types of swings we are seeing in these locations in volume are dramatic.

A. Price wars are always nasty. That's just an adjective that you are using to describe something. You can use a different word, unpleasant, vicious.

Business people like to using the war metaphors and all this macho type of descriptive language. "Nasty" seems to me to be relatively not that bad.

Q. This document, 773, 779, 771 --

A. I think Whole Foods lists a lot of reasons why we want to do this deal.

Yes, eliminating a competitor is one of the reasons why we want to do it. And then there are lots of other reasons.

So I think you have to look at it in the context of all the reasons why we want to do this deal. It is not that single one.

I think if it was that single one, it wouldn't be worth paying this much money for. We list a number of values that this thing does for Whole Foods Market. And eliminating a competitor, being able to increase our comps and being able to increase our profits, at least in the short run, is certainly one of the reasons why.

Q. Anyway --

A. Guilty as charged.

Q. I guess looking at 779, the question there raised in the penultimate e-mail from Glenda to you of 5/19 and then you responded --

A. By the way, you are asking about our comps. If you look at Stacey Hayes, February 12, "4.8 percent last week, 4.6 percent quarter to date."

Those comps are now flattening out to pretty similar to a lot of other supermarket chains.

Q. Glenda asked you and Jim whether we wanted to change our comp guidance for the year. And your answer was -- did you indeed do that?

A. We don't have a deal.

Q. So you don't want to make any announcements on your comp guidance --

A. We don't know when this deal is going to close, if it will close or if we will be allowed to close any stores that potentially compete with us.

We don't know what the FTC is going to do. It is a little premature to change comp guidance, wouldn't you say?

It will probably be next fiscal year. Our fiscal year ends September 30th anyway.

Q. How important to the economics of the deal is being able to close all of the stores that compete with you, some of the stores that compete with you?

A. I don't have that information available to me.

Q. If you did want to find that out, would you look to the model that Betsy and Jim and RBC were putting together?

A. You know, the comps, closing the Wild Oats stores will be an immediate boost to our comps.

It is an unfortunate truth that as a public retail corporation, the market overrates the value of comps. They are obsessed with comps. They always want to talk about comps, comps, comps, comps, comps, comps, comps, comps.

If we show an increase in our comps, our market capitalization will go up, and it will be a short term type of thing because, again, those things cycle over.

After a year, the benefit you got from those comps increases -- say we close the Wild Oats Portland, Maine store. There will be a temporary

C E R T I F I C A T I O N   O F   R E P O R T E R

DOCKET/FILE NUMBER: 0710114
CASE TITLE: WHOLE FOODS MARKET
HEARING DATE: APRIL 27, 2007

I HEREBY CERTIFY that the transcript contained herein is a full and accurate transcript of the notes taken by me at the hearing on the above cause before the FEDERAL TRADE COMMISSION to the best of my knowledge and belief.

DATED: APRIL 29, 2007

____

BRENDA SMONSKEY

C E R T I F I C A T I O N O F P R O O F R E A D E R

I HEREBY CERTIFY that I proofread the transcript for accuracy in spelling, hyphenation, punctuation and format.

____

DIANE QUADE