



Plaintiffs' Opening Statement

Federal Trade Commission v. The Kroger Company and Albertsons Companies, Inc.

Docket No. 3:24-00347-AN



- **Plaintiffs' *Prima Facie* Case**

- Thousands of local supermarket product markets
- Dozens of labor markets for union grocery workers

- **Defendants Cannot Meet Their Burden To Rebut *Prima Facie* Case in Either Market**

- Defendants cannot meet their burden on efficiencies
- Defendants cannot meet their burden regarding the fix

Defendants Operate Dozens of Banners Across the Country

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Defendants Have Grown Through Serial Acquisitions

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- Over 2,700 Total Stores
- 2,257 pharmacies
- 414,000 employees
- 35 States + D.C.



- Over 2,200 Total Stores
- 1,725 pharmacies
- 285,000 employees
- 34 States + D.C.



Kroger & Albertsons Overlap in 22 States

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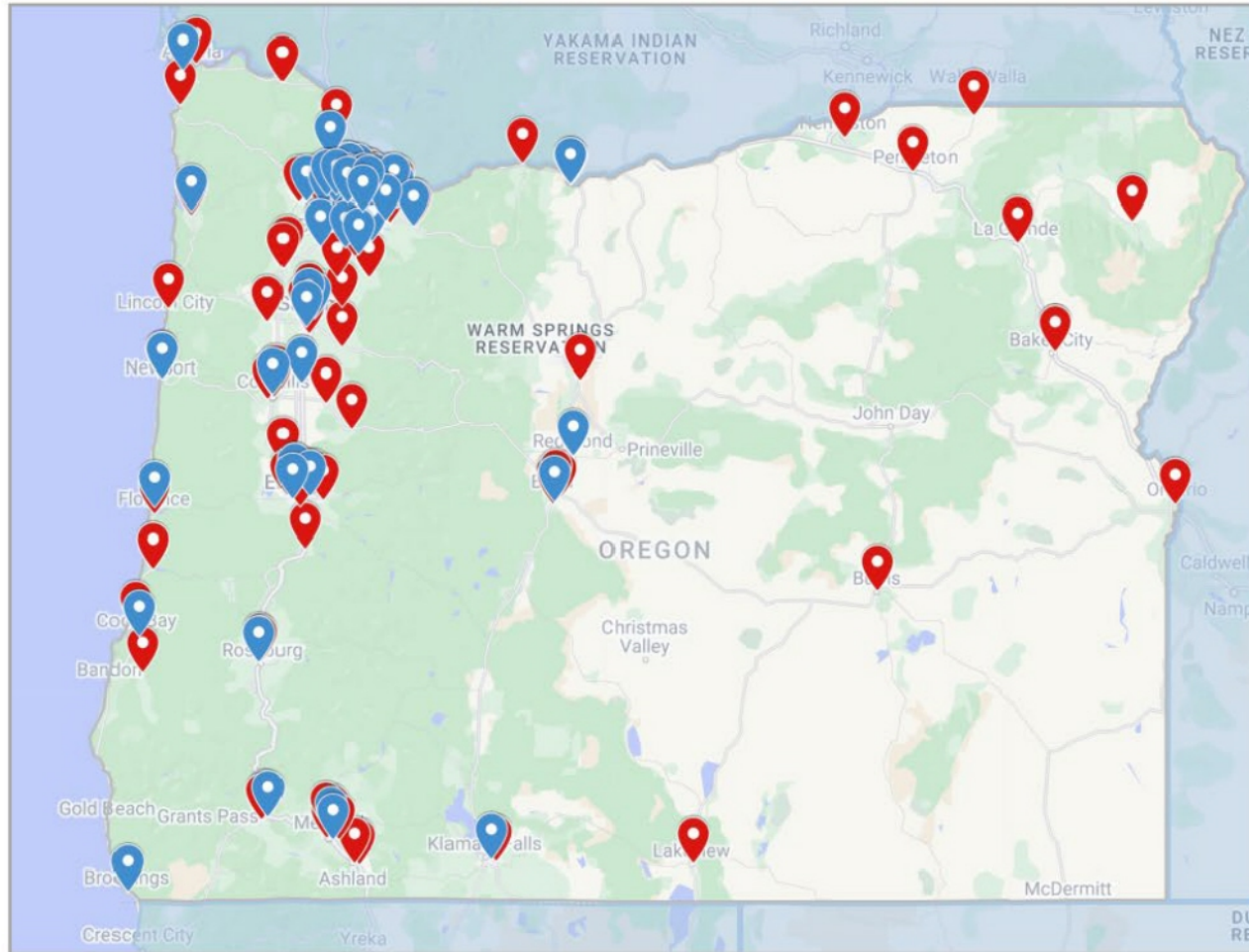
Zooming in on Oregon

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FRE 1006 Exhibit

Oregon Consumer Complaints ¹

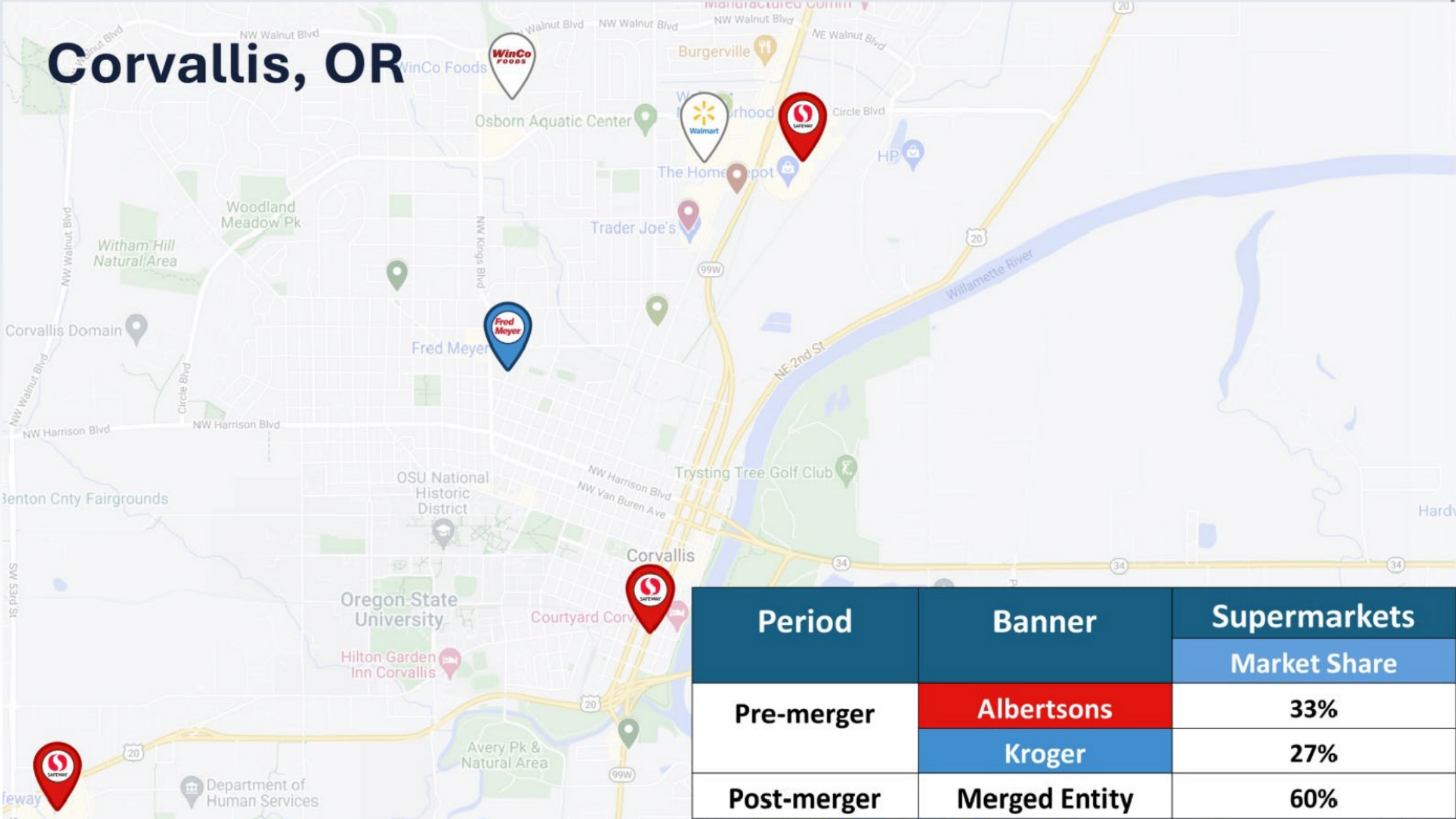
Geographic Area	No. of Complaints
Coos Bay, OR	33
Corvallis, OR	107
Roseburg, OR	41
Oregon (statewide)	4961

¹ FTC-PROD-0000069135 - FTC-PROD-0000165643, FTC-PROD-0000165700 - FTC-PROD-0000173684

Zooming in on Corvallis



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Zooming in on Corvallis

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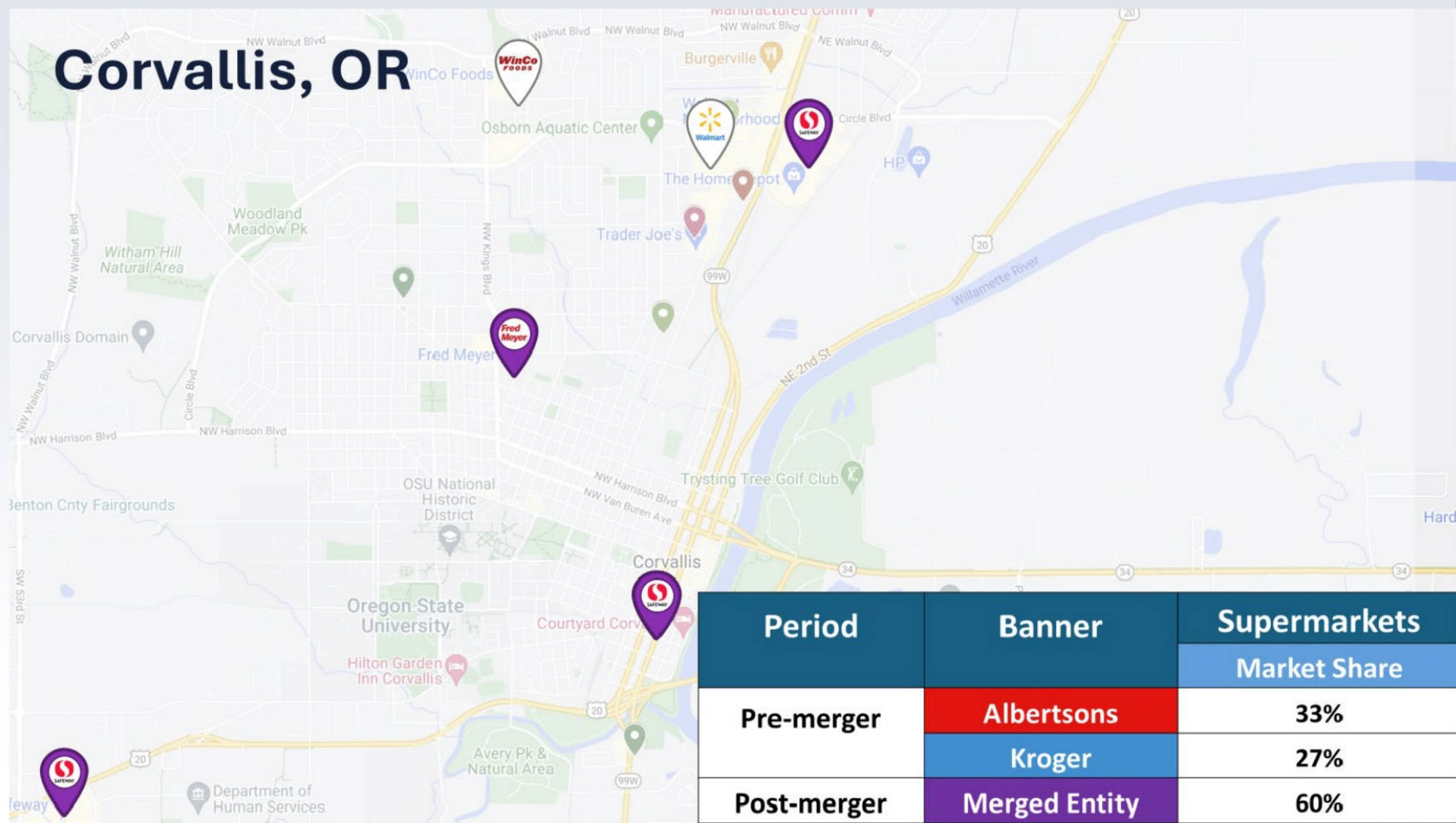
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Corvallis, OR



Period	Banner	Supermarkets
		Market Share
Pre-merger	Albertsons	33%
	Kroger	27%
Post-merger	Merged Entity	60%



FRE 1006 Exhibit

Corvallis Consumer Complaints ¹

Geographic Area	No. of Complaints
Corvallis, OR	107
Corvallis, OR and Surrounding Areas ²	669

¹ FTC-PROD-0000069135 - FTC-PROD-0000165643, FTC-PROD-0000165700 - FTC-PROD-0000173684

² 3-digit zip code: 973*

Zooming in on Santa Fe

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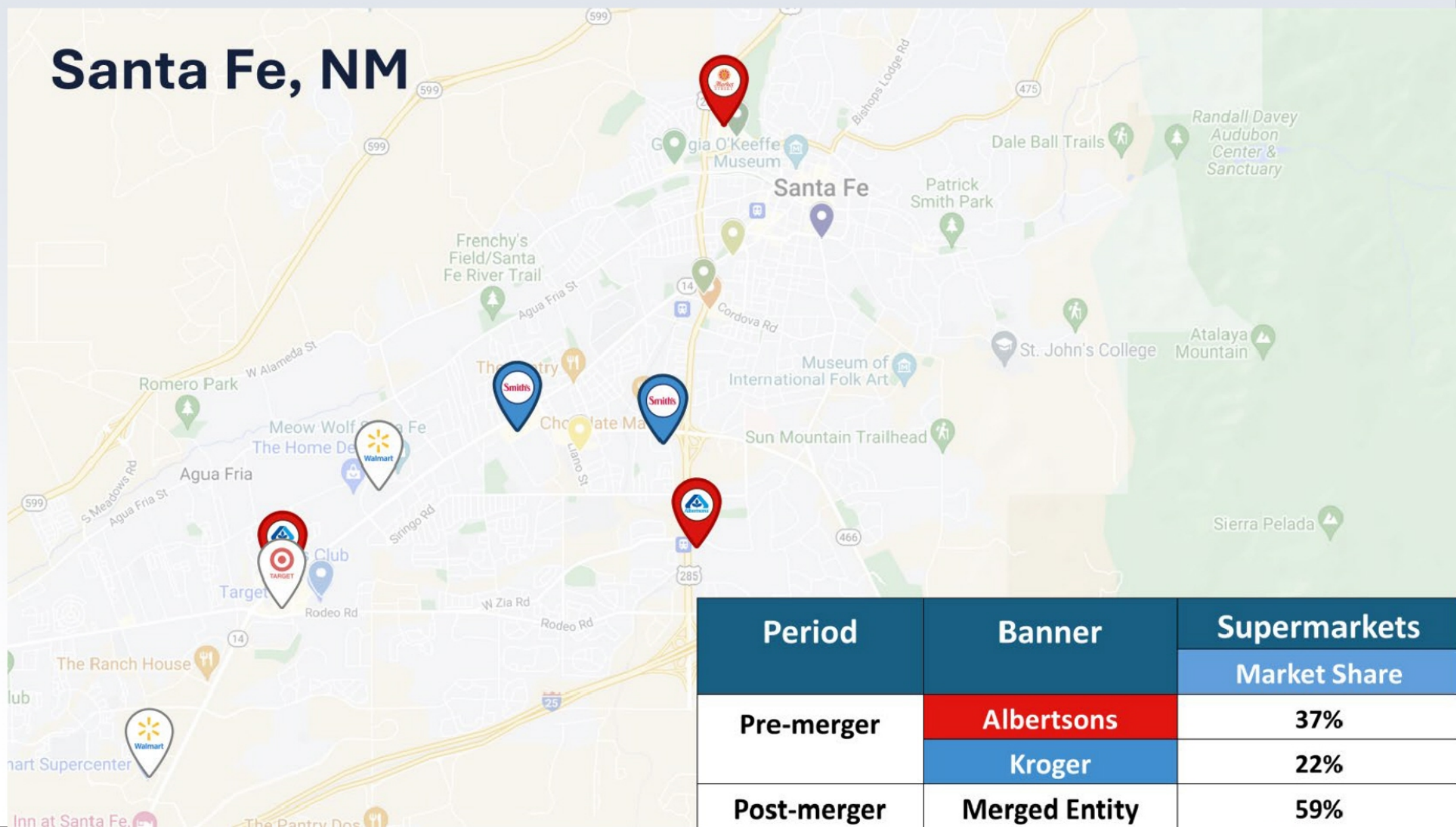
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Santa Fe, NM



Zooming in on Santa Fe

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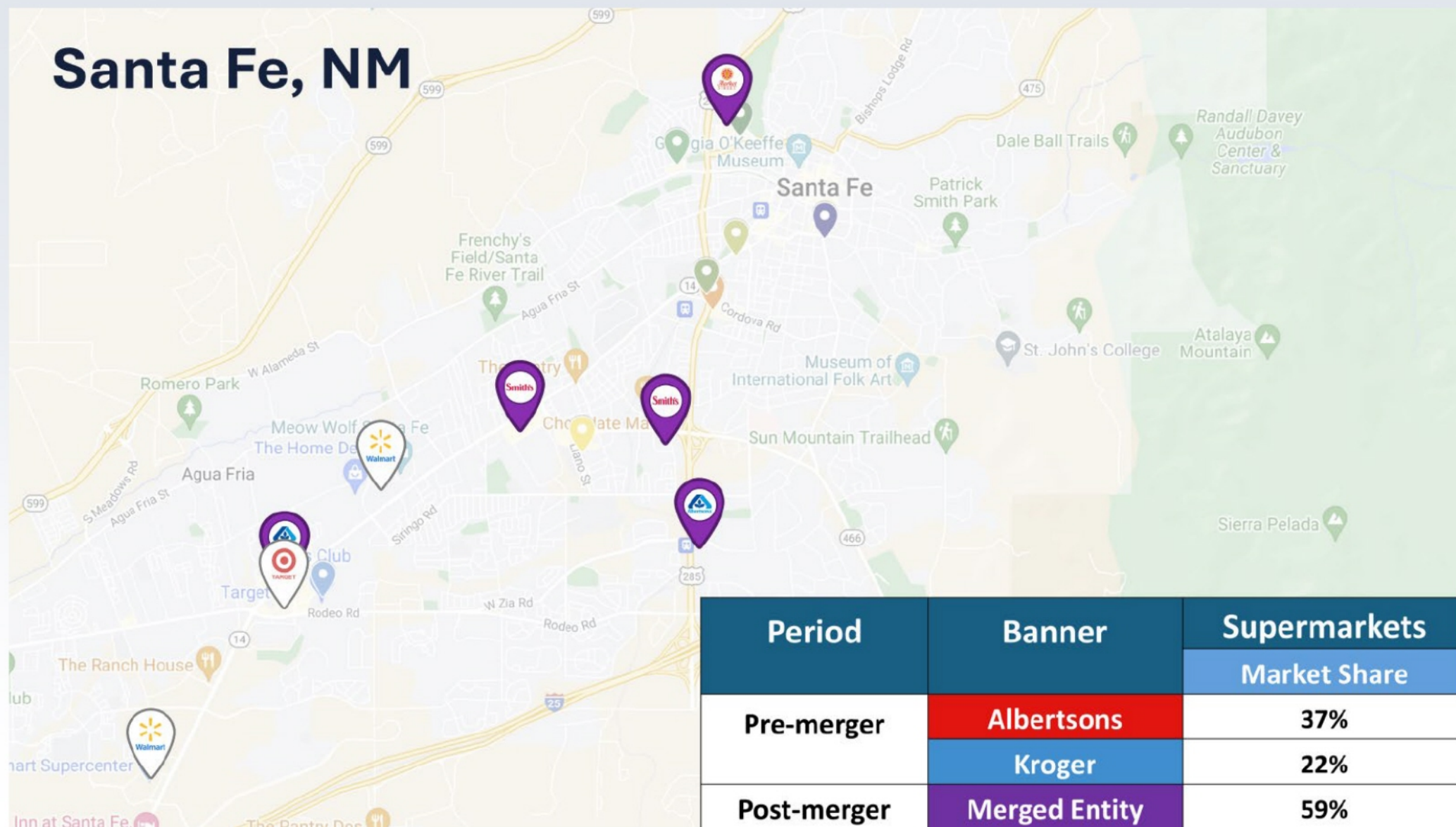
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Santa Fe, NM



Period	Banner	Supermarkets
		Market Share
Pre-merger	Albertsons	37%
	Kroger	22%
Post-merger	Merged Entity	59%

Plaintiffs' Supermarket Case

Head-to-Head Competition

Head-to-Head Competition: Direct Evidence of Harm in the Supermarket Product Market

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- “Courts have recognized that **a merger that eliminates head-to-head competition can result in a substantial lessening of competition.**” *FTC v. Sysco*, 113 F. Supp. 3d 1, 23 (D.D.C. 2015). *See also, FTC v. Staples, Inc.*, 970 F. Supp. 1066, 1083 (D.D.C. 1997); *FTC v. Food Town Stores, Inc.*, 539 F.2d 1345 (4th Cir. 1976).
- “Courts frequently rely on ordinary course documents and witness testimony illustrating that two merging parties **view each other as strong competitors.**” *FTC v. IQVIA Holdings Inc.*, No. 23-cv-06188-ER, 2024 WL 81232, at*37 (S.D.N.Y. Jan 8, 2023).

Head-to-Head Competition

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Kroger 10-K

"We connect with customers through our expanding seamless ecosystem and the consistent delivery of a **full, fresh, and friendly customer experience**."

Fresh
Products

"Our supermarkets, on average, **stock over 12,600 private label items**...We perform a **"make or buy" analysis on Our Brands products** and decisions are based upon a comparison of market-based transfer prices versus open market purchases."

Private Label
Brands

"By maintaining our **long-term commitment to lower prices, through personalized promotions and rewards**, we are increasing customer visits and growing loyal households..."

Loyalty

"We offer Pickup and Harris Teeter ExpressLane™ — **personalized, order online, pick up at the store services — at 2,350 of our supermarkets** and provide Delivery, which allows us to offer digital solutions to substantially all of our customers."

Convenience

"**As of February 3, 2024, we owned 33 food production plants**. These plants consisted of 14 dairies, nine deli or bakery plants, five grocery product plants, two beverage plants, one meat plant and two cheese plants."

Assets

Albertsons 10-K

"The principal competitive factors that affect our business are **location, price, quality, fresh, service, selection, convenience and condition of assets** such as our stores."

"Our *Own Brands* portfolio provides high-quality products to our customers at a great value, offering **more than 14,000 unique items**....We **closely monitor make-versus-buy decisions** to optimize their quality and profitability."

"This includes leveraging customer and transaction information with data driven analytics to **provide both personalized deals and digital coupons, as well as gas and grocery rewards**."

"Our Drive Up & Go curbside pickup service is offered in more than 2,200 locations and **we offer delivery services across more than 2,100 of our stores**."

"**As of February 24, 2024, we operated 19 food production plants**. These plants consisted of seven milk plants, three soft drink bottling plants, three bakery plants, two ice cream product plants, two grocery/prepared food plants, one ice plant and one soup plant."

Head-to-Head Competition | Albertsons Prices off Kroger

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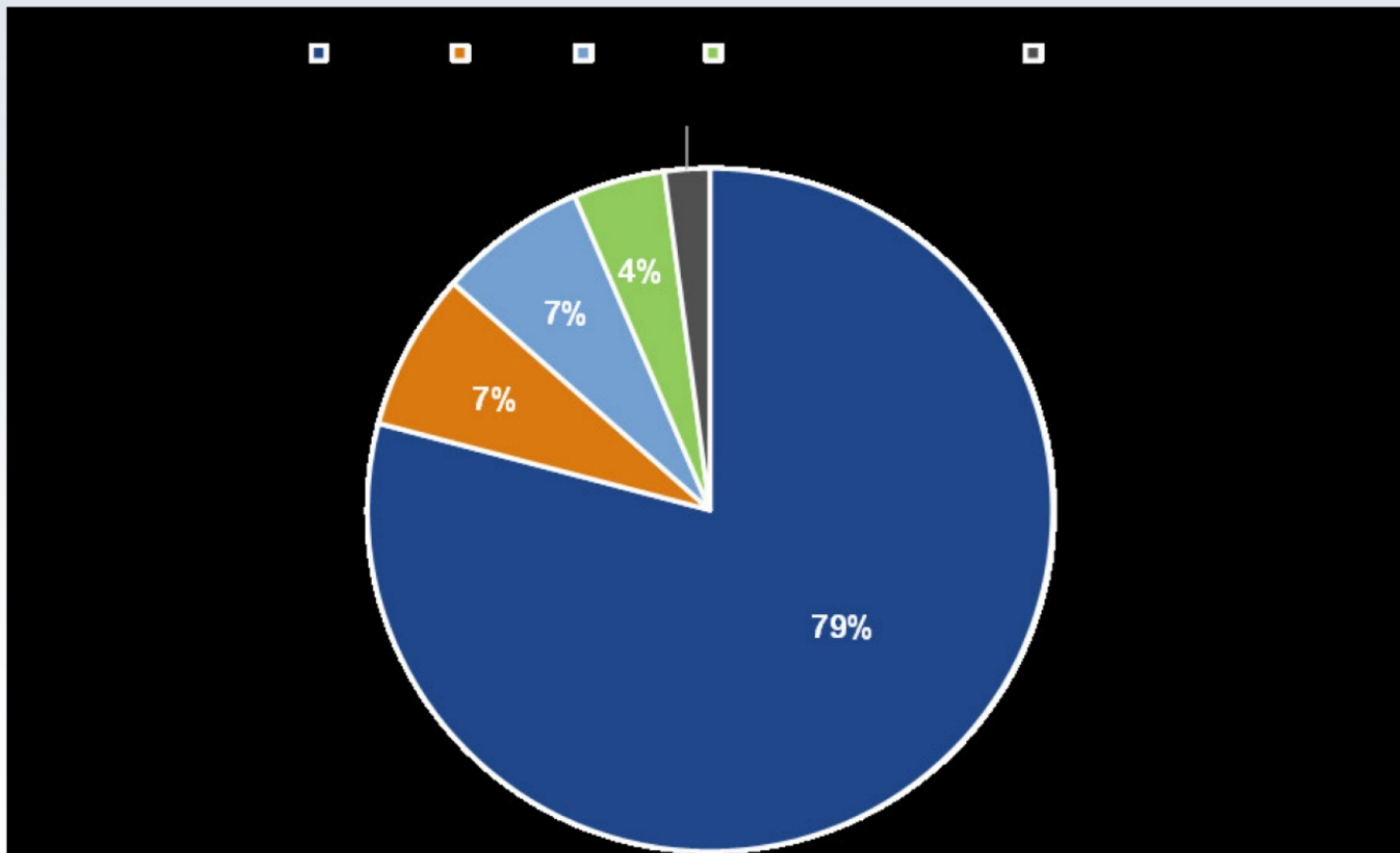
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Figure 36. Share of Albertsons primary grocery competitor by banner in overlap areas, September 2023



Head-to-Head Competition | Kroger's Pricing

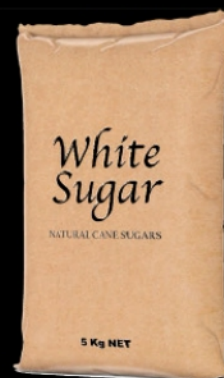
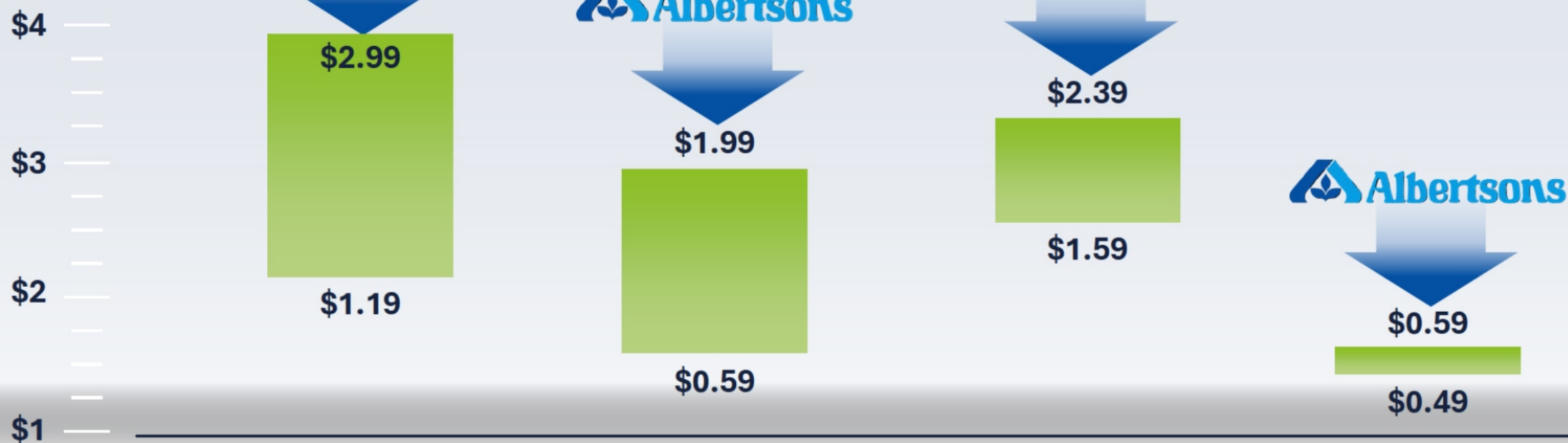


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Head-to-Head Competition | Kroger's Pricing

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Kroger & Albertsons Division Presidents

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**Todd Broderick, President,
Denver Division**

**CO, Eastern WY, SD,
Northwest NM**



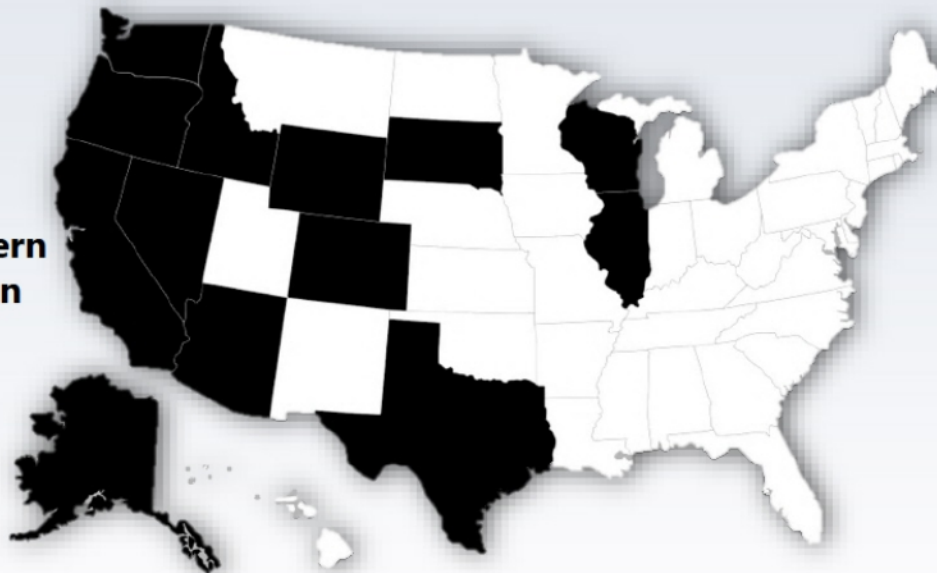
**Kevin Curry,
President, Southern
California Division**

Southern CA



**Carl Huntington,
President, Southwest
Division**

**AZ, Southern NV, NM,
Pueblo, CO, El Paso, TX**



**Todd Kammeyer,
President, Fred Meyer
Stores**

AK, ID, OR, WA



**Michael Marx,
President,
Roundy's Stores**

IL, WI



**Tom Schwilke, President,
Ralphs Stores**

CA



Head-to-Head Competition | On the Ground Competition

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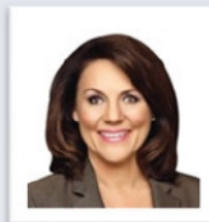
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John Beretta, **Former**
Group Vice President

From: John Beretta [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=800679EC874C4D5D9106E0B2FAE4B5BC-JBERE00]
Sent: 3/30/2021 5:50:04 PM
To: Susan Morris [susan.morris@albertsons.com]; Shane Dorcheus [shane.dorcheus@albertsons.com]

Denver – King's beat us on the Spiral Hams & Beef Rib Roast; Tie on Portions
Intermountain – FM beat us on the Spiral Hams & Portion Hams; Tie on Roast
Jewel – All 3 SVT, Meijer & Marianos came out swinging – no clear win for us.
MA (ACME) – Shoprite beat us on Spiral, Portion and Roast.
MA (SWY) – Giant beat us on Spiral and Portions. Tie on Roast.
NorCal – Win. Beat Lucky and Raleys on Spiral and Portions. Loss on Roast.
Portland – Win. Beat FM on Spiral and Roast; He led with Portions (.87lb).
Seattle – Win. Beat FM on Spirals. Loss on Roasts; he led with Portions
Shaw's – Spiral - Beat Market Basket; Tie with Stoppie. New Ads coming Friday
Southern TT/ Alb – Win vs Kroger on Spiral; Tie on Roasts
SoCal – Beat Ralphs' and Stater on Spiral; Win on Roast v Ralph's
Southwest – Tie on the Spiral Ham; Fry's beat us on Rib Roast
United – We won Lubbock. We tied in Dallas.



Susan Morris,
Executive Vice
President and COO

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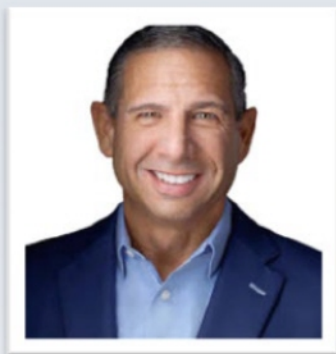
Head-to-Head Competition | Promotional Pricing

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Todd Broderick,
President, Denver
Division



Instant Message : Native Messages

From

Todd Broderick <+13035242499>

13:29:57

The beating continues - second pic is w their front gate

IMG_1564.heic



Instant Message : Native Messages

From

\$!<Other>!\$ <+17205950132>

14:23:42

Crushed them!!

Instant Message : Native Messages

From

Todd Broderick <+13035242499>

14:26:22

Their Lower lips are quivering



Competing in the Market (Holiday Ad)

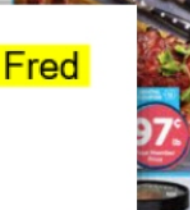
Key comments

- ▶ Shocking, traffic driving retails on the right items
- ▶ Use the cover to drive trips and units, merchandise in-store around these items to build the basket

- ▶ Use history and trends to predict Fred Meyer CY retails and beat it on holidays

to the holiday rotation when appropriate (\$0.97 Pork Spareribs first time ever this year on Memorial Day)

- ▶ Digital offers used as a bolt-on to drive sign ups and household engagement
- ▶ Fred Meyer digital only offers often higher than our open buy or coupon price points



Head-to-Head Competition | Non-Price Competition

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CONTROLLED

From: Andrew Fournier [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5208E66783274066BA7110C2E0DB22FE-AFOUR02]
Sent: 12/2/2022 3:07:06 PM
To: Lynn Miller [lynn.miller@safeway.com]
CC: Todd Broderick [todd.broderick@safeway.com]; Andrew Fournier [andrew.fournier@safeway.com]
Subject: 1644 - CAPEX Items

Here is a rough list of items I think we could do to 1644 to better compete with the impending King Soopers.

Here is a rough list of items I think we could do to 1644 to better compete with the impending King Soopers.

I believe to get the project capitalized we will need to do the polished concrete.

Estimating \$650-\$850k total depending on how many SCOT's we want to order....or use surplus.

- Polished Concrete Floors (\$200k)
- New SBX Kiosk (\$350k)....this is coming in February
- LED lighting across the front end and SBX (\$15k)
- Add 4 SCOT....either 2 corrals or the modified frictionless (\$75-300k)
- Low profile checkstand coolers and magazine racks
- Reconfigure front end
- Do we order new SCOT S7 models or keep the S6?
- Bathroom updates and cleaning (\$25k)
- New inline hot case(\$12k)
- Remove the C2, deli soda, and add inline IM-05 (\$20k)
- Remove the hot chicken/hot wing and remove the Q2 cases in deli (\$5k)
- Add Flat Deck Chicken and Hot Wing Bar (\$25k)
- Add vestibule in second entrance (\$50k)
- Replace Pizza End Cap (\$15k)
- Deli Ovens/Fryers - (\$125k)

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Plaintiffs' Supermarket Case

Presumptively Unlawful Increases in Market Concentration

Plaintiffs Show Harm in Over a Thousand Supermarket Markets

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- "A merger which produces a firm controlling an undue percentage share of the relevant market, and **results in a significant increase in the concentration of firms in that market is so inherently likely to lessen competition substantially** that it must be **enjoined in the absence of evidence clearly showing that the merger is not likely to have such anticompetitive effects.**" *United States v. Phila. Nat'l Bank*, 374 U.S. 321, 363 (1963).
- To assess concentration, we determine the "**line of commerce**" and the "**section of the country**" where relevant competition occurs – i.e., **defining a relevant product and geographic market.** 15 U.S.C. § 18; *Saint Alphonsus Med. Ctr.-Nampa Inc. v. St. Luke's*, 778 F.3d 775, 783-84 (9th Cir. 2015).

Plaintiffs' Relevant Antitrust Product Markets

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Supermarkets Product Market	Large Format Product Market
TRADITIONAL SUPERMARKETS     	TRADITIONAL SUPERMARKETS     
	SUPERCENTERS   
	CLUB STORES  
SUPERCENTERS   	LIMITED ASSORTMENT STORES  
	NATURAL/GOURMET   

Supermarkets Offer a Unique Shopping Experience

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- **A market can be comprised of a set of stores that offer a unique experience.** *FTC v. Staples, Inc.*, 970 F. Supp. 1066, 1079 (D.D.C. 1997) (finding "that office superstores are, in fact, very different in appearance, physical size, format, the number and variety of SKU's offered, and the type of customers targeted and served than other sellers of office supplies.")
- **"The fact that a customer might buy a stick of gum at a supermarket or at a convenience store does not mean there is no definable groceries market."** *FTC v. Whole Foods*, 548 F.3d 1028, 1040 (D.C. Cir. 2008); *see also, United States v. Google*, 2024 WL 3647498, at *70-74 (D.D.C. Aug. 5, 2024).



- "The boundaries of [] a submarket may be determined by examining such **practical indicia** as industry or public recognition of the submarket as a separate economic entity, the product's peculiar characteristics and uses, unique production facilities, distinct customers, distinct prices, sensitivity to price changes, and specialized vendors." *United States v. Brown Shoe*, 370 U.S. 294, 325 (1962).
- "A **common quantitative metric** used by parties and courts to determine relevant markets is the Hypothetical Monopolist Test ('HMT')" *FTC v. Meta Platforms Inc.*, 654 F. Supp. 3d 892, 912 (N.D. Cal. 2023).
- Evidence of head-to-head competition "provides additional support for the market proposed by the FTC See Merger Guidelines § 4 ('**Evidence of competitive effects can inform market definition**, just as market definition can be informative regarding competitive effects.')." *FTC v. IQVIA Holdings Inc.*, 2024 WL 81232, at *20 n.17 (S.D.N.Y. Jan. 8, 2024)

Supermarkets are a One-Stop Shop

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Susan Morris,
Executive Vice
President and COO

Whichever way you are going this year – I think we have every opportunity to have an amazing holiday season. Out in stores we are seeing the bake aisle traffic heat up, fall beers selling already, pumpkin items flying out the door. While I know corporate we are working on securing supply of key holiday items, I encourage all of you to find local source of more. **Winning means having the items our customers want, when they want them! With our larger basket sizes and fewer trips, they are telling us they want one stop shopping – how can we best meet that demand?**



Innovation #1: One-Stop Shopping

Early on, people had to shop a butcher, a baker, and a grocer. Barney knew it would be simpler and more convenient if they could buy everything at one stop from one store, so 1901, Kroger became the first grocer in the country to establish its own bakeries, followed by integration of the meat department.

Today one-stop shopping has grown into something that would make Barney smile—a complete shopping universe with endless variety, in-store dining, wine and cheese shops, sushi and even Starbucks.



Supermarkets are a One-Stop Shop

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Supermarkets are a One-Stop Shop

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Our Brands



Innovation
\$80M
incremental

Assortment & Placement



Big Packs & Multipacks



Differentiate with Freshness and Quality

Service Meat & Seafood



\$380M
in SALES!

Seasoned & Cedar Plank Salmon / Shrimp Bowls



\$53M
in SALES!

Premium Snacking & Entertaining



\$13M
in SALES!



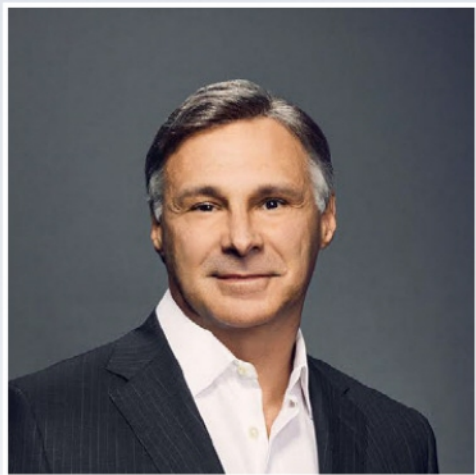
Store Format Witness Testimony

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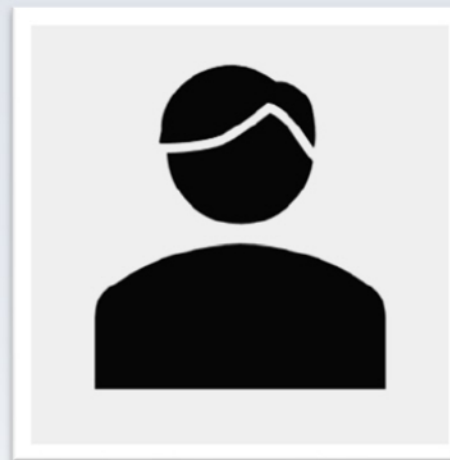


Keith Knopf

The Raley's Company

CEO

(Supermarkets)



Kurt Unkelbach

Dollar Tree

**Vice President of
Merchandise Strategy &
Analytics**

(Dollar Stores)



Peter Van Helden

Stater Bros. Markets

Chairman & CEO

(Supermarkets)



Scott Neal

Sprouts Farmers Market

**Chief Merchandising
Officer**

(Natural/Gourmet)

Other Store Formats Don't Offer the Same One-Stop Shop

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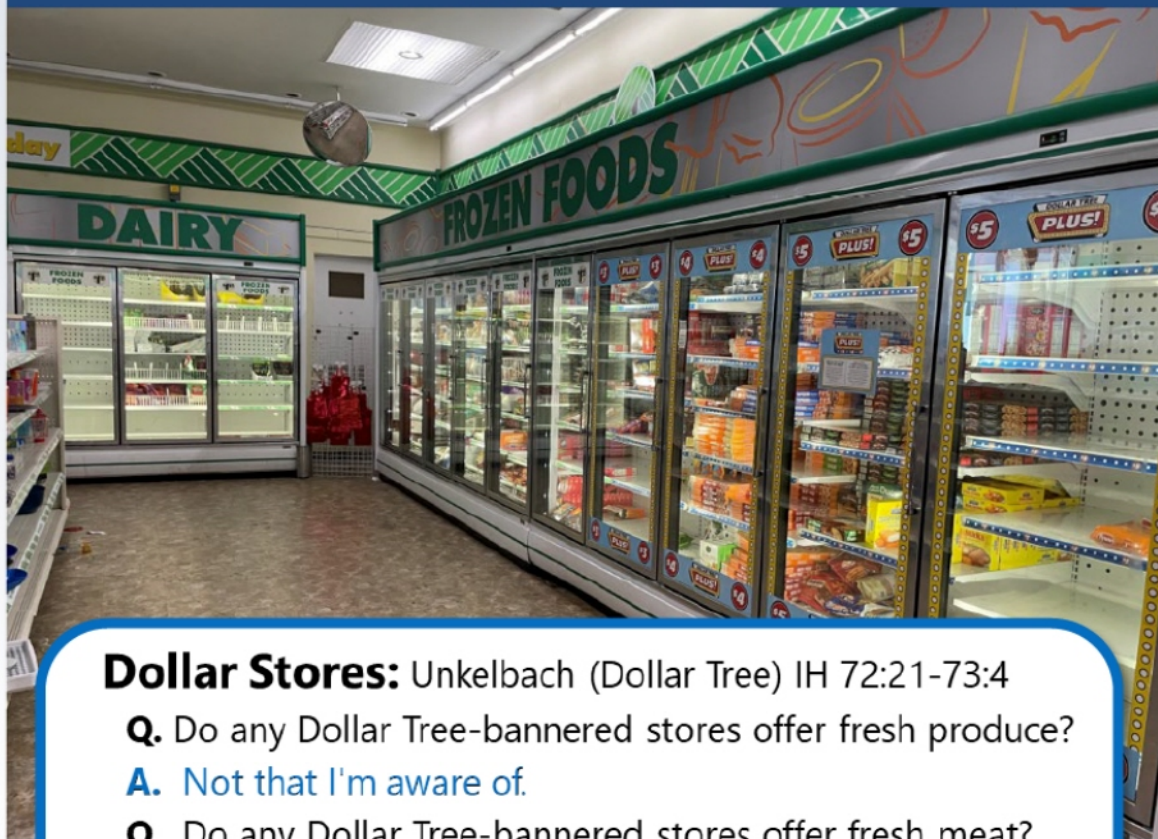
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Dollar Tree



Dollar Stores: Unkelbach (Dollar Tree) IH 72:21-73:4

Q. Do any Dollar Tree-bannered stores offer fresh produce?

A. Not that I'm aware of.

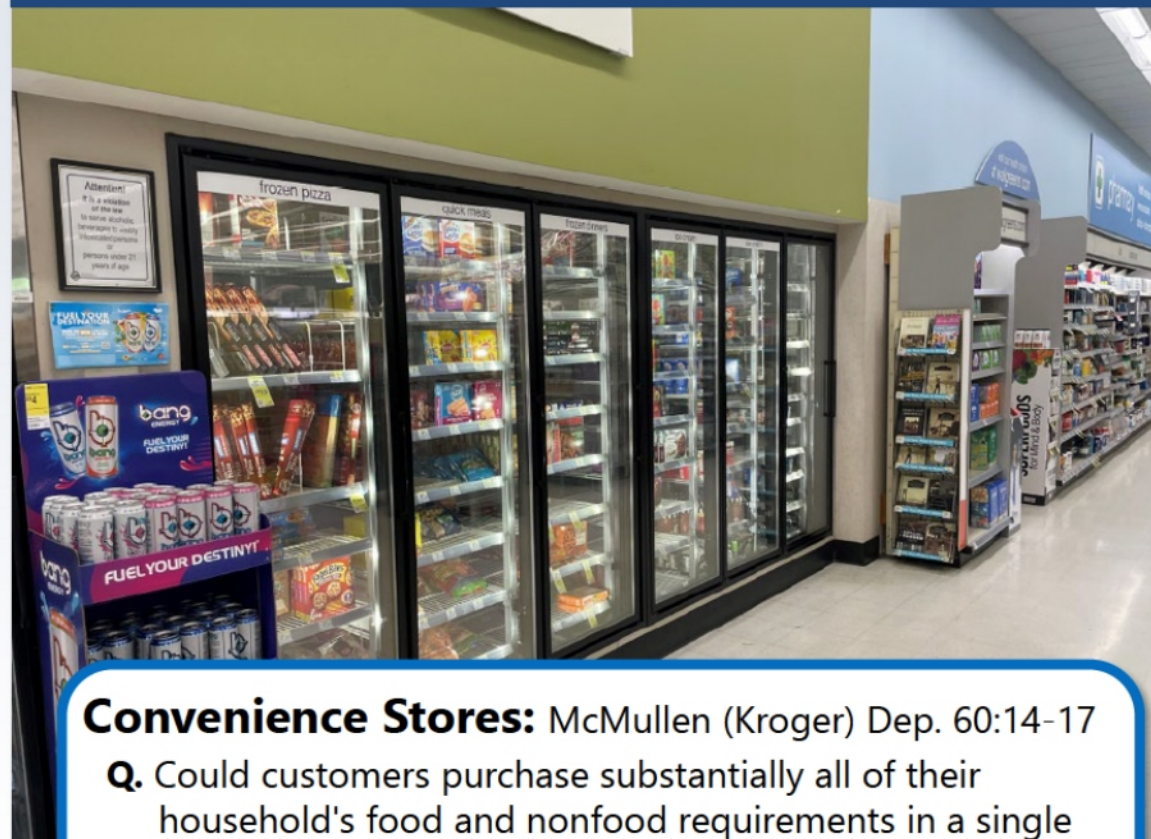
Q. Do any Dollar Tree-bannered stores offer fresh meat?

A. Fresh meat? Not that I'm aware of.

Q. Do any Dollar Tree-bannered stores offer fresh seafood?

A. Not that I'm aware of.

Walgreens



Convenience Stores: McMullen (Kroger) Dep. 60:14-17

Q. Could customers purchase substantially all of their household's food and nonfood requirements in a single shopping visit to a convenience store?

A. No.

Other Store Formats Don't Offer the Same One-Stop Shop

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Natural Grocers



Premium/Natural/Organic:

Neal (Sprouts) Dep. 116:20-25

Q. Does Sprouts provide a treasure hunt experience for shoppers?

A. Yes. And that's something that we continually work to achieve, is create more and more of those treasure hunt experiences in our stores.

Trader Joe's



Premium/Natural/Organic:

Cahan (Trader Joe's) Dep. 102:1-7

A. I think one of the most important distinctions is that we are a limited-SKU retailer. We have approximately 4,000 different products that we offer for sale which is far less than a traditional grocery store, and most of the products we sell are not available in other stores and are unique to Trader Joe's.

Other Store Formats Don't Offer the Same One-Stop Shop

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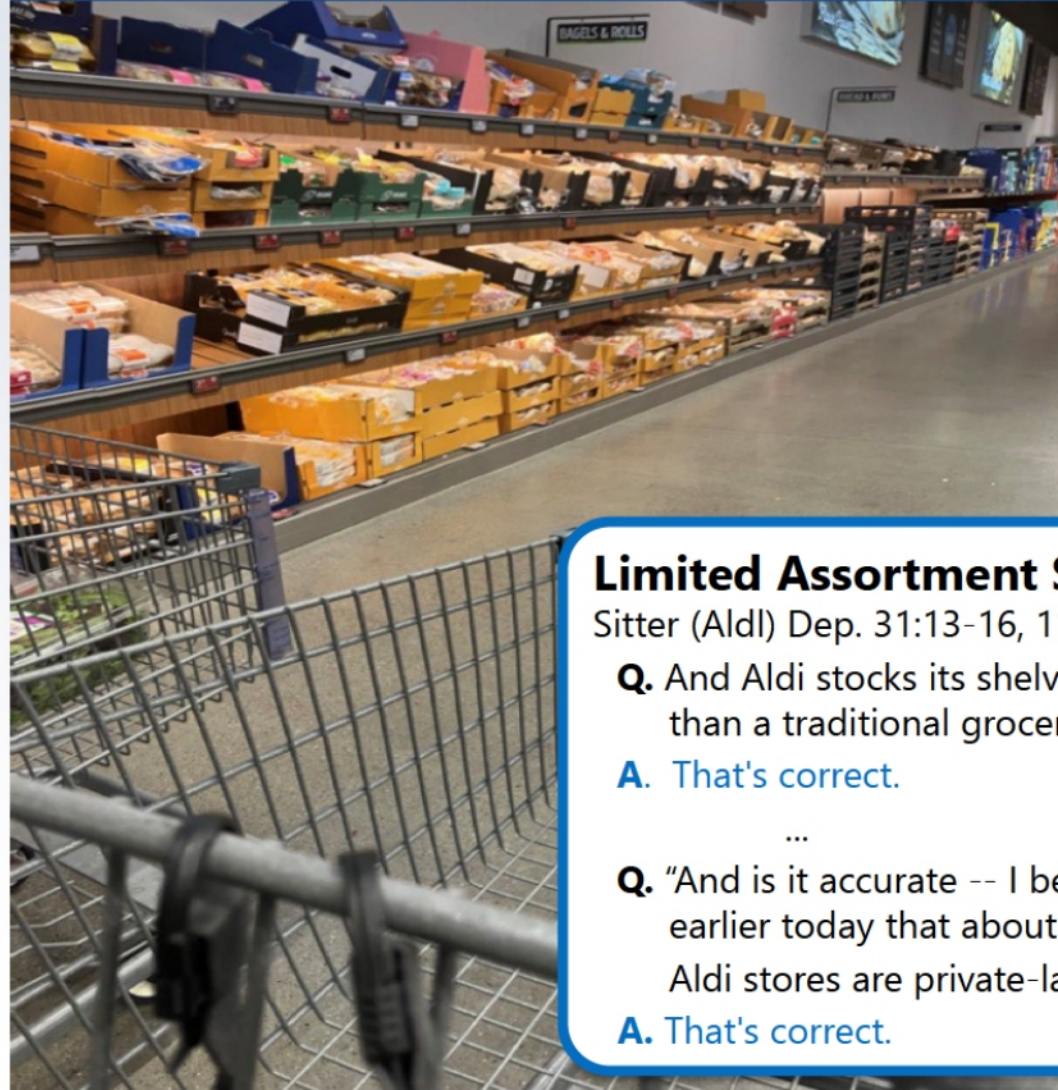
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Aldi



Limited Assortment Store:

Sitter (Aldi) Dep. 31:13-16, 111:5-9

Q. And Aldi stocks its shelves with significantly fewer products than a traditional grocery store or a supermarket; is that correct?

A. That's correct.

...

Q. "And is it accurate -- I believe you -- that you testified earlier today that about 90 percent of products sold in Aldi stores are private-label products?"

A. That's correct.

Other Store Formats Don't Offer the Same One-Stop Shop

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Sam's Club



Club Stores: George (Costco) Dep. 128:5-12

Q. So, for example, Costco customer, Costco member can't weigh potatoes and buy a certain quantity of potatoes; is that correct?

A. That's correct.

Q. And a Costco consumer cannot purchase just one avocado; is that correct?

A. That is correct.

Competition for Groceries is Local

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Vivek Sankaran, CEO



In the Matter of:

Kroger/Albertsons

November 8, 2023

Vivek Sankaran

10 Q. Do you believe that Albertsons provides a
11 valuable service to people in the U.S.?

12 A. We believe we provide an important role in our
13 communities. We provide a range of goods and services
14 every day in reasonable proximity to where they are.

6 Q. And why would certain stores differ by gross
7 margin?

8 A. It could be a myriad of reasons. It could be
9 the mix in the store. It could be the competitive
10 pressures around the store. That means the pricing has
11 to be different. Like I said, the pricing is ultra-
12 local for us, so you could have competitive pressures

PX4022-331

In the Matter of:

Kroger/Albertsons

November 15, 2023

Rodney McMullen

Q And so why does -- why does Kroger
have kind of geographically delimited divisions?

A If you look from an operations
standpoint, you want -- the objective is for
every -- a customer shops one or two -- maybe
three stores at most. And we want for a customer
to really feel that that store is local, and what
we have found over time is by having the regional
structure, you're able to merchandise and really
have each store connect with that particular
trade area because everywhere we operate there's
hundreds of different types of trade areas.

For the record, Inc.

(301) 870-8025 - www.ftrinc.net - (800) 921-5555

PX4024-001



Rodney McMullen,
CEO





- Ph.D. in Economics from Johns Hopkins University
- Partner at Bates White
- 10+ years of government service at DOJ and FTC
- Testified in multiple recent merger trials

Conclusions

- Supermarkets and large format stores in local areas are properly defined antitrust markets
- The acquisition will result in numerous highly concentrated markets with a presumption of harm
- **Acquisition likely will result in higher prices, lower quality, or other consumer harms in many markets**
- Neither entry nor efficiencies is likely to sufficiently mitigate the anticompetitive effects
- **The proposed divestiture is also unlikely to sufficiently mitigate the anticompetitive effects**
- Shares and concentration levels in the Plaintiffs' proposed markets for union grocery labor are high enough that the merger is presumptively anticompetitive

Data Shows that Albertsons and Kroger Price Check

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Figure 12. Share of Albertsons primary food competitors by store format in overlap areas, September 2023

■ Traditional supermarket ■ Supercenter ■ Club

Supermarkets = 99%

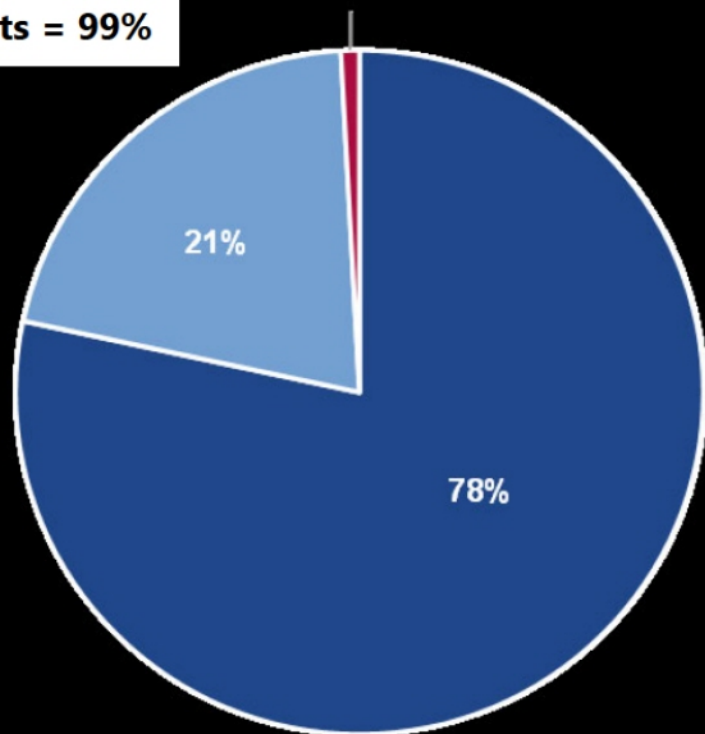
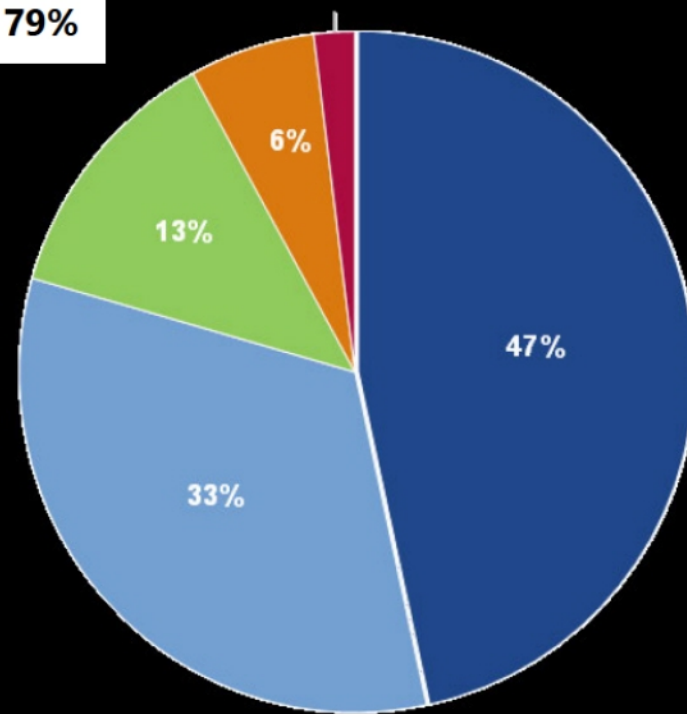


Figure 15. Share of Kroger EDE price checks in overlap areas by store format, April 2024

■ Traditional supermarket ■ Supercenter ■ Club ■ Other

Supermarkets = 79%



More Than 2,000 Properly Defined Local Supermarket Markets

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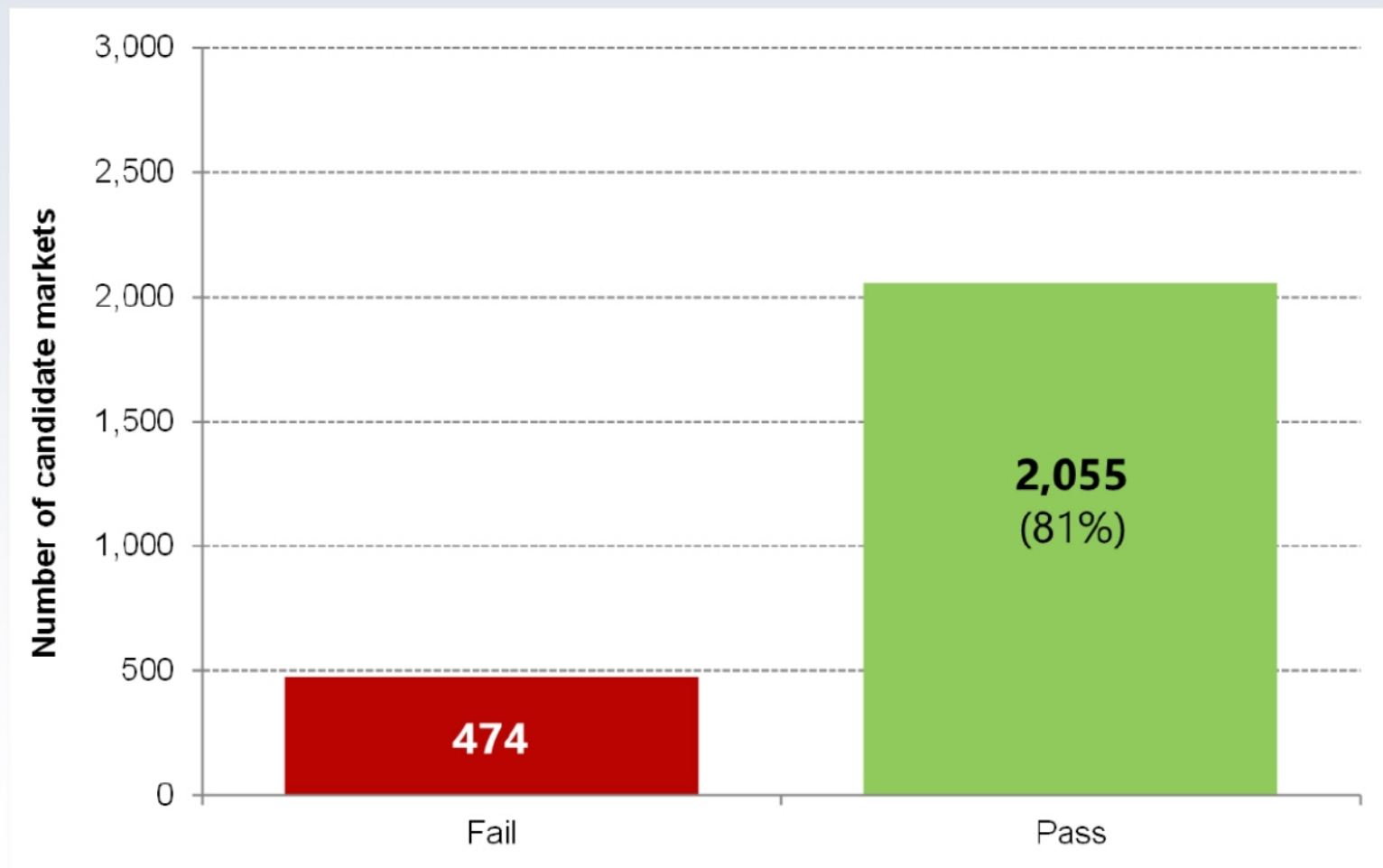
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Number of Supermarket Markets That Pass the Hypothetical Monopolist Test (HMT)



The Merger is Presumptively Anticompetitive in 1,922 Local Supermarket Markets

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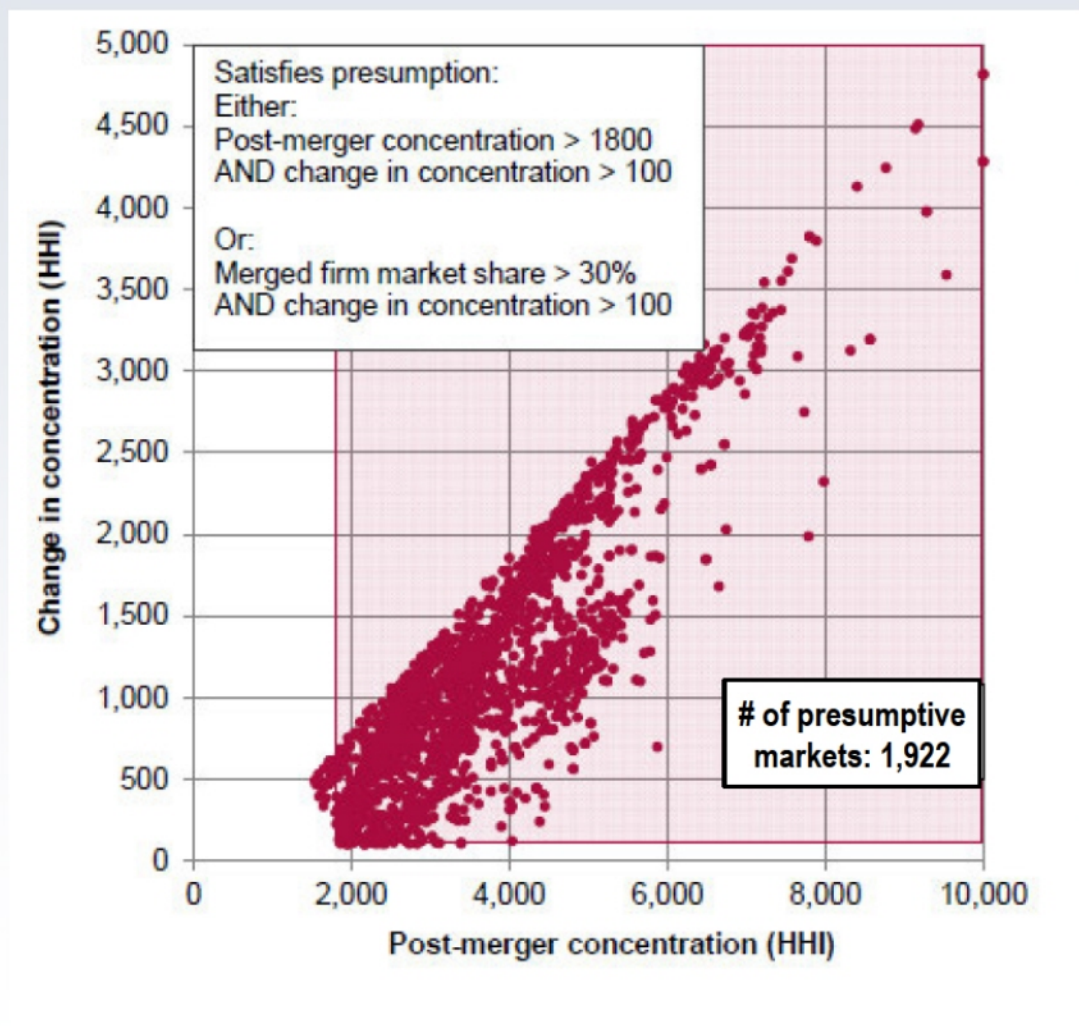
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Hill Rebuttal Report Fig. 42. Presumptive supermarket markets, 2022



\$73 Billion in annual sales at these 1,922 stores

The Merger Likely Will Cause Harm in 1,472 Local Supermarket Markets

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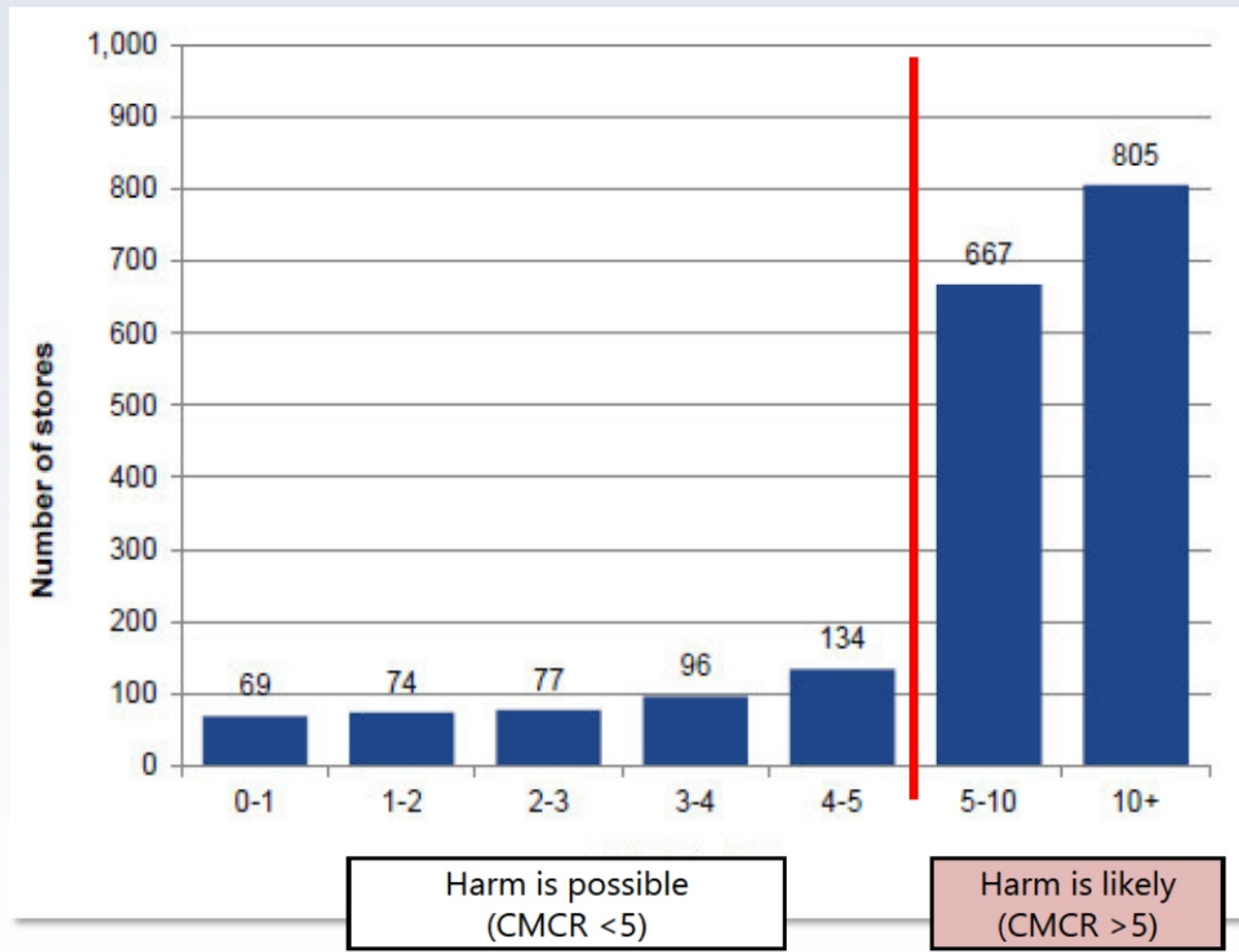
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Distribution of CMCRs for focal stores in the presumptive supermarket markets.



Results are not Sensitive to the Addition of Stores such as Costco and Whole Foods



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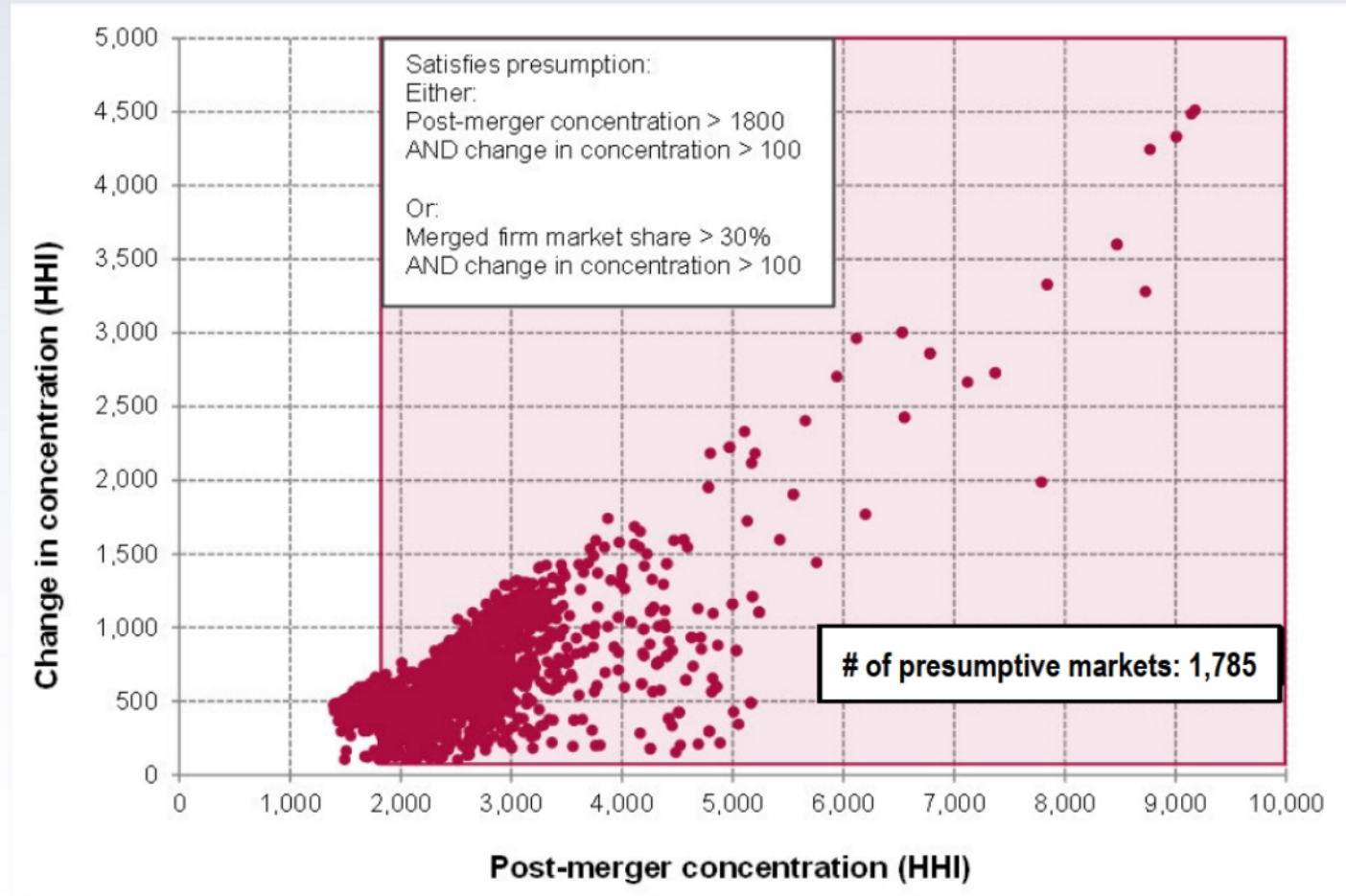
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Market concentration for presumptive large format store markets, 2022.

Includes **supermarkets, supercenters, club, natural, and limited assortment** stores



\$73 billion in annual sales at these 1,785 stores

Results are not Sensitive to the Addition of Stores such as Costco and Whole Foods

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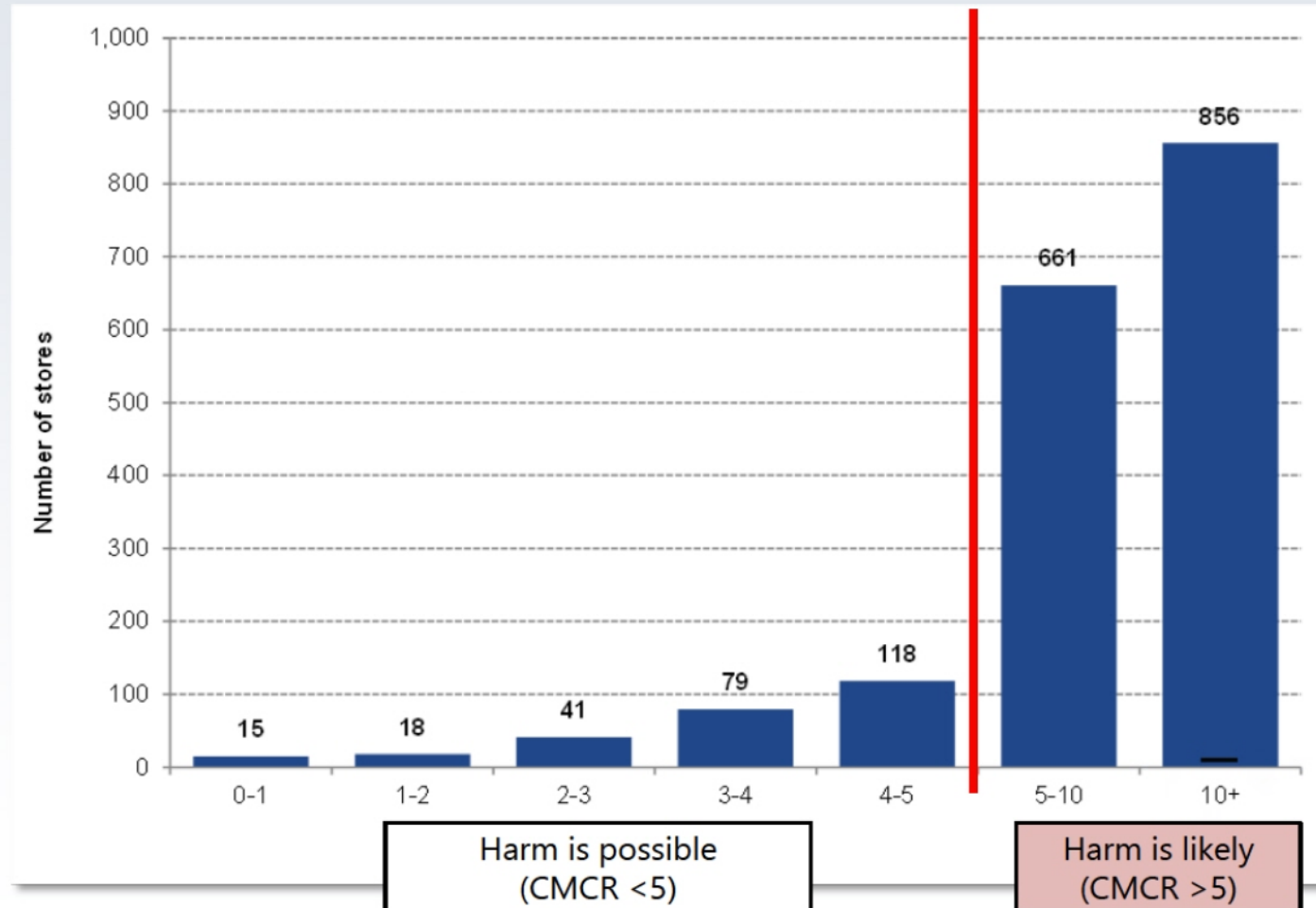
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Distribution of CMCRs for focal stores in presumptive large format store markets.

*Includes **supermarkets**, **supercenters**, **club**, **natural**, and **limited assortment** stores*



Plaintiffs Account for Target, Walmart, Costco, and Whole Foods

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Representative Example of Store Formats in Portland, Oregon Included in Plaintiffs Relevant Markets

Store	Format	Included in Supermarket product market?	Included in Large Format Store product market?
Safeway	Traditional supermarket	X	X
Winco Foods	Traditional supermarket	X	X
Albertsons	Traditional supermarket	X	X

Representative Example of Store Formats in Portland, Oregon Included in Plaintiffs Relevant Markets

Store	Format	Included in Supermarket product market?	Included in Large Format Store product market?
Walmart Neighborhood Mkt	Traditional supermarket	X	X
Walmart Supercenter	Supercenter	X	X
Target	Supercenter	X	X
Walmart Store	Supercenter	X	X
Target Express	Supercenter	X	X
Costco Wholesale	Club		X
Whole Foods Market	Natural and gourmet		X
Trader Joes Market	Natural and gourmet		X
Whole Foods Market	Natural and gourmet		X
New Seasons Market	Natural and gourmet		X
Natural Grocers Vitamin Cottage	Natural and gourmet		X
Basics Market	Natural and gourmet		X
Market Of Choice	Natural and gourmet		X

Plaintiffs' Labor Case

Witness Testimony

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Dan Clay
President, UFCW Local 555



Andrea Zinder
President, UFCW Local 324



Jon McPherson
Kroger VP of Labor
Relations

Credible Threat of Strikes is an Important Bargaining Tool

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Thousands of Fred Meyer, QFC employees in Oregon go on strike



By [Rob Manning](#) (OPB), [Kristyna Wentz-Graff](#) (OPB), [Jeff Thompson](#) (OPB), [Meagan Cuthill](#) (OPB) and [Rebecca Ellis](#) (OPB)

Dec. 17, 2021 9:26 a.m. Updated: Dec. 17, 2021 5:50 p.m.



(Left to right) Fred Meyer employees Ed (no last name given), Shane (no last name given), Kevin Bazante Contreras and Jordan (no last name given) picket at the Beaverton Town Square Fred Meyer.

Kristyna Wentz-Graff / OPB



Nicole Rushing, center, gives a thumbs up as carshonk in support of protesters outside the Hawthorne Fred Meyer in Southeast Portland on Friday.

Kristyna Wentz-Graff / OPB



Protesters outside the Hawthorne Fred Meyer in Southeast Portland.

Kristyna Wentz-Graff / OPB

This Deal Provides a "way out"

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TM	Tim Massa Jk	4/4/2022, 4:57 PM
JM	Jon McPherson Sounds good	4/4/2022, 4:57 PM
JM	Jon McPherson Can you add Chad to the call with Gary at 2?	4/4/2022, 5:25 PM
TM	Tim Massa Just sent invite	4/4/2022, 5:28 PM
TM	Tim Massa Will take it as audio	4/4/2022, 5:28 PM
TM	Tim Massa Have to get over to restaurant	4/4/2022, 5:28 PM
JM	Jon McPherson Sounds good	4/4/2022, 5:30 PM

TM

Tim Massa

Sounds like it. Really disappointed in Albertsons

JM

Jon McPherson

They are poor negotiators and we get stuck with their deal every time. I need to figure a way out of it.

TM	Tim Massa Sounds like it. Really disappointed in Albertsons	4/4/2022, 5:38 PM
JM	Jon McPherson They are poor negotiators and we get stuck with their deal every time. I need to figure a way out of it.	4/4/2022, 5:38 PM
TM	Tim Massa Stay strong brother	4/4/2022, 5:42 PM
TM	Tim Massa Jan - I won't be able to see anyone so if you can lead call once everyone is on. Thanks much	4/4/2022, 5:54 PM

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Defendants Cannot Meet their Burden

Defendants' Ordinary Course Documents Admit that this Merger Raises Competitive Concerns

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Usman Humayun, Group Vice President,
Enterprise Marketing

Instant Message : Microsoft Teams

From

11:57:16

Usman Humayun <Usman.Humayun@albertsons.com>

It's like AT&T and Verizon wanting to merge

Instant Message : Microsoft Teams

From

11:57:01

Usman Humayun <Usman.Humayun@albertsons.com>

But issue is anywhere you go unless you try to argue that Walmart and target would never let you have monopoly, you are basically creating a monopoly in grocery with the merger so makes no sense



Mike Brown, Senior Category Manager

From: Brown, Mike <mike.brown2@kroger.com>

Sent: Thursday, October 13, 2022 2:24 PM

To: Blacksten, Doug <doug.blacksten@kroger.com>

Subject: RE: Albertsons merger with Kroger could be announced this week (cnbc.com)

Didn't want you to hear it from a Vendor.

I think the FTC would be all over this.

Mike

Defendants are Unable to Show Sufficient Cognizable Efficiencies



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- Defendants bear the burden to show cognizable efficiencies of the “nature, magnitude, and likelihood that no substantial lessening of competition is threatened by the merger in any relevant market.” 2023 Merger Guidelines § 3.3; 2010 Merger Guidelines § 10.
- To be cognizable, Defendants must “clearly show” efficiencies are:
 - Verifiable in existence and magnitude
 - Merger-specific
 - Offsetting competitive harm
 - Pass through to consumers



- MBA from Yale School of Management
- Managing Principal at Analysis Group specializing in applying financial and economic analyses to complex business litigation and regulatory matters
- 20+ years of experience in economic consulting, analyzing antitrust concerns, intellectual property claims, and other commercial disputes
- Testified in a 2019 trial in federal court applying a similar analysis to analyze claims of lost profits and disgorgement and concluded claims were unsubstantiated

Conclusions

- Only a small portion of Defendant's claimed synergies are verifiable and merger specific
- Other synergies cannot be verified due missing and incomplete information from the Defendants
- Defendants' expert failed to show that Defendants' assumptions are reasonable or that data used to support them is accurate or reliable
- **The cost synergies claimed by Defendants represent only a small reduction in total costs**
- Parties' planned price investments are based on unenforceable promises
- Based on the experiences in prior acquisitions, Kroger does not have a track record of following through on price investment representations made prior to an acquisition

The Conclusion that's Easily Drawn is Overall Prices will Increase

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4/22/2025



Instant Message: Native Messages

From

17:21:36

Scott Shores <+13038756901>

It's all about pricing and competition and we all know prices will not go down. A \$500M investment in pricing to our company won't get our prices down to Kroger levels in my view, therefore the conclusion that's easily drawn is overall prices will increase.

From: Scott Shores <+13038756901> 17:24:26

And keep in mind if this falls apart, the next "solution" could be worse. Bottom line is our current investors want out and that's why we are here in this situation.

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***Proposed Divestiture to C&S Will Not Remedy
Substantial Lessening of Competition***



- 1. We've Heard These Claims Before**
- 2. Likely Harm in a Single Market Warrants Injunction**
- 3. Divestiture Leaves Hundreds of Markets Unremedied**
- 4. Competition Likely Harmed in Additional Markets**
- 5. No Remedy for Harms to Labor Markets**
- 6. Equities Favor Injunction**

Defendants' Claims

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and associate wages and benefits at Albertsons stores across the country. Kroger will help ensure grocery operations, this level of underperforming stores is normal and companies have corrective procedures available to them to improve performance for long-term sustainability.

We've Heard This Before





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Acquisition	What They Said	What Happened
	<p>"Efficiencies generated from this transaction will enable further price reductions"</p>	<p>"Q. Did Albertsons lower prices as a result of the Safeway acquisition? A. I cannot specifically quote that"</p>
	<ul style="list-style-type: none"> "The Parties and Buyers Have No Plans to Close Any of the 25 Identified Stores" "Store performance can be improved" "Highly experienced senior management team" "acquisition will transform" divestiture buyer "Hiring all existing Albertson's / Safeway store employees at closing" 	<p>BUSINESS</p> <p>Grocer Haggen files for bankruptcy and replaces executive after failing to win over shoppers</p> 
	<ul style="list-style-type: none"> "We have set up the retail organization to succeed in this venture" "Assumptions of Deal Model . . . [are] conservative" 	<p>"Q. And does this reflect that as of April 2024 Grand Union's financial performance continues to be challenged? A. Yes."</p>

Ordinary Course Documents Show C&S's View

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Alona Florenz <aflorenz@cswg.com>

Kroger gave us their worse chains including

Alona Florenz

SVP Corporate Development



Exciting project that is keeping me fully engaged. Massive undertaking for a wholesaler with limited retail capability.

This scenario really worries me, so I wanted to come up with some alternatives to consider. I feel that there is more downside risk for us than for K&A, as we are trying to establish new brands in many of these markets, while also trying to stand up a retail organization. We can't afford customer loss.

Eric Keptner

Chief Marketing Officer



Ordinary Course Documents Show C&S's View

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Florenz, Alona <(617) 777-2938>

Yes just careful with FTC...we want to say we can run them



Alona Florenz

SVP Corporate Development



Eric Winn

CEO

-If asked if we would sell...at this point that isn't something we can discuss, but we have always viewed you as a potential partner in that regard and we definitely want to support your growth

Do we have to say that we won't close stores? (the 'all' is a problem) - the trick is that they stay open as they transition but then what? Are we committed to this? Ensured they remain open through the divestiture process



Bob Palmer

then-CEO





Divestiture must “restore competition” and “replac[e] the *competitive intensity* lost as a result of the merger.”

FTC v. Sysco, 113 F. Supp. 3d 1, 72 (D.D.C. 2015)

Defendants must show that the proposed remedy “sufficiently *mitigate[s]* the merger’s effect such that it was no longer likely to *substantially* lessen competition.”

Illumina, Inc. v. FTC, 88 F.4th 1036, 1059 (5th Cir. 2023)



“[T]he district court did not abuse its discretion in enjoining the merger on the basis of **the merger's anticompetitive effects in the Richmond market**. And, as previously noted, this holding provides **an independent basis for the injunction**, even absent a finding of anticompetitive harm in the fourteen-state national accounts market.”

United States v. Anthem, 855 F.3d 345, 368 (D.C. Cir. 2017)

Zooming in on Santa Fe

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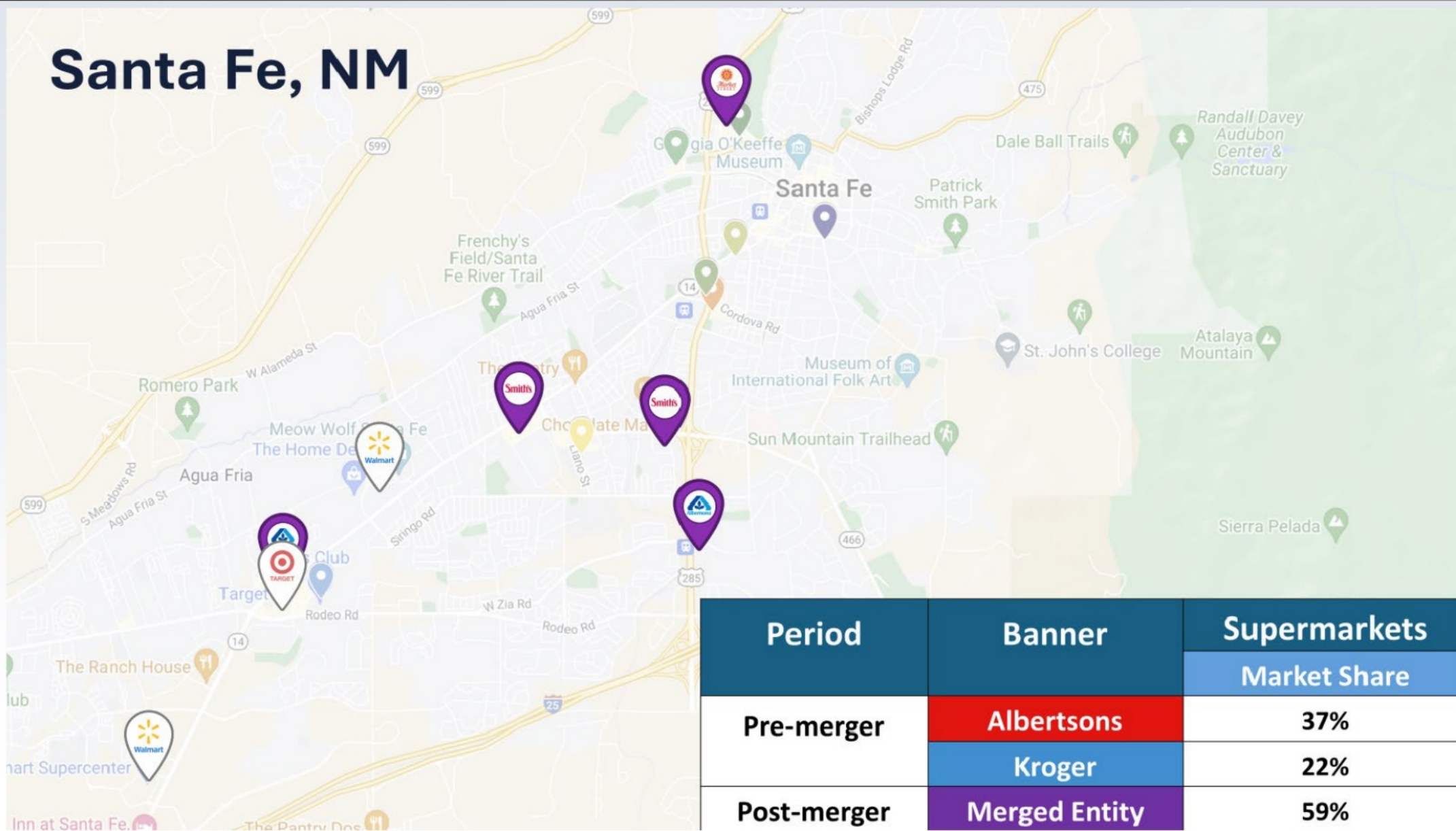
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Santa Fe, NM



Zooming in on Corvallis

FOIA-2025-01503

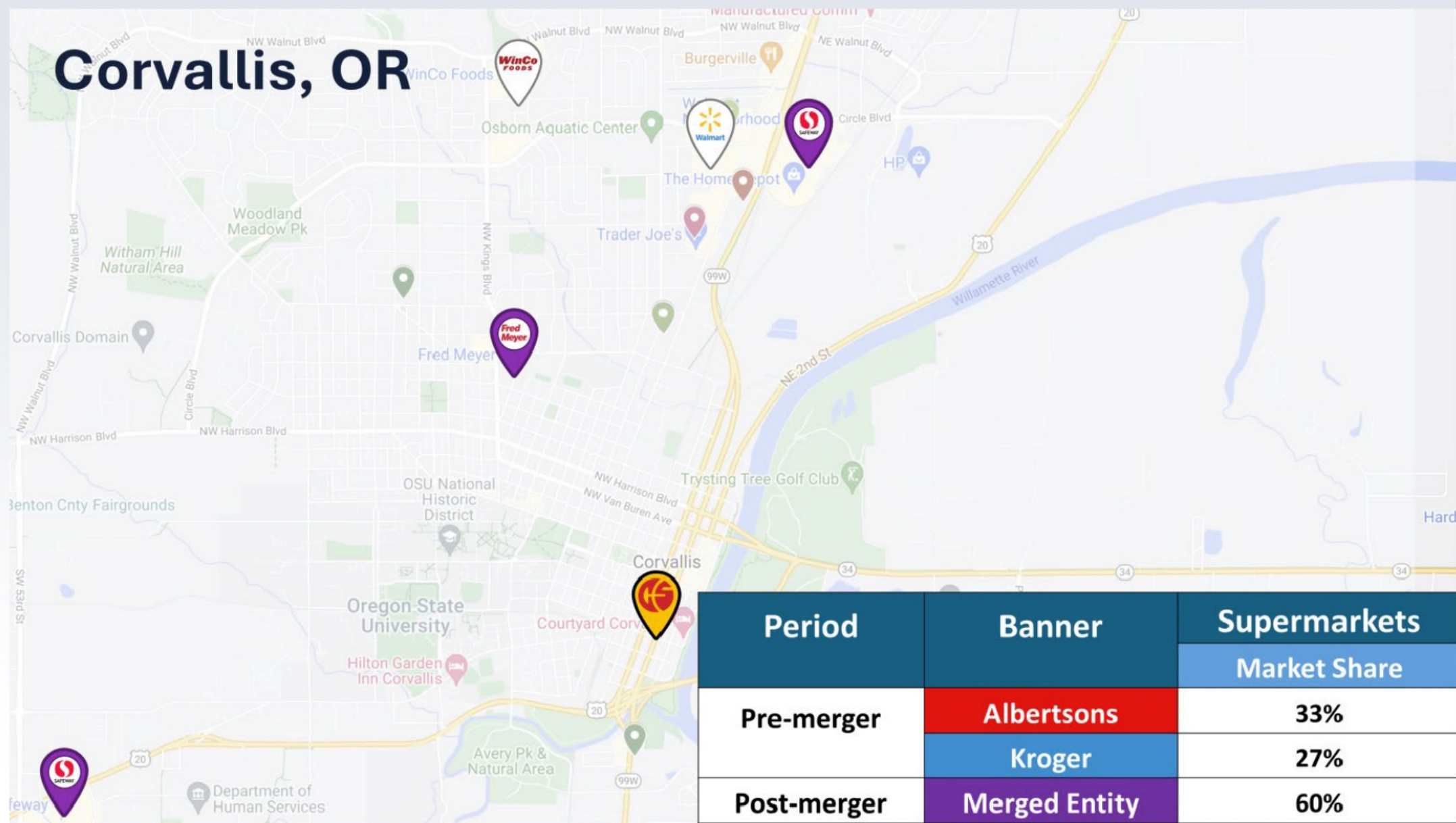
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Corvallis, OR



Period	Banner	Supermarkets
		Market Share
Pre-merger	Albertsons	33%
	Kroger	27%
Post-merger	Merged Entity	60%



Where the “*prima facie* case anticipates and addresses the respondent's rebuttal evidence, as in this case, the *prima facie* case is very compelling and significantly strengthened,” and “the respondent’s burden of production on rebuttal is also heightened.”

Chicago Bridge & Iron Co. N.V. v. FTC, 534 F.3d 410, 426 (5th Cir. 2008)

Defendants' Inconsistent Positions on Competition



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Company

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

FEDERAL TRADE COMMISSION, STATE
OF ARIZONA, STATE OF CALIFORNIA,
DISTRICT OF COLUMBIA, STATE OF
ILLINOIS, STATE OF MARYLAND, STATE
OF NEVADA, STATE OF NEW MEXICO,
STATE OF OREGON, and STATE OF
WYOMING,

Plaintiffs,

v.

THE KROGER COMPANY and
ALBERTSONS COMPANIES, INC.,

Defendants.

Case No.
DEFENDANT
COMPANIES
PLAINT
PRELIM
REDACTED

Now, the *why*. The reason is existential—Kroger must expand, adapt, and most importantly, continue to lower prices to compete with global behemoths like Walmart, Costco, and Amazon, which have moved aggressively, rapidly, and effectively to dominate grocery retailing. services, among other things. The divestiture will preserve competition in every market in which plaintiffs could conceivably allege competitive harm.

Comparison of Merged Firm to Post-Divestiture C&S

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Assets	Kroger/Albertsons	C&S
Stores	4410	602
Revenues (MM)	208,404	42,614
Manufacturing Facilities	51	2

Divestiture Is Insufficient to Remedy Acquisition's Harms

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- **Leaves Hundreds of Markets Unremedied**
- **C&S's Poor Track Record of Operating Supermarkets**
- **Divestiture Is Not a Standalone Business**
- **C&S Will Need to Rebanner Hundreds of Stores**
- **C&S's Dependency on Kroger for Up to Four Years**
- **C&S Will Not Compete on Price for Up to Three Years**
- **C&S Will Have Less Incentive to Compete than Albertsons**
- **C&S Predicts Declining Sales and Increased Costs**
- **C&S's Failure with Prior Divestiture**

C&S's Poor Track Record of Operating Supermarkets

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Year-End Count of Grocery Stores Operated by C&S (2001 – 2023)



- **Store operations requests**

- Call requested: to discuss what it takes to operate a grocery store

From time to time, we acquire retail store locations in connection with strategic transactions to maintain or expand our grocery wholesaling and distribution business.

Divestiture Is Not a Standalone Business

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initial matter, the current mix-and-match approach that Kroger/Albertsons took with respect to all categories of assets in creating the divestiture package will complicate the transition and C&S's ultimate operation of those assets. Scale is also important, so increasing the number of

Q. And C&S is not -- as we discussed earlier, C&S is not buying all of the infrastructure required to run the divested stores; is that correct?

MS. HESSE: Objection.

THE WITNESS: We are -- there are some pieces in the infrastructure we have to, for example, build warehouses, and we have to stand up the tech stack, yes.

17 best illustrated with an alternative. The alternative
18 is you buy a company, a fully functioning company. And
19 that's not what we are buying here. We are buying a





- Ph.D & M.A. in Marketing from UPenn, Wharton School of Business
- Southern Methodist University, Cox School of Business
 - Professor of Marketing and Marketing Department Chairperson
 - Deans Distinguished Research Professor; W.R. & Judy Howell Endowed Director of the JCPenney Center for Retail Excellence
- Academic research areas
 - Category Management
 - Retail Pricing, Promotion, and Assortment Decision-Making
 - Consumer Store Choice Decisions

Assignment:

- Evaluate the retail supermarket business environment in which operate Kroger, Albertsons, and C&S
- Identify and assess the challenges C&S must overcome to attract shoppers to its stores and compete effectively in the supermarket industry.
- Assess the conclusions of Mr. Daniel Galante as they relate to the challenges C&S must overcome.



To succeed, C&S must maintain and build upon the banners' consumer-based brand equity and faces various challenges, including in:

- Supermarket Banners
 - Rebannering
 - Competition against merged entity
- Private Label
- Marketing
 - Loyalty
 - Personalized advertising and promotion
 - Retail media network

C&S Is Dependent on Kroger for Personnel

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- **“Not easy to get resources externally & even if we do, there is a ramp up period for training and learning a new environment (will still lack business knowledge of k&a)”**
- **“Legacy systems and skill not available in market”**
- **“C&S doesn’t have these skills today”**

As C&S Loses Sales, Affected Markets Increase

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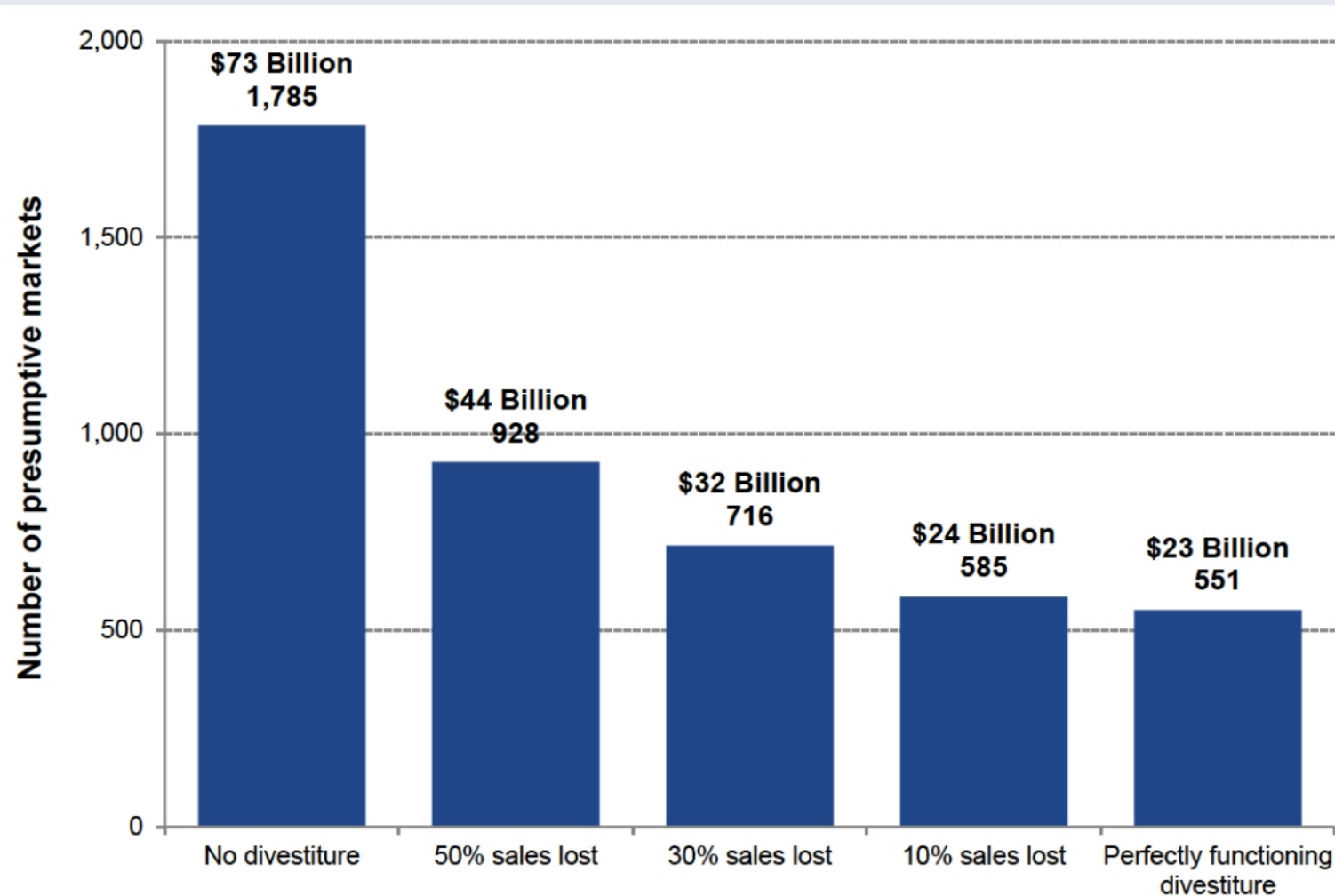
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Figure 30. Impact of divested store sales loss scenarios on the number of presumptive large format store markets and the total annual sales of focal stores in these markets



Divestiture Does Not Remedy Harms to Labor Market

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Andrea Zinder

President, UFCW Local 324

A. The big national corporations do not care what a local competitor is doing when they're at the bargaining table with the UFCW.



Jon McPherson

Kroger VP of Labor Relations

Q. But in a situation in a market where there is only one employer who is unionized, could a union use the tactic of a whipsaw strike in that market?

A. No.

A. We usually -- so just for the record, I have not signed, in my tenure with Kroger, an MSAA with any other company. So we typically tell them that we are



"Although private equities may be considered, public equities receive far greater weight. . . . A denial of a preliminary injunction would preclude effective relief if the Commission ultimately prevails and divestiture is ordered."

FTC v. Warner, 742 F.2d 1156, 1165 (9th Cir. 1984) (citations omitted)

The "principal public equity" favoring a preliminary injunction is "the public interest in effective enforcement of the antitrust laws."

FTC v. H.J. Heinz Co., 246 F.3d 708, 726 (D.C. Cir. 2001)

Kroger Plans Price Investment Only in Albertsons Stores

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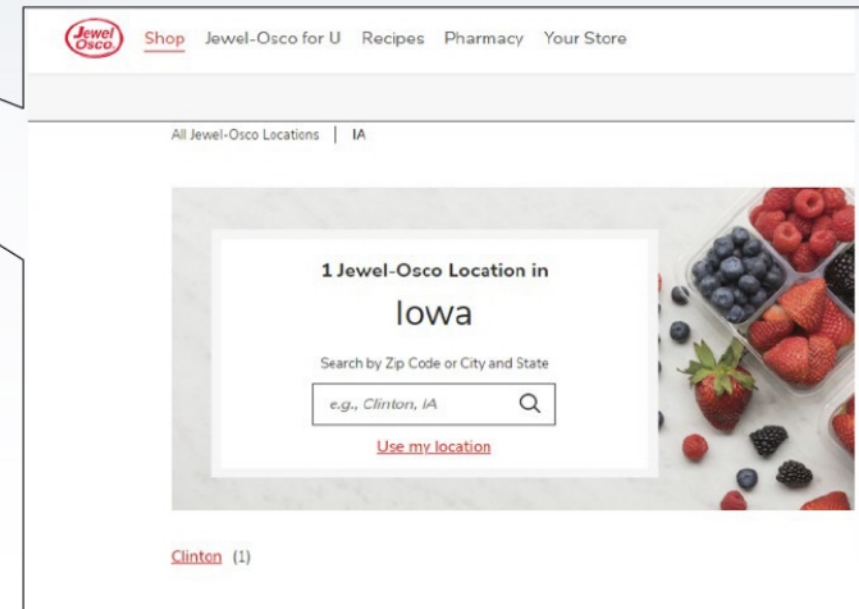
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**No Albertsons stores
in Ohio, Alabama, or
Georgia**



Risk of Harm to Employees Favors Injunction

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**Naomi Oligario,
UFCW Local 3000**

have on not only the employees but the community as well. When Albertsons and Safeway merged, they had to sell some stores off and did not give the employees the chance to even stay with the employer they were currently working for. My long employment, hard work, and loyalty to Safeway meant nothing. I was SOLD with the company! Haggens bought mine and many

employees seeking jobs and customers seeking another grocery store to shop. We were left without a job and had to REAPPLY to the store we were previously employed with! Because of

Kroger & Albertsons Overlap in 22 States

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Thank you