



The Honorable Amy Klobuchar
Chairwoman
Subcommittee on Competition Policy,
Antitrust, and Consumer Rights
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Mike Lee
Ranking Member
Subcommittee on Competition Policy,
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November 29, 2022

Chairwoman Klobuchar and Ranking Member Lee:

Farm Action would like to thank the Senate Judiciary Subcommittee on Competition Policy, Antitrust, and Consumer Rights for holding this critical hearing to examine the effects that the proposed merger of the Kroger Company and Albertsons Companies, Inc. could have on our food system, workers, consumers, and farmers. As a farmer-led organization dedicated to fighting corporate power and monopolistic practices across our food system, we oppose this merger and ask that you encourage our antitrust enforcers to prevent its consummation.

On October 14, 2022, Kroger announced its intention to acquire Albertsons, one of its primary competitors.¹ The proposed Kroger-Albertsons would control almost 12% of the retail grocery market, securing this potential megacorporation's position as second largest food seller in the country, behind only Walmart.² This new behemoth would own and operate 4,996 stores, 66 distribution centers, 52 manufacturing plants, 3,972 pharmacies, and employ more than 710,000 workers.³

¹ The Kroger Company, *Kroger and Albertsons Companies Announce Definitive Merger Agreement*, (Oct. 14, 2022) <https://ir.kroger.com/CorporateProfile/press-releases/press-release/2022/Kroger-and-Albertsons-Companies-Announce-Definitive-Merger-Agreement/default.aspx>.

² Mary Ellen Shoup, *Kroger to Acquire Albertsons for \$24.6 Billion Solidifying Its Position as Number Two Grocery Retailer with 11.8% Market Share*, Food Navigator Usa (Oct. 14, 2022) <https://www.foodnavigator-usa.com/Article/2022/10/14/kroger-to-acquire-albertsons-for-24.6bn-solidifying-its-position-as-2-grocery-retailer-with-11.8-market-share>.

³ Russell Redman, *Kroger-Albertsons Merger: Many Views, Many Angles*, Supermarket News (Oct. 18, 2022) <https://www.supermarketnews.com/retail-financial/kroger-albertsons-merger-many-views-many-angles>.

Between the two corporations, Kroger and Albertsons already own 38 national and regional grocery brands; Ralps, QFC, Harris Teeter, and Pay Less are all owned by Kroger, while Albertsons controls familiar names like Safeway, Vons, Carrs, and Acme.⁴ Kroger and Albertsons compete directly in multiple regions across the country, with both corporations operating a large number of stores in and around Seattle, WA; Portland, OR; Tuscon, AZ; Denver, CO; Chicago, IL; Washington, D.C.; and Houston, TX, as well as in other local and regional markets.⁵

Since this dangerous acquisition was proposed, a preponderance of experts and advocates have lent their voices to illustrate the economy-wide harms that Kroger's acquisition of Albertsons will cause. The United States already has one-third fewer stores than we did twenty-five years ago, and experts agree that further consolidation in retail grocery is likely to exacerbate the creation of food deserts; stores will close in already-concentrated markets that will soon have two grocery stores with the same owner.⁶

However, Farm Action is particularly concerned about the likely damage further consolidation in the retail grocery market could cause our nation's farmers, ranchers, and food producers. All too often, the hardworking farmers and ranchers who provide grocers with the food that stocks their shelves go ignored when discussing the negative impact of consolidation. The share of every dollar spent on food at the grocery store that ends up in farmers' and ranchers' pockets has been steadily declining for years. In 1975, farmers received about 40 cents of every dollar spent on food. In 2021, that number had dropped to only about fourteen cents.⁷ This decline has coincided with rampant consolidation across the food industry, from meatpacking to agrochemicals to retail grocery.⁸ We have serious concerns that this merger will lead to worse outcomes for farmers and ranchers, exacerbating the already-debilitating effects of extreme vertical integration and enhanced buyer power.

⁴ *Id.*

⁵ *Id.*

⁶ Jenn McMillen, *Kroger, Albertsons and Food Deserts: Yes, We Should Worry*, *Forbes* (Nov. 9, 2022) <https://www.forbes.com/sites/jennmcmillen/2022/11/09/kroger-albertsons-and-food-deserts-yes-we-should-worry/?sh=53b633466e1e>.

⁷ Rick Barrett, *Even with Higher Prices, Little of Your Thanksgiving Meal Spending Goes Back to Farmers*, *The Milwaukee Journal Sentinel* (Nov. 22, 2022) <https://www.jsonline.com/story/money/business/2022/11/23/consumers-paying-more-for-thanksgiving-meals-but-farmers-dont-benefit/69669229007/>.

⁸ Gil Gullickson, *Ten Ag Mergers and Acquisitions from 2017*, *Successful Farming* (Dec. 20, 2022) <https://www.agriculture.com/news/business/10-mergers-and-acquisitions-for-2017>; James M. MacDonald et. al., *Consolidation in U.S. Meatpacking*, United States Department of Agriculture, Food and Rural Economics Division, Economic Research Service (Feb. 2000) https://www.ers.usda.gov/webdocs/publications/41108/18011_aer785_1_.pdf?v=0; Kelsi Trinidad, *History of the Supermarket Industry in America*, *Stacker* (Mar. 13, 2020) <https://stacker.com/stories/3984/history-supermarket-industry-america>.

The corporate models of America's largest retail grocery chains now revolve around the fact that they own and operate more than just the stores where consumers purchase their food. Walmart, Kroger, and Albertsons are all heavily vertically integrated, controlling multiple elements along the supply chain for many of the products in their stores. Kroger's own website brags that they are "the only major U.S. supermarket company to operate an economical three-tier distribution system."⁹ In particular, these supermarket chains have invested heavily in establishing their own milk processing facilities.¹⁰ Indeed, Kroger processes about 90% of all the milk sold in its stores.¹¹

We now have decades of evidence to show that vertical integration and hyper consolidation lead to worse outcomes for farmers and ranchers. The effects of grocery chains' vertical integration can be clearly seen in the dairy processing industry. For example, Walmart's establishment of dairy processing facilities led to the demise of Dallas-based Dean Foods, which was until 2019 the single largest milk processor in the United States.¹² The day Walmart announced plans to build its own dairy processing plant in 2016, Dean Foods' stock dropped 12%.¹³ Two years later, Dean Foods canceled more than 100 contracts with dairy farmers.¹⁴ The company argued that they were "forced...into this position" by dominant firms in retail grocery establishing their own dairy processing plants, in conjunction with decreased demand for liquid milk.¹⁵ A year later, in 2019, both Dean Foods and another milk giant, Borden Dairy Co., were forced to file for bankruptcy and eventually sell to milk cooperatives.¹⁶

When large processors like Dean Foods and Borden go under, farmers and producers are the ones who suffer. For instance, Joe Kelsay was a sixth-generation dairy farmer from Indiana who had contracted with Dean Foods for more than two decades. When Walmart began processing its own milk in 2018, Mr. Kelsay was one of the hundreds of farmers who lost his contract. Like those other farmers, he was forced to find a new buyer for his milk in a challenging new market with fewer options. He contacted twelve different buyers, and only one

⁹ The Kroger Company, *Our Business*, (Nov. 30, 2020) <https://www.thekrogerco.com/about-kroger/our-business/>.

¹⁰ Jacob Bunge and Jaewon Kang, *Walmart, Kroger Bottle Their Own Milk and Shake Up American Dairy Industry*, *The Wall Street Journal* (July 27, 2020) <https://www.wsj.com/articles/walmart-kroger-bottle-their-own-milk-and-shake-up-american-dairy-industry-11595872190>.

¹¹ *Id.*

¹² *Id.*

¹³ Phil Lempert, *Walmart Moves Into the Dairy Business Even as Milk Consumption Drops*, *Forbes* (Aug. 8, 2017) <https://www.supermarketguru.com/articles/walmart-moves-into-the-dairy-business-as-milk-consumption-drops/>.

¹⁴ Jim Hook, *Milk Processor Cancels farm Contracts as Walmart Makes Own Milk*, *Chambersburg Public Opinion* (Mar. 12, 2018) <https://www.publicopiniononline.com/story/news/2018/03/12/milk-processor-cancels-farm-contracts-walmart-makes-own-milk/417995002/>.

¹⁵ *Id.*

¹⁶ Jacob Bunge and Jaewon Kang, *Walmart, Kroger Bottle Their Own Milk and Shake Up American Dairy Industry*, *The Wall Street Journal* (July 27, 2020) <https://www.wsj.com/articles/walmart-kroger-bottle-their-own-milk-and-shake-up-american-dairy-industry-11595872190>.

was willing to buy his milk — at one-fifth the price he'd previously been selling to Dean Foods. Unsurprisingly, this proved unsustainable for Mr. Kelsay and his family; they were forced to leave the dairy industry and sell their cows to another, much larger producer.¹⁷ Hundreds of other farmers have the same story: driven out of dairy production by the entrance and integration of dominant retail grocery firms.¹⁸

Walmart simply entering the milk processing industry was enough to kill the nation's largest independent processor. Should Kroger and Albertsons become one entity, competition among milk processors will vanish. Both Kroger and Albertsons are vertically integrated in liquid milk processing; if allowed to centralize their milk processing, their ability to control prices will increase dramatically. Food Lion — one of these two companies' few remaining competitors — purchases their milk from Kroger's processing facilities.¹⁹ Kroger-Albertsons processing would have enormous reach and market power, and it is likely that more processors would fold in the face of the milk processing giant this merger would create.

Additionally, both Kroger and Albertsons currently operate milk processing facilities in similar markets. For example, should this merger be consummated, Kroger-Albertsons will own more processing plants in Colorado than any of their competitors except for the Dairy Farmers of America.²⁰ This increased market control in dairy processing will grant the new company sufficient buyer power to set take-it-or-leave-it prices for independent milk producers like Mr. Kelsay. Those who are unable to make ends meet in the environment Kroger-Albertsons will dominate will have no choice but to either take massive losses on their product or leave the dairy industry altogether, further consolidating an already-concentrated industry.

These megacorporations claim that this integration all serves the consumer. Walmart, for example, maintains that “[opening their own dairy processing plants] is an example of how we are always finding efficiencies within the supply chain to deliver on our commitments to everyday low prices and high quality groceries.”²¹ However, consumer outcomes over the last five years show that increased consolidation does not create a more resilient system for consumers. During the pandemic, Kroger passed increased costs along to consumers under the mask of inflation, calling “a little bit of inflation... good in our business,” while passing the lion's share of their record profits in 2021 along to their shareholders in the form of dividends and

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ United States Food and Drug Administration, *Interstate Milk Shippers List Sanitation Compliance and Enforcement Ratings of Interstate Milk Shippers* (Oct. 2022) <https://www.fda.gov/media/162187/download>.

²¹ Jacob Bunge and Jaewon Kang, *Walmart, Kroger Bottle Their Own Milk and Shake Up American Dairy Industry*, *The Wall Street Journal* (July 27, 2020) <https://www.wsj.com/articles/walmart-kroger-bottle-their-own-milk-and-shake-up-american-dairy-industry-11595872190>.

stock buybacks.²² And food costs are unlikely to drop anytime soon, as retail grocery prices are notoriously sticky; prices tend to go up over time, stores have an incentive to keep costs consistent, and once they increase they are extremely unlikely to go down.²³

Additionally, a report by The Economic Roundtable found that workers at Kroger already struggle to make ends meet. Kroger's workers are seven times more likely than the general population to experience food insecurity, with three-quarters of those surveyed not having access to enough food for an active, healthy lifestyle.²⁴ Fourteen percent reported experiencing homelessness in the last year or requiring government food assistance while employed by Kroger.²⁵

Should Kroger be allowed to purchase Albertsons, we at Farm Action believe that the negative impacts on farmers and ranchers — not to mention workers, small businesses, and consumers — will be severe. A combined Kroger-Albertsons will drive independent farmers out of business, make it harder for new producers to enter food markets, reduce access to healthy food by creating more food deserts, increase prices for consumers, and lead to worse conditions for some of our country's most exploited workers. We commend you for holding today's hearing and highlighting the likely harms a merger of Kroger and Albertsons would have on our economy, and hope that you will encourage our nation's antitrust enforcers to stop it.

Sincerely,



Joseph Van Wye
Policy and Outreach Director
Farm Action

cc: Members of the Senate Committee on the Judiciary

²² The Groundwork Collaborative, *Corporate Profiteering Findings* (June 8, 2022) https://groundworkcollaborative.org/wp-content/uploads/2022/06/RESEARCH-Corporate-Profiteering-Findings-22-06.08.pdf?campaign_id=9&emc=edit_nn_20220614&instance_id=63989&nl=the-morning®i_id=98763043&segment_id=95068&te=1&user_id=639a6973fef1467e99b2c58759b60dc4.

²³ Danielle Wiener-Bronner and Nathaniel Meyersohn, *Grocery Store Prices Aren't Coming Down Anytime Soon*, The Cable News Network (Sept. 30, 2022) <https://www.cnn.com/2022/09/30/business-food/grocery-store-prices-food>.

²⁴ Jamie Ding, *Two Out of Three Kroger Workers Struggle to Afford Food and Housing, Survey Finds*, The Los Angeles Times, (Jan. 11, 2022) <https://www.latimes.com/business/story/2022-01-11/2-out-of-3-kroger-workers-struggle-to-afford-food-housing-survey-finds>.

²⁵ *Id.*