

Class 5 slides

---

# Unit 5: Merger Antitrust Settlements— Kroger/Albertsons

---

Professor Dale Collins  
Merger Antitrust Law  
Georgetown University Law Center

September 12, 2023

# Kroger/Albertsons



---

# The Deal

# The deal

- Kroger will acquire all outstanding shares of Albertsons
  - Announced October 14, 2022
  - Estimated total consideration of \$34.10 per share in cash
  - Represents a 32.8% premium to the unaffected closing price of Albertson's common stock on October 12, 2022
- Combines the two largest standalone grocery store chains
- Combined company enterprise value: \$24.6 billion
- Expects to achieve \$1 billion annual run-rate synergies net of divestitures within first four years postclosing
  - Approximately 50% achieved within the first two years postclosing
- Accretive to earnings in the first year following closing
  - Double-digit accretive to earnings by year four, excluding one-time costs

# The merging companies

- Kroger
  - 2700+ stores
  - Operates under 28 banners, including Kroger, Ralphs, Harris Teeter, and Pay Less
- Albertsons
  - 2273 stores
  - Operates under 24 banners, including Albertsons, Vons, Acme, Pavilions, and Star Market



# The combined company

## Expanded Network Enables Accelerated Profitable Growth and Value Creation



**+2,700**

Stores

+2,200 pharmacies  
+1,600 fuel centers

**~\$28B**

Our Brands Portfolio

9th largest U.S. CPG brand portfolio  
Four distinct billion-dollar plus brands

**60M**

Households Nationwide

**~\$34B**

Fresh Sales

15.6% growth over 2019

**+420K**

Associates

Make Kroger a place where customers love to shop



+



**4,996<sup>(1)</sup>**

Stores

3,972 pharmacies  
2,015 fuel centers

**~\$43B**

Our Brands Portfolio

One of the largest CPG in the U.S.

**~85M**

Households Nationwide

Expanded customer base nationwide

**~\$59B**

Fresh Sales

Accelerated growth of fresh portfolio

**+710K**

Associates

Key component of combined success



(1) Current combined store, pharmacy and fuel center count.

Note: Reflects FY 2021A metrics for Kroger and Albertsons

16

The Kroger Co. and Albertsons Companies, [Investor Presentation](#) 16 (Oct. 14, 2022)

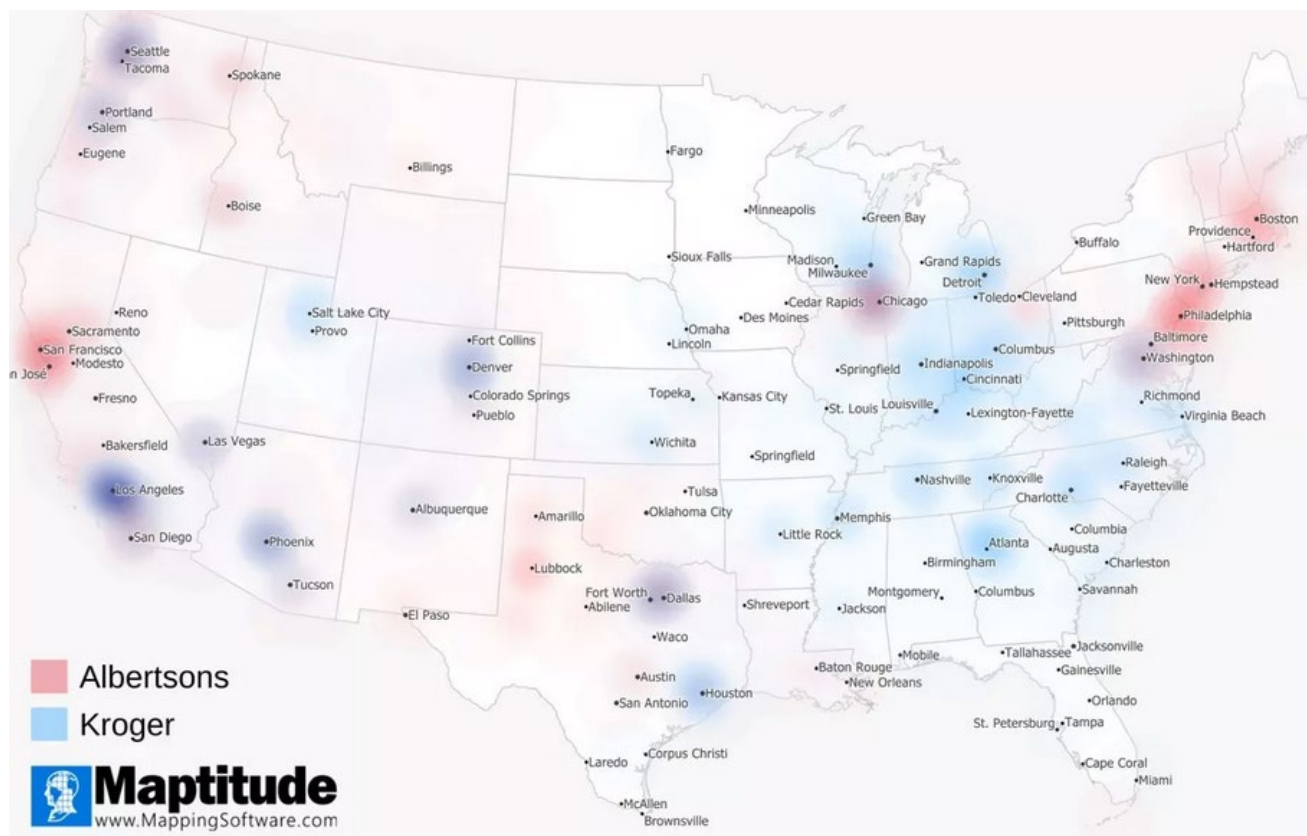
# Overlaps

## Complementary National Footprint with Iconic and Trusted Supermarket Banners



The Kroger Co. and Albertsons Companies, [Investor Presentation](#) 8 (Oct. 14, 2022).

# Overlaps: Another look



Areas in darker red indicate concentrations of Albertsons (e.g., San Francisco, Philadelphia, Lubbock), areas in darker blue indicate concentrations of Kroger (e.g., Houston, Atlanta, Detroit), and areas in purple indicate where there is overlap between the two stores (e.g., Los Angeles, Dallas, Washington DC).

Max Bahar, Maptitude blog, [Albertsons and Kroger Geographic Market Analysis](#) (undated).



---

# Antitrust considerations

- Merging companies say they will have to sell between 100-375 stores to alleviate FTC concerns
- Merger agreement provides for the divestiture of up to 650 stores if necessary to satisfy the FTC
- Also, an antitrust reverse termination fee (ARTF) to be paid by Kroger to Albertsons if the deal does not close for antitrust reasons

# Opposition

## ■ Opponents

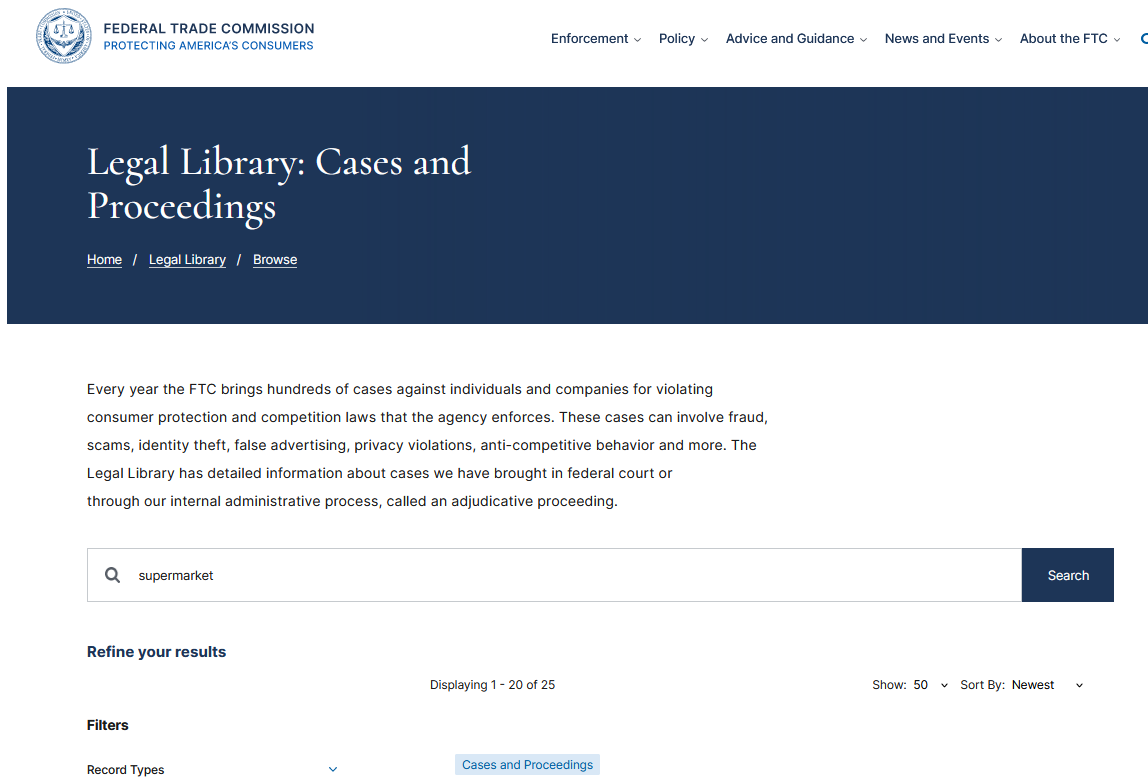
- ❑ “Stop the Merger” coalition (over 100 interest groups)
- ❑ American Antitrust Institute
- ❑ Some state AGs
- ❑ What will the FTC do?

## ■ Putative antitrust victims

- ❑ *Consumers* will face less competition for their patronage, leading to higher prices, lower quality, and less product choice
- ❑ *Workers* will face less competition for their services, leading to lower wages, and poorer working conditions
- ❑ *Suppliers* will face less competition for the products, leading to lower input prices and reduced profits
- ❑ *Small independent grocers* will face larger firms with even greater bargaining power with suppliers, leading to more price and supply discrimination and less competitive businesses

# What will the FTC do?

- Find the most recent FTC enforcement action against a supermarket merger (Price Chopper/Tops Markets):



The screenshot shows the Federal Trade Commission's Legal Library website. At the top, the FTC logo and name are visible, along with navigation links for Enforcement, Policy, Advice and Guidance, News and Events, and About the FTC. The main heading is "Legal Library: Cases and Proceedings". Below this, there is a breadcrumb trail: Home / Legal Library / Browse. A paragraph of text explains that the FTC brings hundreds of cases against individuals and companies for violating consumer protection and competition laws, and that the Legal Library provides detailed information about these cases. A search bar contains the text "supermarket" and a "Search" button. Below the search bar, there is a "Refine your results" section with a "Filters" dropdown menu. The "Record Types" dropdown is currently set to "Cases and Proceedings". At the bottom of the search results area, it says "Displaying 1 - 20 of 25" and "Show: 50" and "Sort By: Newest".

FTC web page: <https://www.ftc.gov/legal-library/browse/cases-proceedings>

# What will the FTC do?

- Find the alleged relevant markets
  - Alleged product market: “Supermarkets

10. For purposes of this Complaint, the term “supermarket” means any full-line retail grocery store that enables customers to purchase substantially all of their weekly food and grocery shopping requirements in a single shopping visit with substantial offerings in [enumerated categories].<sup>1</sup>

11. Supermarkets provide a distinct set of products and services and offer consumers convenient one-stop shopping for food and grocery products. Supermarkets typically carry more than 10,000 different items, typically referred to as stock-keeping units (SKUs), as well as a deep inventory of those items. In order to accommodate the large number of food and non-food products necessary for one-stop shopping, supermarkets are large stores that typically have at least 10,000 square feet of selling space.<sup>2</sup>

<sup>1</sup> [Complaint ¶ 10, Golub Corp.](#), No. C-4753 (F.T.C. Nov. 5, 2021) (Price Chopper/Tops Markets).

<sup>2</sup> *Id.* ¶ 11

# What will the FTC do?

- Find the alleged relevant markets
  - Alleged geographic markets

14. Customers shopping at supermarkets are motivated by convenience and, as a result, competition for supermarkets is local in nature. Generally, the overwhelming majority of consumers' grocery shopping occurs at stores located very close to where they live.<sup>1</sup>

<sup>1</sup> [Complaint ¶ 14, Golub Corp.](#), No. C-4753 (F.T.C. Nov. 5, 2021) (Price Chopper/Tops Markets).

# What will the FTC do?

- Find out what happened
  - Complaint alleged a Section 7 violation in 11 local markets across upstate New York and Vermont<sup>1</sup>
  - Settled investigation by divestiture consent order
    - Requires Price Chopper and Tops to divest the 12 Tops stores and related assets to C&S Wholesale Grocers on a rolling basis, beginning by Jan. 17, 2022, at a rate of two stores per week for six weeks<sup>2</sup>

<sup>1</sup> [Complaint ¶¶ 16, 19, Golub Corp.](#), No. C-4753 (F.T.C. Nov. 5, 2021) (Price Chopper/Tops Markets).

<sup>2</sup> [Decision, Golub Corp.](#), No. C-4753 (F.T.C. Jan. 20, 2022).

# Albertsons/Safeway

- Relevant factoid: Albertsons/Safeway
  - In 2015, Albertsons acquired Safeway for \$2.0 billion
    - At the time, Albertsons was owned by Cerberus Capital Management
  - At the end of the FTC review, the FTC concluded that the acquisition would violate Section 7 in 130 local markets
    - To resolve the FTC's concerns, Albertsons agreed to a consent order requiring it to sell 168 stores to four FTC-preapproved buyers:
      - Hagen Holdings LLC acquired 146 Albertsons and Safeway stores located in Arizona, California, Nevada, Oregon, and Washington
      - Increased Hagen's—
        - Locations from 18 to 164
        - Employees from about 2,000 to about 10,000<sup>1</sup>
      - Will convert all the acquired Albertsons and Safeway stores to the Hagen banner in phases during the first half of 2015

<sup>1</sup> Press Release, Hagen Holdings LLC, [\*Hagen to Expand from 18 Stores to 164 Stores with Major Acquisition\*](#) (Dec. 19, 2014).

# Albertsons/Safeway

## ■ What happened?

- July 2015: Haggen lays off employees and cut worker hours in the face of what it called “unprecedented” competition<sup>1</sup>
- July 2015: Albertsons files suit against Haggen alleging accusing the grocer committed fraud in failing to pay more than \$41 million for inventory at 38 divestiture stores<sup>2</sup>
- August 14, 2015: Haggen announced that it was closing 27 stores<sup>3</sup>
- August 2015: Haggen files suit against Albertsons for \$1 billion alleging that Albertsons—
  - “made false representations to both Haggen and the FTC about Albertsons’ commitment to a seamless transformation of the stores into viable competitors” and
  - engaged in “coordinated and systematic efforts” to eliminate Haggen as a competition<sup>4</sup>

<sup>1</sup> See Kevin Smith, [Why Is No One Shopping at Southern California’s New Haggen Supermarkets?](#), San Gabriel Valley Tribune, July 24, 2015.

<sup>2</sup> Shan Li, [Albertsons Sues Haggen Stores](#), L.A. Times, July 1, 2015, at C2.

<sup>3</sup> Shan Li, [Grocer Haggen Closing 27 Stores, Including 16 California Supermarkets](#), L.A. Times, Aug. 14, 2015.

<sup>4</sup> Julie Gallagher, [News Haggen Sues Albertsons for More than \\$1 Billion](#), Supermarket News, Sept. 1, 2015. The two actions settled in early 2016. See Peg Brickley, [Albertsons Settles Litigation Over Haggen Troubles](#), Wall St. J., Jan. 22, 2016.



# Albertsons/Safeway

## ■ What happened?

- September 9, 2015: Haggen declares bankruptcy<sup>1</sup>
- November 2015: Albertsons reacquires 33 of the 146 stores divested to Haggen in a bankruptcy auction<sup>2</sup>
- Following bankruptcy, Haggen abandons the divestiture stores it could not sell and reverts to operating as a strictly Washington state grocery chain
- Lina Khan declares the Haggen divestiture a “spectacular failure”<sup>3</sup>

<sup>1</sup> Ángel González, *Struggling Haggen Files for Bankruptcy Protection, Parts with Southwest Co-CEO*, Seattle Times, Sept. 9, 2015.

<sup>2</sup> See Jon Springer, *Judge Approves Sale of 47 Haggen Stores; 33 to Albertsons*, Supermarket News, Nov. 9, 2015.

<sup>3</sup> Lina Khan & Sandeep Vaheesan, *Market Power and Inequality: The Antitrust Counterrevolution and Its Discontents*, 11 Harv. L. & Pol'y Rev. 235, 288 (2017).

---

# The Divestiture

# The substance

## Extending a Well-Capitalized Competitor into New Geographies

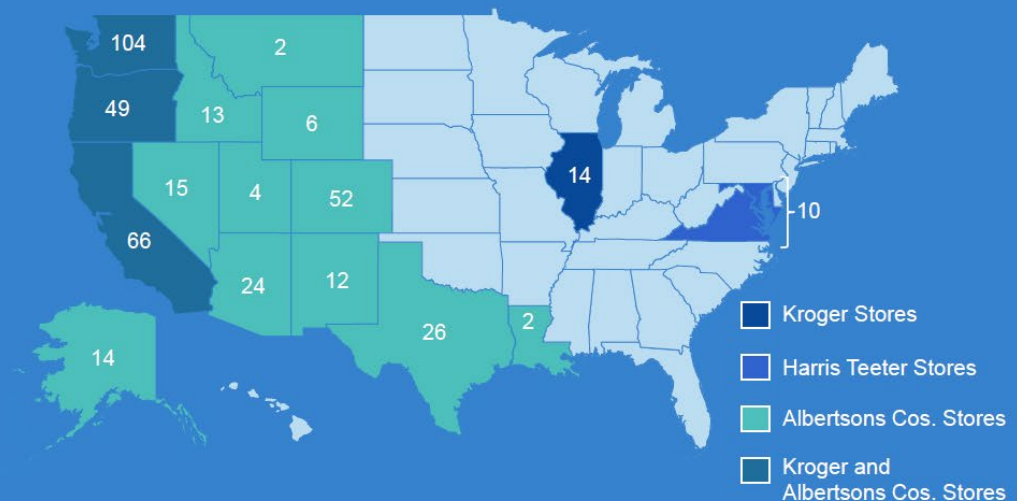
### Core Assets

- 413 Stores
  - Incl. any associated fuel centers and pharmacies
- QFC, Mariano's and Carrs brand names<sup>1</sup>
- Exclusive Licensing Rights to Albertsons Brand Name in Arizona, California, Colorado and Wyoming
- Debi Lilly Design, Primo Taglio, Open Nature, ReadyMeals and Waterfront Bistro private label brands

### Comprehensive Operational Infrastructure

- 8 distribution centers
- 2 regional headquarters
- Expert district, division and functional associates

### Divested Stores



Transfer of operational infrastructure to ensure C&S can continue to operate the divested stores competitively and cohesively



<sup>1</sup> Stores currently under these banners that are retained by Kroger will be re-bannered into one of the retained Kroger or Albertsons Cos. banners following the close of the transaction. In the four states where C&S will have the license to the Albertsons banner, Kroger will re-banner the stores following the close of the merger with Albertsons Cos. Kroger will maintain the Albertsons banner in the remaining states.

The Kroger Co. and Albertsons Companies, [Comprehensive Divestiture Plan with C&S Wholesale Grocers, LLC](#) 5 (Sept. 8, 2023) (investor presentation).

# The divestiture buyer

Also \$30 billion in annual revenue

## C&S is Positioned to Successfully Operate and Grow Iconic Brands into the Future

C&S Wholesale Grocers, one of the largest privately-held companies in the U.S., is an industry leader in wholesale grocery supply chain solutions with 104 years of food industry experience and a strong track record as a successful grocery retailer:



Supplies more than 7,500 independent supermarkets, retail chain stores and military bases



Operates Grand Union supermarkets and Piggly Wiggly® franchise and corporate-owned stores



FTC-approved divestiture buyer in prior grocery transactions with strong track record of successfully transitioning union employees and their associated collective bargaining agreements



Provides end-to-end wholesale, supply and marketing services to its retailer customers



Through its wholesale and retail operations, C&S purchases more than 100,000 products, giving it the ability to provide customers with the best product selection and pricing available



C&S has established a retail holding entity to ensure a seamless closing process

Agreement follows robust and thoughtful process to identify buyer with management experience, a sound business plan, strong balance sheet and financial stability to continue to serve our communities



4

The Kroger Co. and Albertsons Companies, [\*Comprehensive Divestiture Plan with C&S Wholesale Grocers, LLC\*](#) 4 (Sept. 8, 2023) (investor presentation).

# Other details

## Divestiture Plan Delivers on Our Commitments

### 2023 Divestiture Plan

Ensures that no stores will close as a result of the merger

Ensures frontline associates will remain employed

Existing collective bargaining agreements will be honored, with continued investment in associates and stores for the long term

Maintaining healthcare & pension benefits, and bargained-for wages

C&S has a strong balance sheet and a sound business plan

Seasoned operators with track record as a successful grocery retailer

### 2022 Merger Commitments Delivered

- ✓ Zero store closures
- ✓ Zero frontline associate job loss
- ✓ Secures union jobs
- ✓ Continued industry-leading benefits
- ✓ Well-capitalized buyer
- ✓ Strong management team







6

The Kroger Co. and Albertsons Companies, [Comprehensive Divestiture Plan with C&S Wholesale Grocers, LLC](#) 6 (Sept. 8, 2023) (investor presentation).

# The divestiture agreement

## Reaffirming Compelling Shareholder Value Creation Opportunity

Combined company on track to meet financial commitments once merger and sale to C&S are completed

	<b>Divestiture Plan Consideration</b>	<ul style="list-style-type: none"> <li>The definitive purchase agreement has customary representations and warranties and covenants of a transaction of its type</li> <li>Subject to fulfillment of customary closing conditions, including FTC and other governmental clearance, and the completion of the Kroger-Albertsons Cos. merger, C&amp;S will pay Kroger all-cash consideration of approximately \$1.9 billion, including customary adjustments</li> <li>Prior to the closing, Kroger may, in connection with securing FTC and other governmental clearance, require C&amp;S to purchase up to an additional 237 stores in certain geographies</li> <li>As a result of the comprehensive divestiture plan announced with C&amp;S, the spin-off previously contemplated by Kroger and Albertsons Cos. is no longer a requirement under the merger agreement and will no longer be pursued</li> </ul>
	<b>Financial Performance and Value Creation</b>	<ul style="list-style-type: none"> <li>Divestiture plan marks a key step forward in the merger process, allowing us to reaffirm our financial commitments for the combined company, including:             <ul style="list-style-type: none"> <li><b>Synergies:</b> Expects to achieve \$1B annual run-rate synergies net of divestitures within first four years post-close; approximately 50% achieved within first two years post-close</li> <li><b>Accretion:</b> Accretive to earnings in the first year following close and double digit accretive to earnings by year four, excluding one-time costs</li> <li><b>Free Cash Flow:</b> Continued strong free cash flow generation; 30% accretive to total annual free cash flow by year four</li> <li><b>Total Shareholder Return:</b> Expected average TSR well above Kroger standalone model of 8-11% in the first four years following close</li> </ul> </li> </ul>
	<b>Financing</b>	<ul style="list-style-type: none"> <li>Due to strong operating performance and comprehensive divestiture plan, Kroger remains on track to deliver on initial target to achieve 2.5x net debt to EBITDA leverage ratio within first 18-24 months post-close</li> </ul>
	<b>Path to Close</b>	<ul style="list-style-type: none"> <li>Remain on track to close in early 2024 subject to required regulatory approvals and other customary closing conditions</li> <li>Committed to working cooperatively with the regulators and all other interested parties to complete transaction</li> </ul>
		7

The Kroger Co. and Albertsons Companies, [\*Comprehensive Divestiture Plan with C&S Wholesale Grocers, LLC\*](#) 7 (Sept. 8, 2023) (investor presentation).