



May 15, 2023

VIA ELECTRONIC FILING

The Honorable Lina M. Khan, Chair
The Honorable Rebecca Kelly Slaughter, Commissioner
The Honorable Alvaro Bedoya, Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Anticompetitive and Consumer Protection Concerns of the Proposed Kroger-Albertsons Merger

Dear Chair Khan and Commissioners Slaughter and Bedoya,

The Center for Science in the Public Interest (CSPI) respectfully submits these comments in opposition to the proposed acquisition of Albertsons Companies, Inc. (Albertsons) by Kroger Company (Kroger). CSPI is an independent, science-based consumer advocacy organization that has worked for over 50 years to improve the food system to support healthy eating. A merger of Kroger and Albertsons would dramatically decrease competition within an already consolidated food retail market, which would result in fewer grocery stores and higher food prices, negatively impacting food and nutrition security for consumers across the country. Additionally, the proposed merger would substantially increase Kroger-Albertsons' buying power, worsening anticompetitive retailer marketing practices to the detriment of smaller suppliers and consumers.

The Kroger-Albertsons merger would combine the two largest U.S. supermarket chains, resulting in an entity that would control 22% of the food retail market and make it the nation's second largest food retailer.¹ Post-merger, two firms would control over 55% of the national food retail market that includes supermarkets, grocery stores, warehouse clubs, and supercenters (Walmart and Kroger-Albertsons).² The proposed merger would continue the trend of concentration in the food retail market; over the past three decades, national market concentration, measured by the Herfindahl-Hirschman Index, has increased by 458 percent and county-level market concentration has increased by 94 percent.³ The merger would reduce competition in numerous states, increasing anticompetitive concentration in local markets.⁴ Kroger and Albertsons acknowledged local market competition concerns by proposing to divest 100–375 stores.⁵ However, divestitures as conditions of previous grocery mergers have proven unsuccessful solutions to local market concentration, leading to companies buying back stores and store closures.⁶

Consumer concerns arise from the Kroger-Albertsons merger as the recent consolidation of the grocery market has been associated with fewer grocery stores.⁷ Nearly forty million Americans already live in areas that have low incomes and low food access, with evidence that the food access crisis is worsening.⁸ Limited geographic access to healthy food is a key contributor to nutrition insecurity and inequality, as limited access to supermarkets, supercenters, grocery stores, or other sources of healthy and affordable food makes it harder for Americans to achieve a healthy diet.⁹ Nutrition insecurity is defined by the USDA as lacking “consistent and equitable access to healthy, safe, and affordable foods that promote optimal health and well-being.”¹⁰ Poor nutrition is the leading cause of illness in the United States, leading to 600,000 deaths caused by diet-related disease every year.¹¹ Importantly, there are health equity concerns as Black and Latine communities have less access to healthy food retailers¹² and are therefore disproportionately impacted by food and nutrition insecurity and diet-related chronic diseases relative to their white counterparts.¹³ The proposed merger will worsen the current food access crisis and is likely to have a greater impact in areas where food access is already limited, potentially worsening inequities.

The Kroger-Albertsons merger will also harm consumers by exacerbating current food access issues through higher prices. Grocery mergers in highly concentrated markets are associated with higher food prices¹⁴ and affordability is a key barrier to healthy eating and is associated with food insecurity.¹⁵ Americans are already facing unprecedented high food prices, constraining their budgets and likely leading consumers to choose cheaper, unhealthy foods.¹⁶ The increase in the price of groceries driven by the proposed merger is therefore likely to further exacerbate food and nutrition insecurity.

Finally, smaller suppliers and consumers will be negatively impacted by Kroger-Albertsons’ consolidated buying power. CSPI is committed to promoting a competitive, fair food retail market where Americans have access to affordable, nutritious groceries. In 2021, CSPI submitted a [letter](#) requesting that the FTC investigate under Section 6(b) of the FTC Act food retailer and manufacturer marketing practices of antitrust and consumer protection concern, including trade promotion practices and category captain arrangements. Since then, CSPI filed a [public comment](#) on how supply chain disruptions have further exacerbated the previously identified threats to competition and consumer choice in the food retail marketplace. By increasing consolidation in the food retail market, this merger would further threaten competition and consumer choice. The proposed merger would concentrate powerful cooperative marketing agreements, thus consolidating retailer control of trade promotion practices like exorbitant slotting fees and category captain arrangements where a single brand exerts influence on product placement and pricing across entire categories of foods.¹⁷ Smaller suppliers could face higher barriers to entry, further ceding control to major food manufacturers and processors and their predominantly unhealthy products, and ultimately limiting consumer choice.¹⁸ And while store

closure and food price concerns are manifest in local markets, this buyer power consolidation creates anticompetitive concerns in regional and national markets, underscoring the widespread anticompetitive impacts of the proposed merger.

Kroger and Albertsons claim the merger will benefit consumers,¹⁹ yet there is no evidence the projected efficiencies stemming from the merger will meet Horizontal Merger Guidelines for pass-through of cost savings to consumers.²⁰ In fact, the proposed merger is likely to harm consumers through an anticompetitive food retail market with fewer stores, higher food prices, and consolidated food manufacturer and processor control, ultimately reducing healthy food access. We urge the FTC to seek to enjoin this merger.

Thank you for the opportunity to share CSPI's perspectives on maintaining a fair and competitive food retail environment that operates in the best interest of America's consumers and their health. We welcome the opportunity to discuss our concerns about the Kroger-Albertsons merger and the negative implications for consumer health with you and the FTC.

Respectfully,

A handwritten signature in black ink that reads "Peter Lurie". The signature is written in a cursive style with a horizontal line underneath the name.

Peter Lurie, M.D., M.P.H.
President and Executive Director
Center for Science in the Public Interest

A handwritten signature in black ink that reads "S John". The signature is written in a cursive style.

Sara John, Ph.D.
Senior Policy Scientist
Center for Science in the Public Interest

¹ Food & Water Watch, The Economic Cost of Food Monopolies: The Grocery Cartels. (Nov. 2021), https://www.foodandwaterwatch.org/wp-content/uploads/2021/11/IB_2111_FoodMonoSeries1-SUPERMARKETS.pdf

² *Id.*

³ USDA Economic Research Service, Food retailing market concentration increased more at national level than county level over past three decades. (Jan. 2023) <https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=105671>

⁴ Kroger, Albertsons Companies, Merger Investor Presentation. (Oct. 2022) https://s1.q4cdn.com/137099145/files/doc_downloads/2022/Kroger-and-Albertsons-Merger-Investor-Presentation-FINAL.pdf

⁵ *Id.*

⁶ Kendall, B. and Brickley, P. Albertsons to Buy Back 33 Stores It Sold as Part of Merger With Safeway, Wall Street Journal (Nov. 24, 2015), <https://www.wsj.com/articles/albertsons-to-buy-back-33-stores-it-sold-as-part-of-merger-with-safeway-1448411193>.

⁷ Food & Water Watch, 2021.

⁸ Rhone, A, et al. Low-Income and Low-Supermarket-Access Census Tracts, 2010-2015, USDA ERS Economic Information Bulletin No. (EIB-165) 21 pp (Jan. 2017).

⁹ Allcott H, et al. Food Deserts and the Causes of Nutritional Inequality*. *The Quarterly Journal of Economics*. 2019;134(4):1793-1844.

¹⁰ USDA Food and Nutrition Service, USDA Actions on Nutrition Security, (Accessed May 2023), <https://www.usda.gov/nutrition-security>.

¹¹ *Id.*

¹² Amin, MD, et al. Predicting access to healthful food retailers with machine learning. *Food Policy*. Feb. 2021;99:101985.

¹³ USDA Food and Nutrition Service, May 2023.

¹⁴ Hosken DS, et al. Do retail mergers affect competition? Evidence from grocery retailing. *Journal of Economics & Management Strategy*. 2018;27(1):3-22.

¹⁵ USDA Food and Nutrition Service, Barriers that Constrain the Adequacy of Supplemental Nutrition Assistance Program (SNAP) Allotments: Survey Findings (June, 2021), <https://www.fns.usda.gov/snap/barriers-constrain-adequacy-snap-allotments>.

¹⁶ U.S. Department of Agriculture ERS. Food Price Outlook, 2023. Updated March 24, 2023. Accessed April 19, 2023. <https://www.ers.usda.gov/data-products/food-price-outlook/summary-findings/>

¹⁷ Rivlin, G, Rigged: Supermarket Shelves for Sale, CSPI (Sep. 2016) <https://www.cspinet.org/resource/rigged>

¹⁸ *Id.*

¹⁹ Kroger, Albertsons Companies, 2022.

²⁰ U.S. Department of Justice and the Federal Trade Commission, HORIZONTAL MERGER GUIDELINES (2010), <https://www.justice.gov/atr/horizontal-merger-guidelines-08192010#10>.