

Congress of the United States
Washington, DC 20515

December 12, 2023

Lina M. Khan, Chair
Rebecca Kelly Slaughter, Commissioner
Alvaro Bedoya, Commissioner
Federal Trade Commission (FTC)
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Dear Chair Khan, Commissioner Slaughter, Commissioner Bedoya:

We write to urge the Federal Trade Commission (FTC) to carefully scrutinize the proposed merger involving the Kroger Corporation (Kroger) and Albertsons, which are the largest and second-largest supermarket chains in the United States respectively. This proposal is the culmination of a decades-long consolidation trend, led by these two companies, that has eliminated neighborhood stores, leading to higher prices, while also creating pharmacy and food deserts in vulnerable communities. As the two companies have bought out their competitors, they have accrued increased market power – negatively affecting labor markets.

Past mergers have left some regions with just a single major employer, who, holding monopsony power, can impose lower wages and benefits than the unions achieve in regions where there are several employers that the union negotiators can negotiate with. According to United Food and Commercial Workers (UFCW) union reports, in regions where Kroger has no major competition, it has resorted to numerous unfair labor practices to impede unionization. We understand that today, Kroger has been held in contempt for failure to abide by adjudicated remedies for its past unfair practices—practices that persist today. Across the country, this merger would sharply reduce labor’s ability to effectively represent workers.

We are also deeply concerned about the Kroger and Albertsons announcement on September 8 that they have entered into a \$1.9 billion agreement with C&S Wholesale Grocers (C&S) to sell 413 stores and eight distribution centers across the country, as part of a bid to satisfy regulators reviewing the \$24.6 billion proposed mega-merger. Historically, divestiture plans have been harmful. UFCW reports the proposed divestitures will implicate the following Locals:

- California - 66 Albertsons and Kroger stores to be divested. UFCW Locals 5, 324, 770, and 1442 all represent workers at Albertsons and/or Kroger stores in California, and these unions represent the majority of Kroger and Albertsons stores in the state and therefore their members at the stores to be divested will be directly impacted. Local 324, 770 and 1442 are part of a Southern California bargaining unit including other UFCW locals.

- Washington - 104 Albertsons and Kroger stores to be divested. The vast majority of these stores employ workers represented by UFCW Local 3000 or another UFCW Local.
- Colorado - 52 Albertsons stores to be divested. UFCW Local 7 represents almost all workers of these stores.
- Oregon - 49 Albertsons and Kroger stores to be divested. Some of these stores employ workers represented by UFCW Local 3000 or another UFCW Local.
- New Mexico - 12 Albertsons stores to be divested. All of these stores employ workers represented by UFCW Local 1564.
- Montana/Utah/Wyoming - 12 Albertsons stores to be divested. Some of these stores have workers represented by UFCW Local 7.

UFCW data indicates that C&S does not have the capability to operate grocery markets well enough to be a strong competitor in a post-merger Kroger market. It has functioned as a wholesale supplier to other grocery chains for nearly its entire existence, operating only a handful of retail stores. Thus, C&S has been operating a small chain, split into two regions hundreds of miles apart, in which the majority of its stores were run by franchisees, not it. It now proposes to take on 413 stores, increasing their size by a factor of eight overnight, largely in areas where it has no retail experience. The majority of the divested stores are located on the West Coast, while C&S has only three distribution centers west of the Rockies and none in the Mountain states.

Furthermore, there is good reason to doubt that the spun-off properties are intended to remain in the grocery business. The \$1.9 billion deal price is approximately half a billion dollars less than the value of just the real estate on which the stores sit – and the UFCW Locals fear that the structure of the deal could be modeled on the 2015 divestiture to Haggen, with one company set up to operate the stores and a second, bankruptcy-remote firm set up to hold the real estate, suggesting that this could be a real-estate play and not meant to ensure the viability of a grocery chain. This merger, if allowed, will strand countless consumers without local markets and workers without jobs. Therefore, it is critical that the FTC enforce the law when it comes to Kroger's intention to acquire Albertsons.

Lastly, this divestiture plan is silent on a number of elements that are critical to any new market entrant's survival. To provide more transparency on this proposal, we request that the Federal Trade Commission provide us with the following information:

- What is C&S' plan to continue operating pharmacies in the stores they acquire? Do they have adequate leverage within a concentrated pharmacy benefit management industry?
- Will Kroger and C&S make the 413 store locations public so local communities can have advance notice of any changes to their food source? C&S has indicated they will purchase up to 237 more stores – will they provide the locations of those stores?

- Has C&S contacted the local union representing the workers in those 413 stores?
How does C&S intend to distribute assets between the two corporate entities it has set up? Will C&S be granted access to customer loyalty data and distribution networks?

Thank you for your full and fair consideration of this request, consistent with applicable agency guidelines. We are hopeful for a response by January 11, 2024.

Sincerely,



Barbara Lee
Member of Congress



Pramila Jayapal
Member of Congress



Henry C. "Hank" Johnson, Jr.
Member of Congress



Greg Casar
Member of Congress



André Carson
Member of Congress



Katie Porter
Member of Congress



Bonnie Watson Coleman
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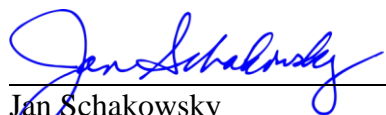
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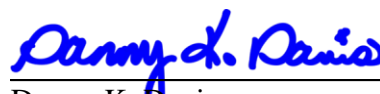
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