

United States Senate

September 22, 2023

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW Washington, DC 20580

Dear Chair Khan:

Since Kroger announced on October 14, 2022, that it would acquire Albertsons for \$24.6 billion, we have been closely monitoring the situation, listening to Alaskans, reviewing the history of similar mergers in Alaska, and waiting for Kroger to share its divestiture plan. We can say with great confidence that this potential merger has Alaskans justifiably on edge and that the track record of grocery store consolidation in our state does not bode well for Alaskans' food security, affordability, and our dedicated workforce.

On September 8, 2023, Kroger [announced](#) a \$1.9 billion divestiture agreement with C&S Wholesale Grocers, LLC (C&S). The agreement proposes to sell 14 of 35 existing Carrs-Safeway stores currently owned by Albertsons to C&S. Based on this news, we write to express our deep concerns about the agreement and the potential impacts the proposed merger will have on Alaskans. There are simply too many unanswered questions and unforeseen consequences over the horizon should this merger be approved. When reviewing this proposed merger, we ask that you and the Federal Trade Commission (FTC) set a very high approval bar and consider the following issues that are essential to Alaskans' well-being.

First, Alaskans already face higher prices than the average American consumer due to higher transportation costs. The FTC's review of this merger must include a rigorous assessment of consumer price and competition impacts. As my colleagues in the Alaska State Legislature have noted in their correspondence to you, across Alaska's five largest jurisdictions, Fred Meyer and Safeway/Carrs are each other's primary competitors. Although Kroger's divestiture announcement does not specify where the 14 transfers of ownership will take place, the sales will likely occur where stores are near one another. The likely result is that in Alaska's most populous markets, Kroger would lose its largest and most sophisticated competitor, which in time would be subsumed by a new and unproven operator in the Alaskan market. On its face, the proposal appears to violate the FTC's longstanding [merger guidelines](#) regarding market competition and concentration.

In testimony to the Senate Judiciary Committee on November 29, 2022, Kroger's CEO, Mr. Rodney McMullen, stated, "As part of this merger, we made an additional commitment to invest \$500 million to lower prices and \$1.3 billion to improve the customer experience. ... We will begin these investments on day one after the merger closes." While we appreciate the promises made, we are concerned there is no way to enforce Mr. McMullen's commitment to lowering prices once the merger

is approved and it appears to us that such a commitment is only possible because of Kroger's impending market dominance. Perhaps the FTC should require that the pledged price reductions take place as a condition of the merger. We look forward to reviewing the FTC's analysis of the proposed merger's competition and price impacts on Alaskans.

In addition to the likelihood that higher prices will result even though lower prices have been promised, food security is an extremely relevant consideration for the FTC's merger review process. Each year, Alaska imports [95%](#) of its food, primarily through the Port of Alaska in Anchorage. Alaska's supply chain is complicated and relies on the carefully choreographed movement of goods between that particular port, distribution centers, and stores in oftentimes adverse weather conditions. C&S does not currently operate in Alaska and has no history of operating in Alaska. The company currently operates stores only in the Midwest and the Carolinas, and we are concerned it lacks the expertise and the commitment to do what it takes to operate in Alaska. While Mr. McMullen is adamant about C&S' financial health and has promised Congress that there will be no store closures, there is no way to enforce Kroger's pre-merger words after a merger has been approved. Should Kroger be required to or decide to close existing stores or should C&S choose to close any of the 14 stores following the merger, Alaskans may lose access to their grocery store. As a result, we ask that the FTC conduct a rigorous analysis of C&S' fitness to operate in Alaska and the impacts that potential store closures would have on Alaskans' food security, including accessibility, nutritional access, and pharmacy services.

Today, Fred Meyer and Safeway/Carrs are the third and fourth largest employers by number of employees in the state of Alaska. The FTC's review of this merger must ensure that Alaskan employees and union contracts are protected. Despite Kroger's assertion that it will honor all existing employment agreements and contracts, the history of grocery store consolidation in Alaska tells a different story. In 1999, when Safeway purchased Carrs for \$330 million, six of the stores that were required to be sold off as part of the merger closed shortly after they were acquired by Alaska Marketplace. In addition to this cautionary tale, we echo the concerns that my colleagues Senators Cantwell and Murray have relayed to the FTC regarding Washington's history with the Safeway-Albertsons merger and the closure of hundreds of stores there. To date, no adequate evidence shows how this proposed merger will ultimately benefit Alaskan consumers. Instead, recent history points to consumer and employee harm, so we ask that the FTC consider enforceable measures to prevent a similar circumstance in Alaska.

In closing, we believe there is much work to do between now and early 2024 when Kroger has suggested the FTC will approve this merger. Now that the entire Alaska Congressional Delegation has weighed in on this matter, we ask that you and your fellow Commissioners consider the issues we have raised and respond appropriately, given that this merger, if approved, appears to go against the interests of Alaska and Alaskans.

Sincerely,



Senator Lisa Murkowski



Senator Dan Sullivan