

# Dr. Nitin Dua

*State of Washington v. Kroger et al.*

# Background and Qualifications

- Partner and co-chair of Antitrust and Competition Practice, Bates White Economic Consulting, 2011-present
- PhD, Economics, Florida State University
- Performed merger analysis for the FTC, DOJ, State Attorneys General, and private parties

# Summary of Conclusions

- The Proposed Transaction Will Lead to Undue Concentration in Relevant Markets Across Washington
- The Merger Will Likely Cause a Substantial Loss of Competition Regardless of How Markets Are Defined
- Defendants' Proposed Divestiture Will Not Restore the Competitive Intensity Lost as a Result of the Merger

# Merger Analysis Framework

- 1 Market Definition and Concentration**

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- 2 Competitive Effects**

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- 3 Efficiencies and Divestiture**

# The Merger Guidelines



## Merger Guidelines

U.S. Department of Justice and the Federal Trade Commission

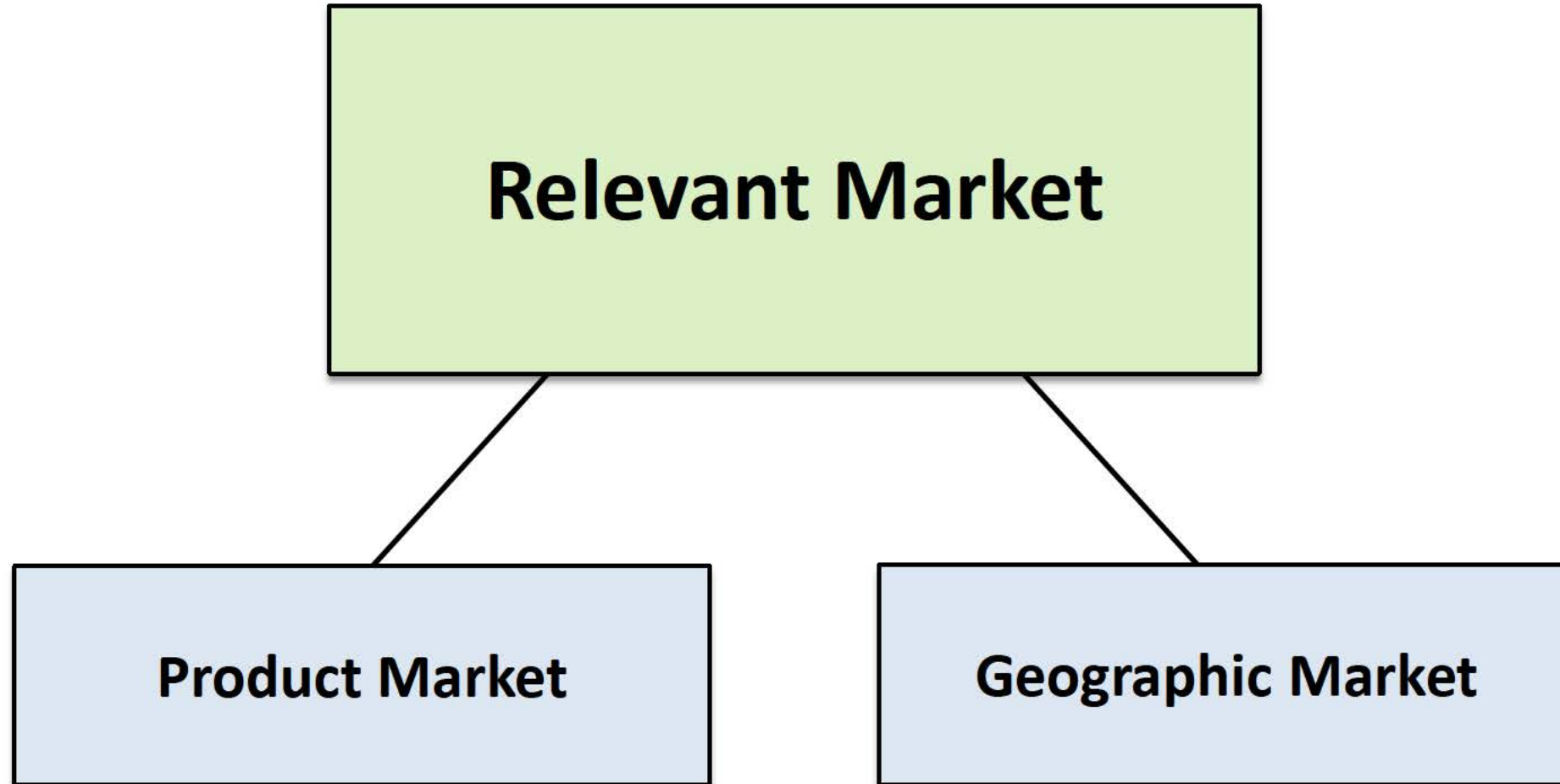
Issued: December 18, 2023

# Summary of Conclusions

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- The Merger Will Likely Cause a Substantial Loss of Competition Regardless of How Markets Are Defined
- Defendants' Proposed Divestiture Will Not Restore the Competitive Intensity Lost as a Result of the Merger



# Market Definition



Source: Dua report, ¶¶ 85–87; DOJ and FTC “Merger Guidelines” December 18, 2023.

# The Relevant Market Consists of Close Substitutes



## Merger Guidelines

U.S. Department of Justice and the Federal Trade Commission

Issued: December 18, 2023

Relevant markets need not have precise metes and bounds. Some substitutes may be closer, and others more distant, and defining a market necessarily requires including some substitutes and excluding others. Defining a relevant market sometimes requires a line-drawing exercise around product features, such as size, quality, distances, customer segment, or prices. There can be many places to draw that line and properly define a relevant market.

Horizontal Merger Guidelines, § 4.3



# Relevant Product Market

The relevant product market is Supermarkets and Supercenters, which carry a wide assortment of food and other grocery products and generally offer more than 20,000 square feet of selling space.

Store format	Owner	Banners	Store Count	Avg. Sales (annual)	Avg. Size (sq. ft)
Supermarket	Kroger	QFC	55	\$ 27,000,000	31,000
	ACI	Albertsons, Haggen, Safeway	215	\$ 40,000,000	36,000
	Winco	WinCo Foods	25	\$ 37,000,000	63,000
	Walmart	Walmart Neighborhood Market	4	\$ 36,000,000	48,000
	Amazon	Amazon Fresh	5	\$ 22,000,000	22,000
	Yokes	Yokes Fresh Market	14	\$ 16,000,000	39,000
Supercenter	Kroger	Fred Meyer, Fred Meyer Marketplace	59	\$ 60,000,000	125,000
	Walmart	Walmart Supercenter	52	\$ 65,000,000	61,000

Note: This is a non-exhaustive list of banners  
Source: Dua report, Figure 7

# Close Substitutes Are Included in the Market

## Traditional Supermarkets and Supercenters



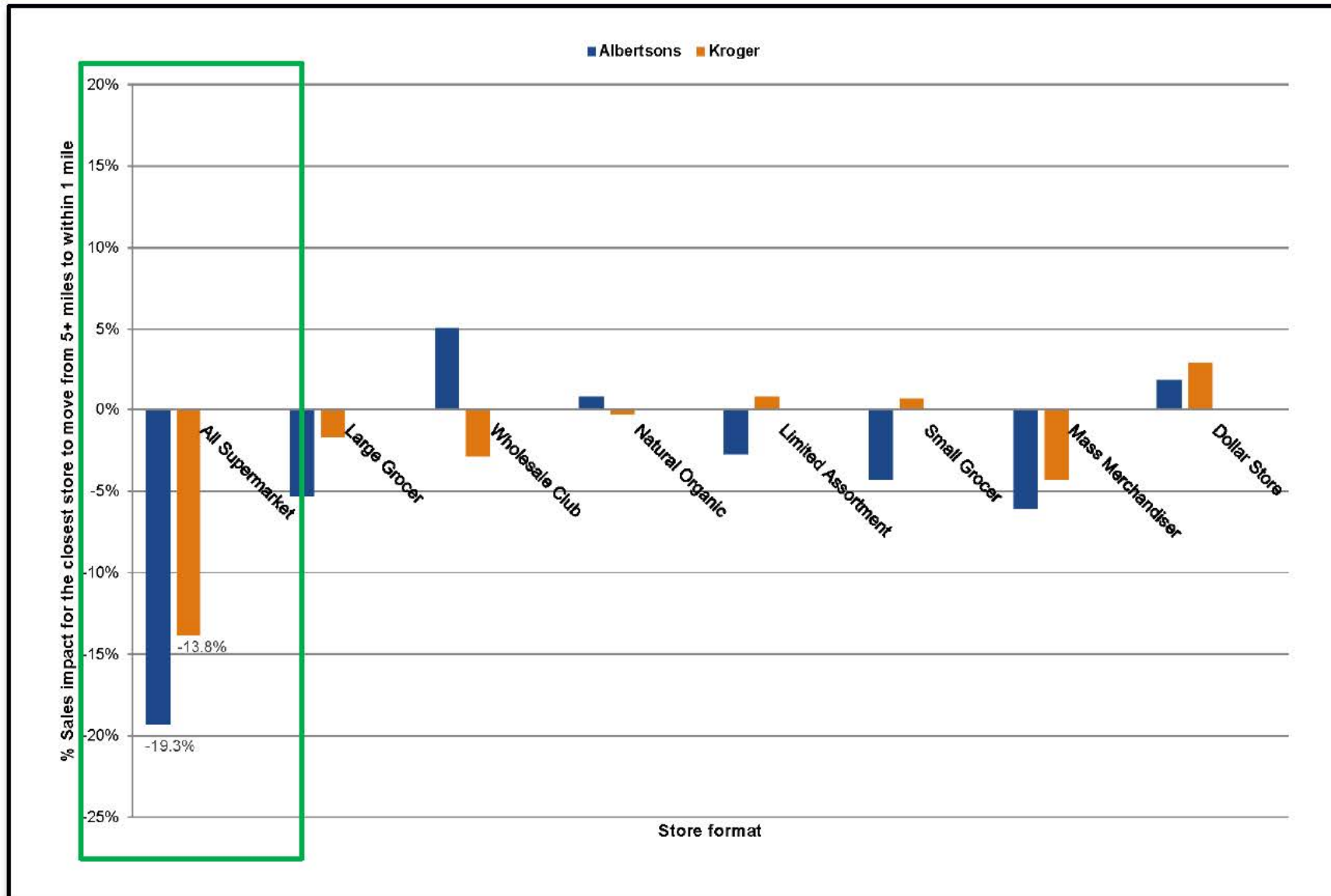
Note: This is a non-exhaustive list of banners  
Source: Dua report, ¶¶ 85–87

# Distant Substitutes Are Excluded from the Market

## Other Retail Formats

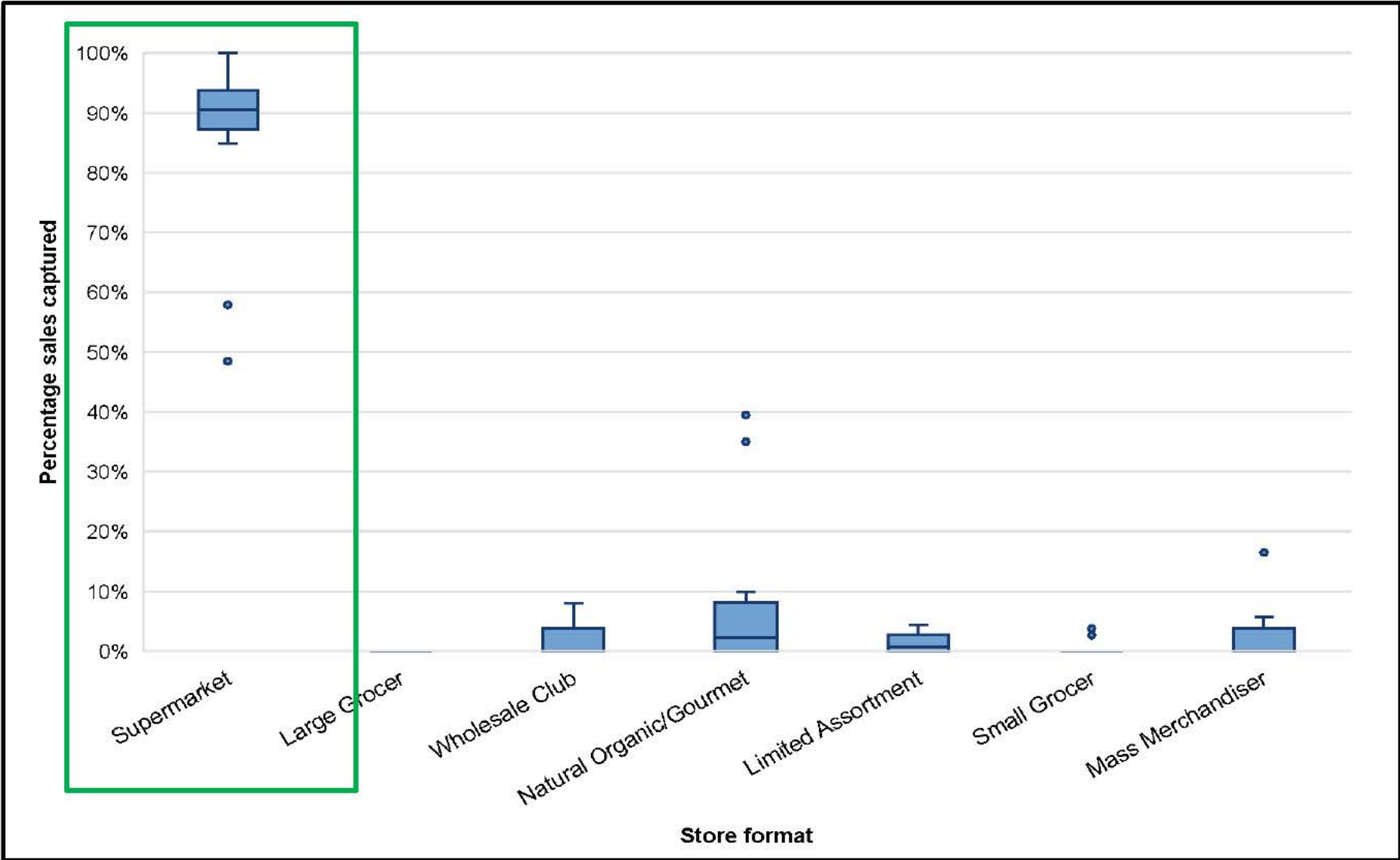


# Supermarket Entry Results in Greater Sales Loss



Source: Dua report, Figure 10

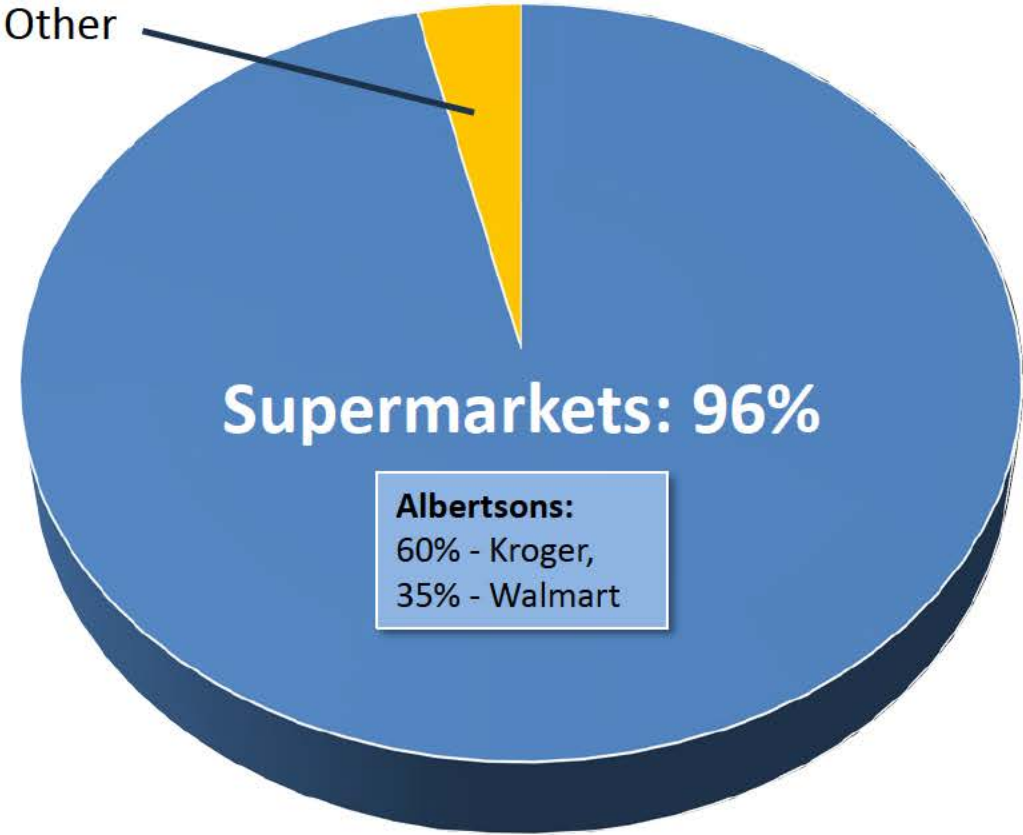
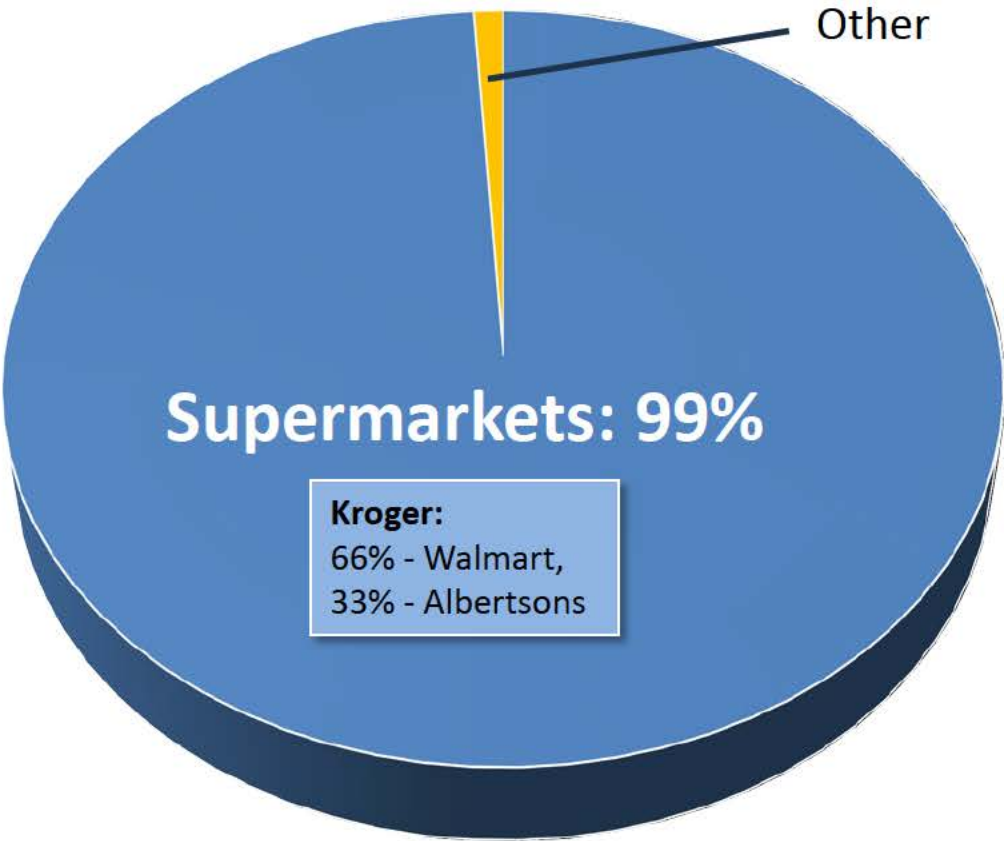
# Albertsons Store Closure Analysis



Note: Outlier observations for Supermarket and Natural Organic/Gourmet include Safeway # [redacted] and Safeway # [redacted]. Outlier observation for Mass Merchandiser is Safeway # [redacted].  
Source: Dua Report, Figure 8



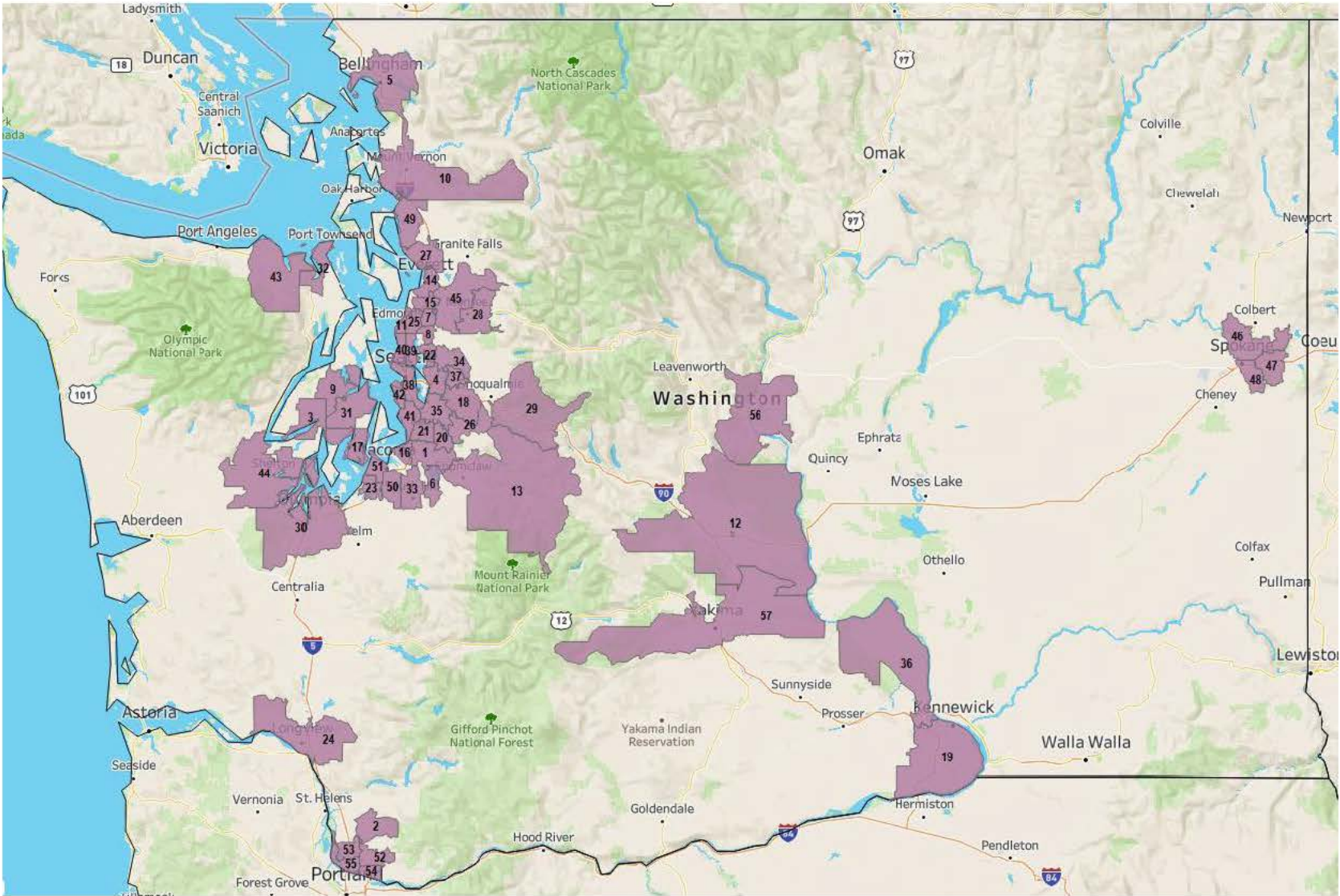
# Price Checks in Washington



Source: Dua report, ¶ 106

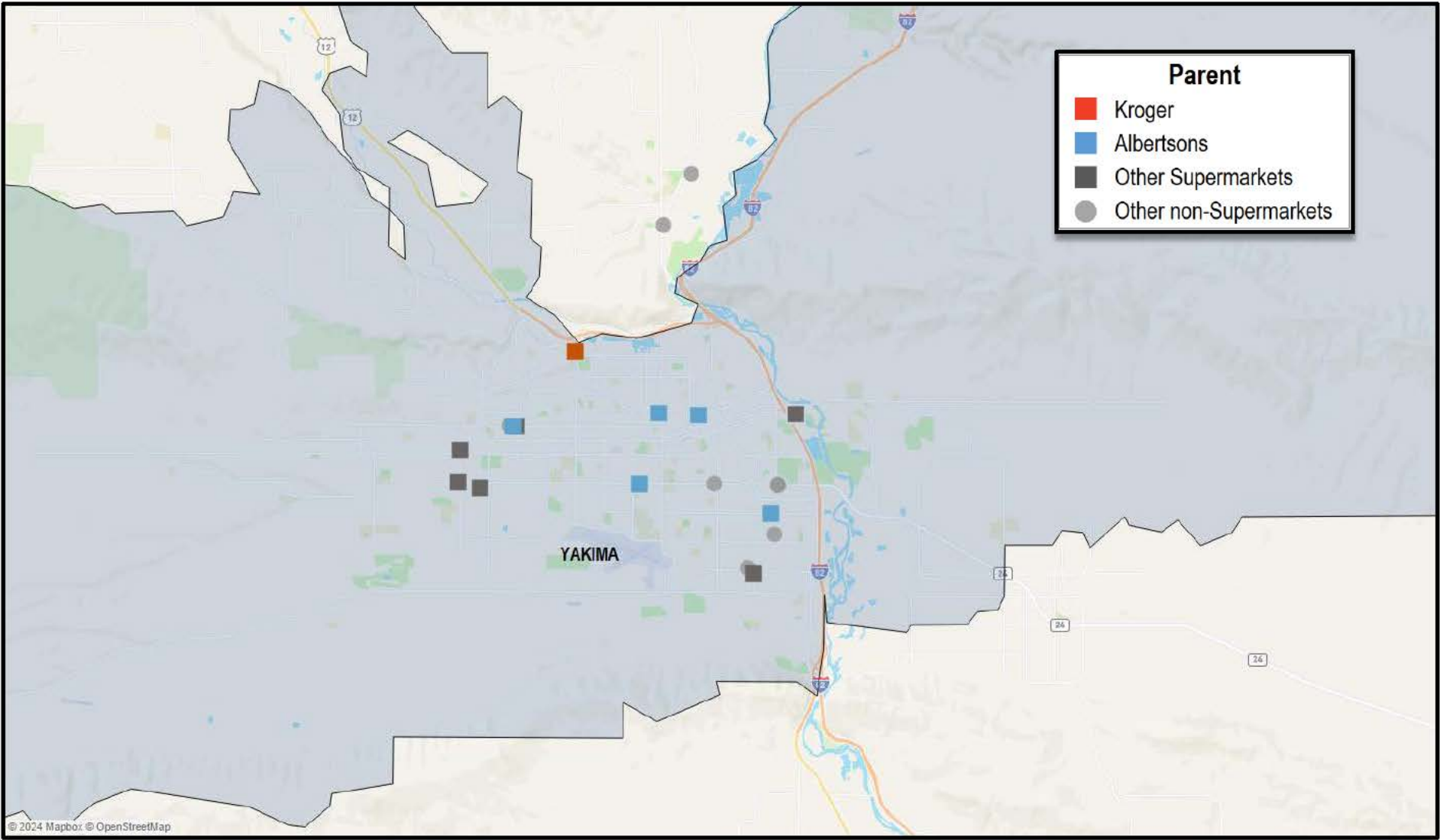


# City Areas in Washington



Source: Dua report, Figure 46

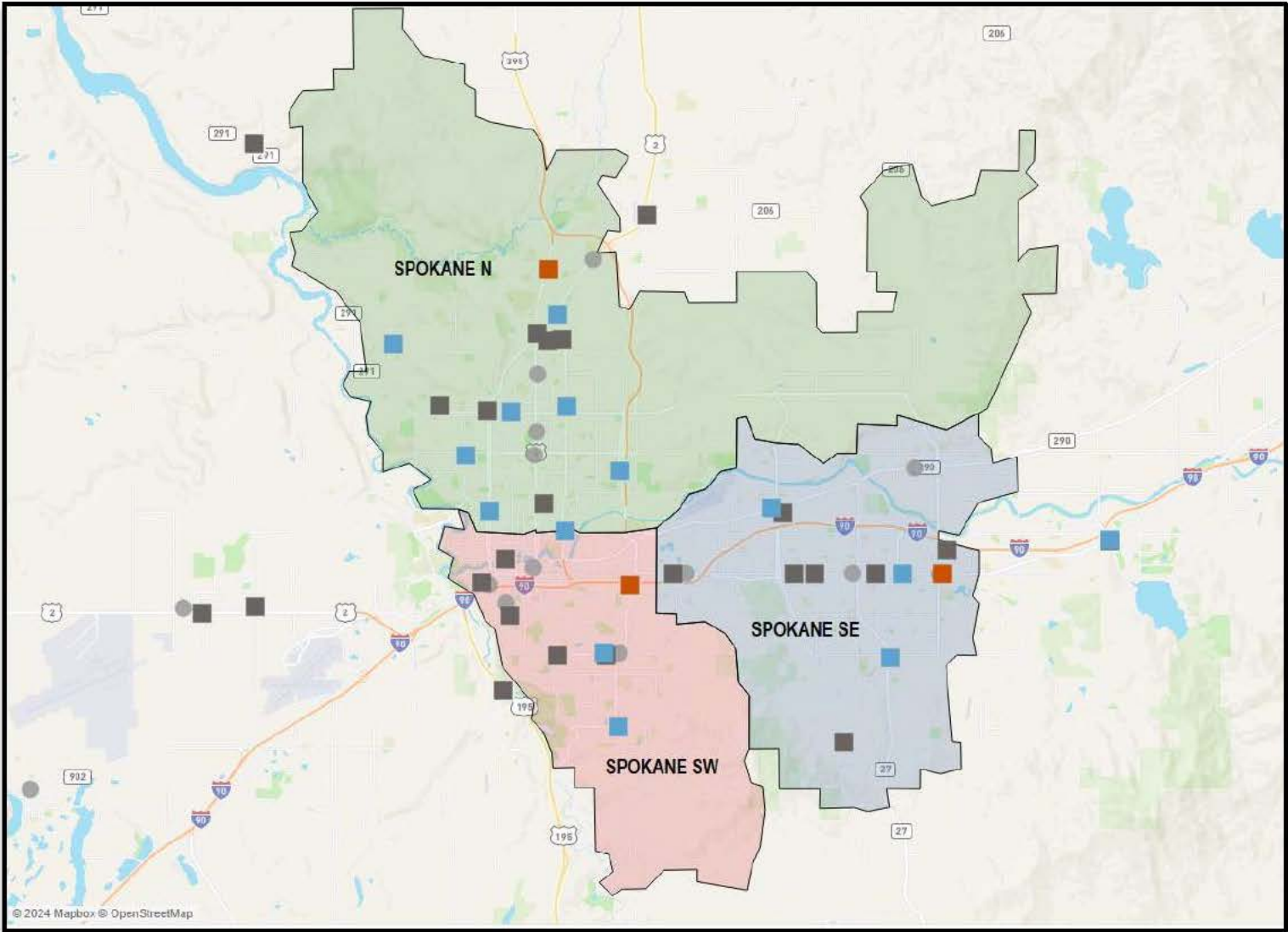
# City Area: Yakima



Source: Dua report, Figure 12



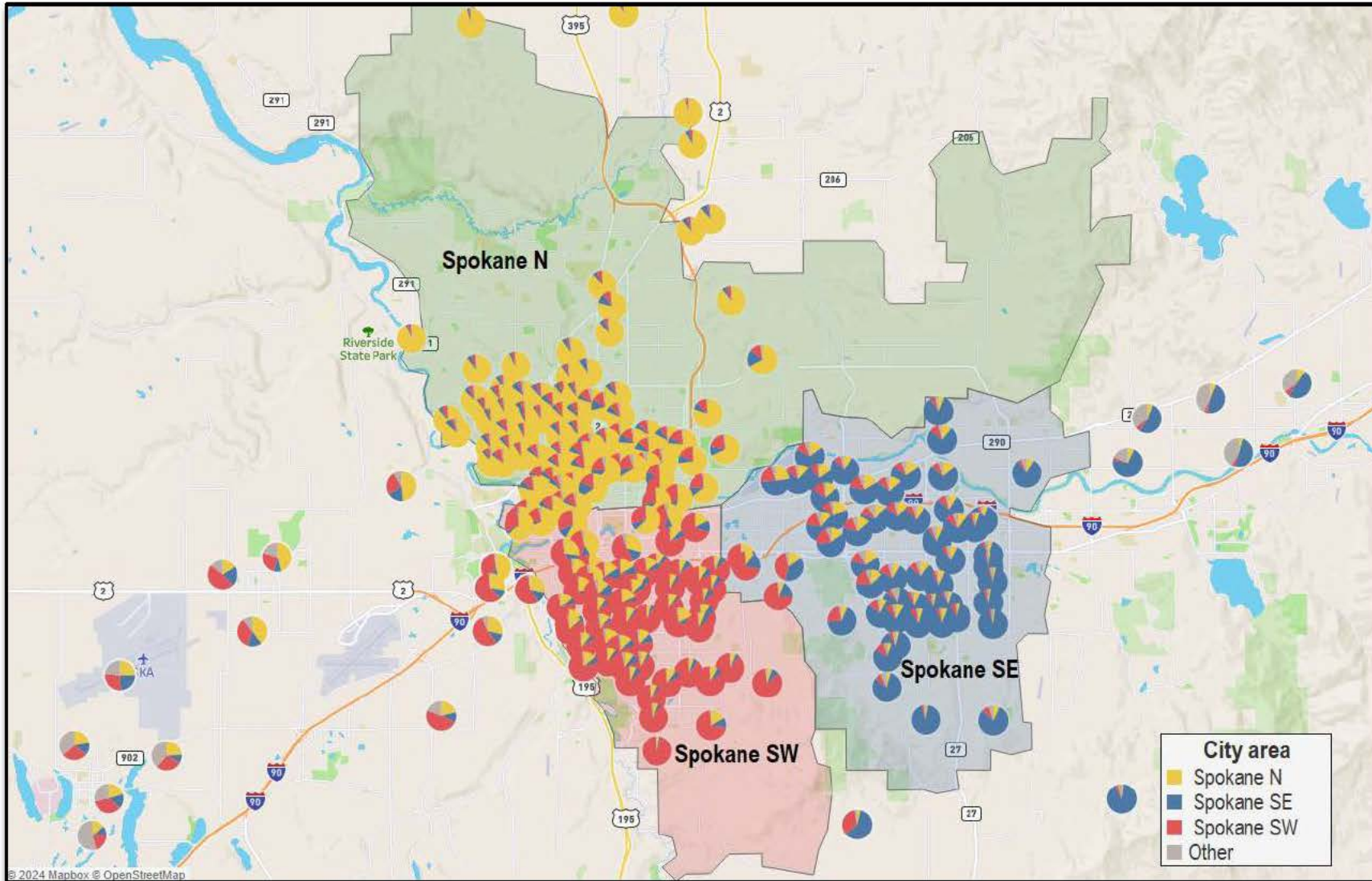
# City Areas: Spokane



Source: Dua report, Figure 14



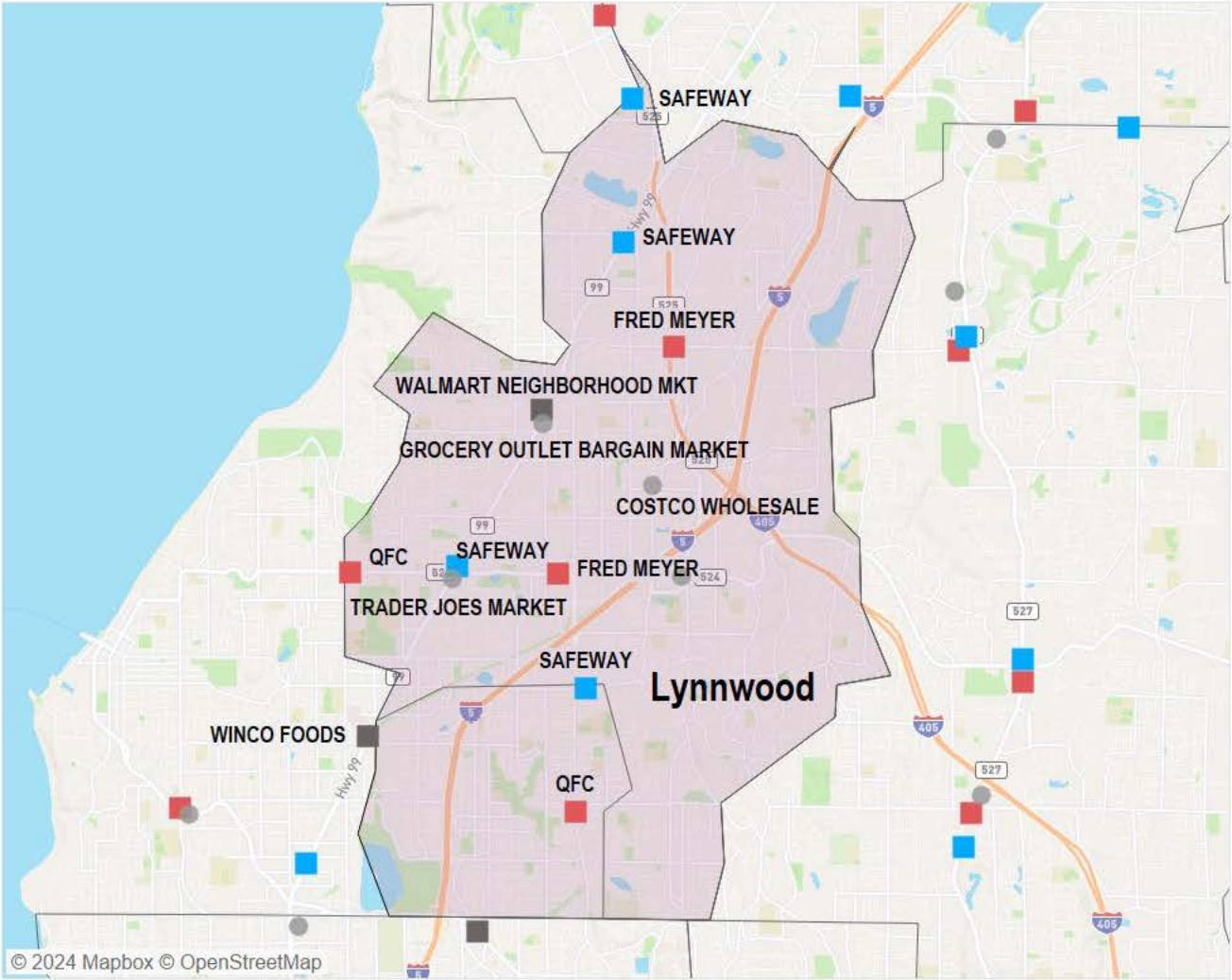
## Geographic Allocation of Consumer Spending: Spokane



Source: Dua report, Figure 17

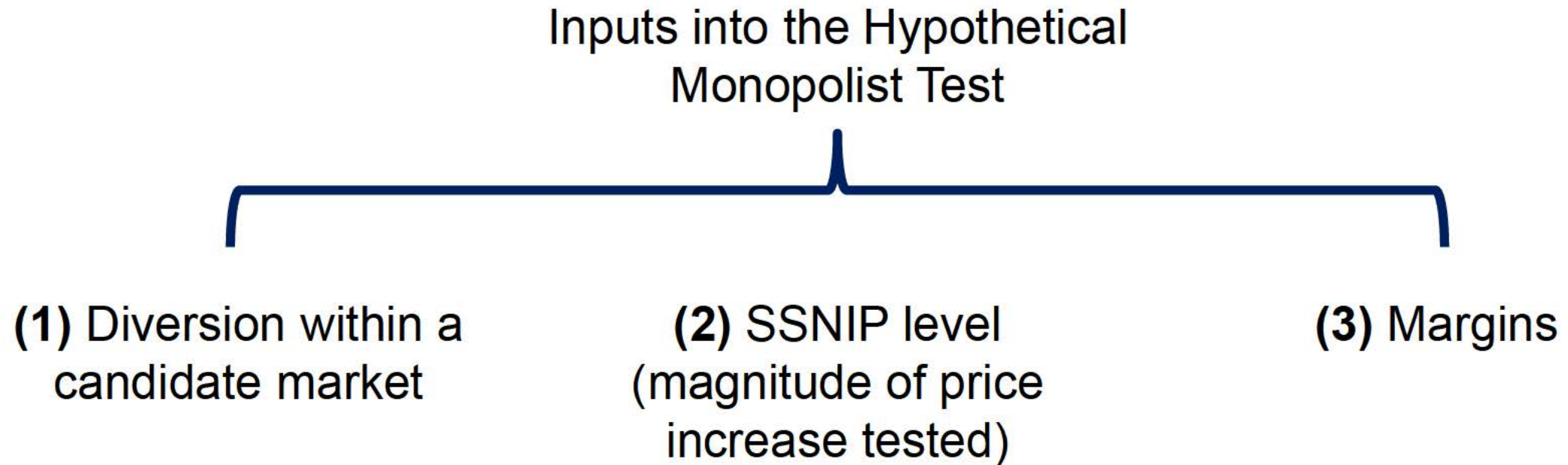


# Lynwood City Area



Source: Dua Report Appendix C; TDLinx

# The Hypothetical Monopolist Test: Inputs



Source: Dua report paragraphs 139-143



# The Hypothetical Monopolist Test: Results

Test	City Areas that Pass HMT
<b>Break-even test (Dua Report)</b>	57
<b>Profit maximization test (Dua Reply Report)</b>	57

Source: Dua report paragraph 154 & Figure 19; Dua reply report Figure 6



## “No Comp” Zones

Date: Wednesday, April 13 2022 02:00 PM  
Subject: PWF: King Soopers | Western Slope Ad Version  
From: Botcher, Tammy  
To: Moyeg, Matt; [REDACTED]; Murphy, M  
Schmuck, Jenn  
Attachments: image002.png  
Good afternoon,

Q3 Did this supply-section (the one you have mentioned in ad review) to probe upon retailers in City competitive awarded in Denver, sharing with you the alignment we (pricing and promo) can lay down and new promo in Q3 of the 24 City Market stores where we have little to no competition will cost you through the balance of the stores with a more surgical approach. As you know also this happens primarily these working in the service industry that are very price conscious stores with Safeway and Wal-Mart nearby.

@JaredforLeads: @Haworth there is a lot of work being done regarding ad distribution. With Marketplaces listed below it seems prudent to move them to digital/in-store only model. Pl can be added into your workflow of changes, Mike @King's is aligned with this change when

## Thankyou

Thammy  
Buyer Name: Thammy | Group Lead  
Mobile Phone: [REDACTED]

From: Kristine, Danvers  
Sent: Wednesday, April 18, 2012 1:46 PM  
To: Johnson, Mike  
Cc: Diaz, Rachel  
Nielsen, Samantha

Subject: FPA: King Seepers | Western Slope Ad Version  
Importance: High

Mike - sharing with you the communications sent to my team today regarding the change, at CityMarket stores we discussed Monday. Please reach out with any questions.

Thank you

Timing  
 Budget Source Planning | Group Leads  
 Mobile Phones

From: Bobbi King, Training  
Sent: Wednesday, April 13, 2022 1:37 PM  
Subject: King Scoops | Western Slope Ad Version  
Importance: High

to working with the pricing team and the division we have determined that the group with the largest no competition. Our plan is to work through a different price strategy (steers on items where we can move the retail up and not effect movement. The first into a separation and we will have chart below) and probe the market on ad retail start

Date: Wednesday, April 13 2022 02:00 PM  
Subject: FW: King Soopers | Western Slope Ad Version  
From: Bottcher, Tammy  
To: Meyer, Matt <[REDACTED]>; Murphy, Mike <[REDACTED]>;  
Schmitz, Jenn [REDACTED]  
Attachments: image002.png

Good Afternoon,

@Mike Murphy – several times you have mentioned in ad review to probe up on retails in City Market where we don't have to be as competitive as we do in Denver. Sharing with you the alignment we (pricing and promo) came to with the division to explore higher retails (promo and non-promo) in 9 (of the 24) City Market stores where we have little to no competition surrounding the store. Our next steps will be to work through the balance of the stores with a more surgical approach. As you know, while this area has highly affluent shoppers it also has shoppers (primarily those working in the service industry) that are very price conscious, so we will need to be a refine our tactics in stores with Safeway and Walmart nearby.

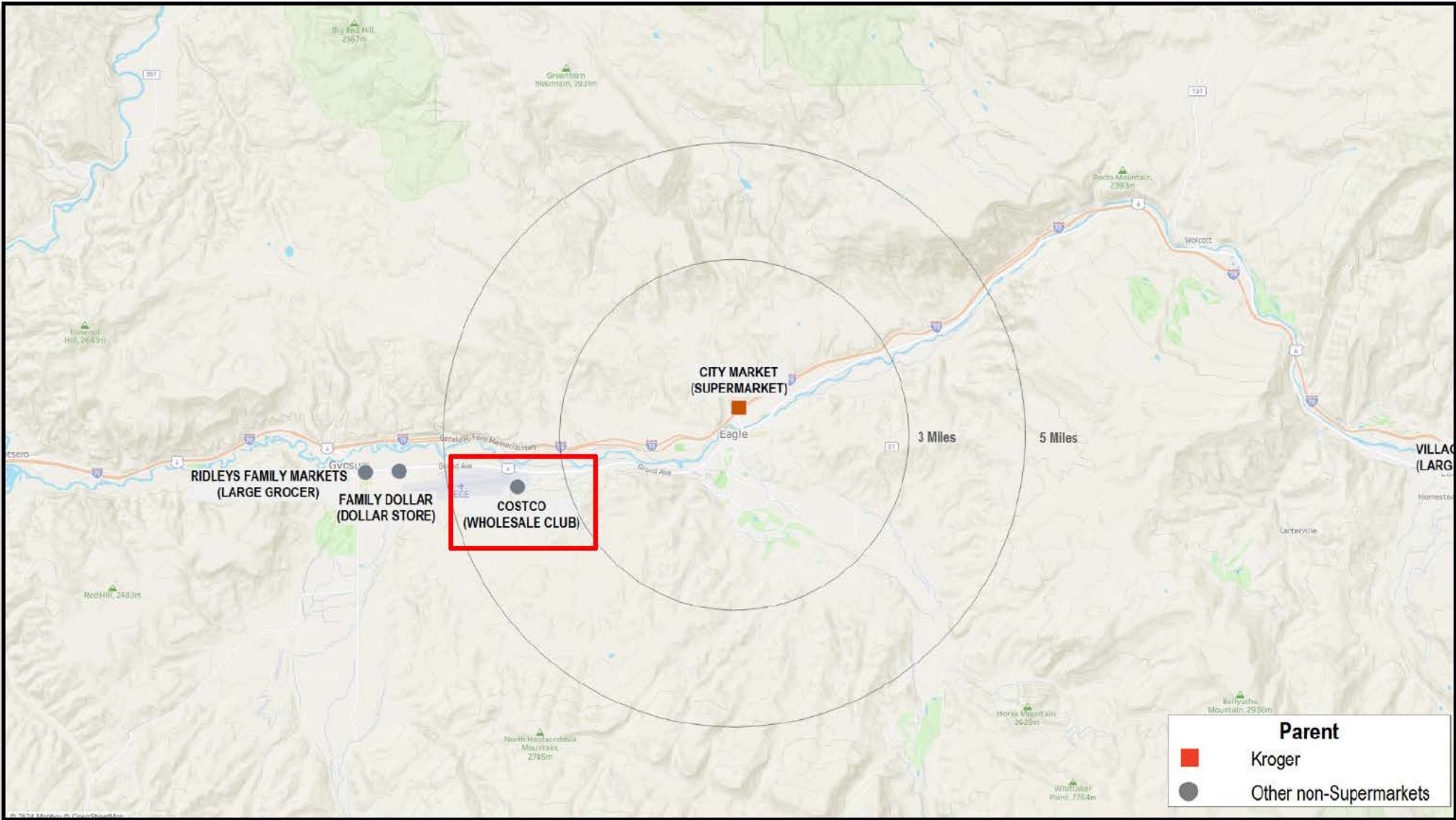
@Jennifer Schmitz—I know there is a lot of work being done regarding ad distribution. With little to no competition nearby the 9 City Market stores listed below it seems prudent to move them to digital/in-store only model. Please let me know if you agree and when this can be added into your workflow of changes. Mike @ King's is aligned with this change whenever you can make it.

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KRPROD-FTC-2R-001036417

Source: KRPROD-FTC-2R-001036417; Dua report paragraphs 197-201 & n.334; B-7

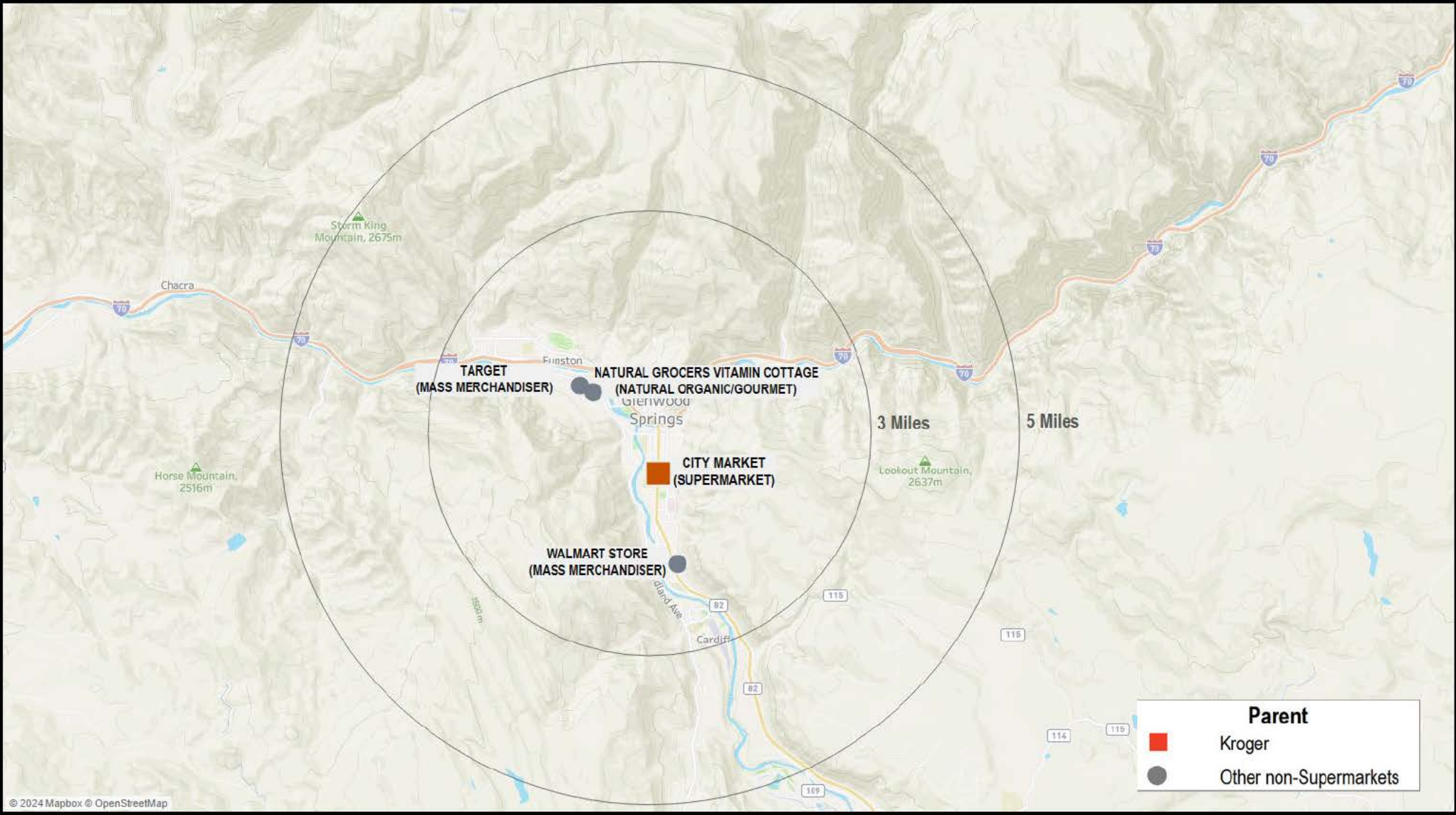
# All Grocery Options in Eagle, CO “No Comp” Zone



Source: Dua report, Figure 32



# All Grocery Options in Glenwood Springs, CO “No Comp” Zone



Source: Dua reply report, ¶106 and Figure 17

# “No Comp” Zone Results

From: Powell, Tyler  
Sent: Tuesday, February 28, 2023 10:38 AM  
To: Nielsen, Samantha  
Cc: St Clair, Chadd  
Subject: 620 Kings Program Analysis

Hello,

Please see the below overview of Non-Comp Stores against Comp Stores for Kings. Let me know if you have any questions.

Seeing favorable trend in Non-Comp stores for P1 as their Sales \$ and GM \$ growth rates

Program View:

Store Type	Sales % vs. LY		Movement % vs. LY	
	Competitive Stores	Non-Comp Stores	Competitive Stores	Non-Comp Stores
22.91%	36.40%	2.31%	3.44%	
9.85%	12.14%	-7.28%	-7.18%	
4.13%	10.17%	-12.21%	-11.68%	
-69.81%	-72.81%	-68.87%	-71.01%	
15.24%	15.16%	-2.74%	-6.10%	
5.37%	9.62%	-3.49%	-0.91%	
7.47%	-7.11%	2.21%	-8.22%	
-2.51%	-7.42%	-7.72%	-18.20%	
16.10%	33.57%	-2.96%	3.75%	
Grand Total	11.19%	17.11%	-5.05%	-4.45%

- Non-Comp stores showing higher growth rate across Sales \$ and GM \$ for P1
  - CSSP and Grocery Critical driving growth for both store sets, but has slightly lower GM % in competitive stores which aligns with expectations


Total Primary Dept Sales (Dept 01, 03, 06, 07, 09, 10):

Store Type	Sales - CY	Sales vs. LY	Sales % vs. LY	Movement - CY
			10.45%	
			8.68%	
			6.89%	

- Seeing similar results at rolled up level with Non-Comp stores outpacing competitive growth
  - Grocery, Deli/Bake, Drug/GM, and Produce (in order) all contributing to growth

Thank you,

Tyler Powell | Pricing Business Analyst  
tyler.powell@kroger.com



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To: Nielsen, Samantha  
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Subject: 620 Kings Program Analysis

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Seeing favorable trend in Non-Comp stores for P1 as their Sales \$ and GM \$ growth rates outpaced competitive stores.

Program View:

Store Type	Sales % vs. LY		Movement % vs. LY		GM \$ % vs. LY	
	Competitive Stores	Non-Comp Stores	Competitive Stores	Non-Comp Stores	Competitive Stores	Non-Comp Stores
22.91%	36.40%	2.31%	3.44%	60.04%	95.58%	
9.85%	12.14%	-7.28%	-7.18%	13.07%	25.43%	
4.13%	10.17%	-12.21%	-11.68%	-1.73%	11.26%	
-69.81%	-72.81%	-68.87%	-71.01%	-67.67%	-70.05%	
15.24%	15.16%	-2.74%	-6.10%	16.56%	25.64%	
5.37%	9.62%	-3.49%	-0.91%	11.30%	24.47%	
7.47%	-7.11%	2.21%	-8.22%	11.61%	-7.17%	
-2.51%	-7.42%	-7.72%	-18.20%	19.93%	26.93%	
16.10%	33.57%	-2.96%	3.75%	11.87%	55.04%	
Grand Total	11.19%	17.11%	-5.05%	-4.45%	20.72%	39.63%

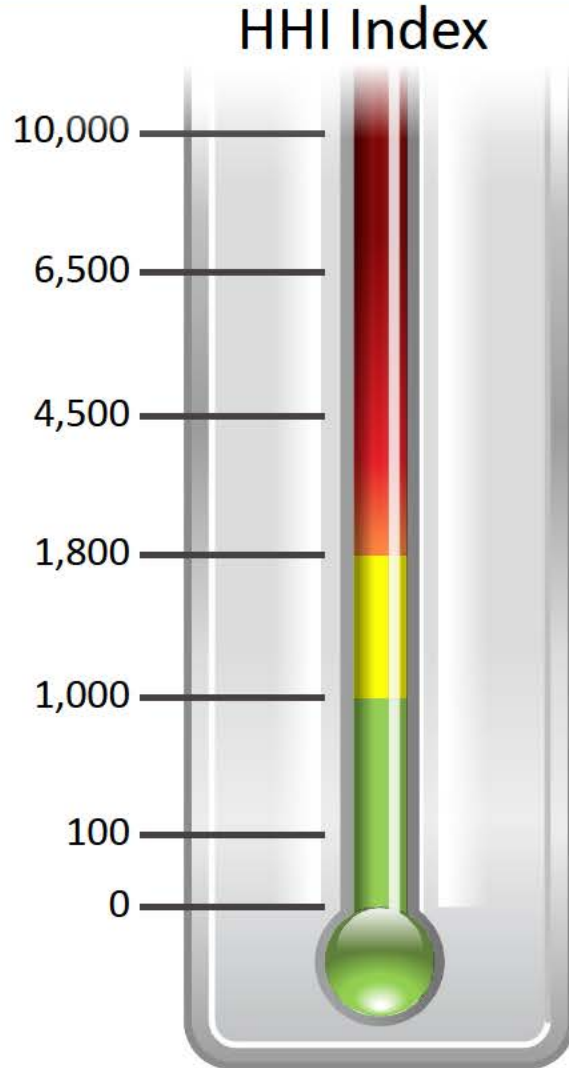
- Non-Comp stores showing higher growth rate across Sales \$ and GM \$ for P1
  - CSSP and Grocery Critical driving growth for both store sets, but has slightly lower GM % in competitive stores which aligns with expectations

Source: KRPROD-FTC-2R-020803474 at -75, Dua reply report, Footnote 135





# Market Concentration



**Monopolist HHI =  $100^2 = 10,000$**

**Four Competitors (Equal Shares) HHI =  $25^2 + 25^2 + 25^2 + 25^2 = 2,500$**

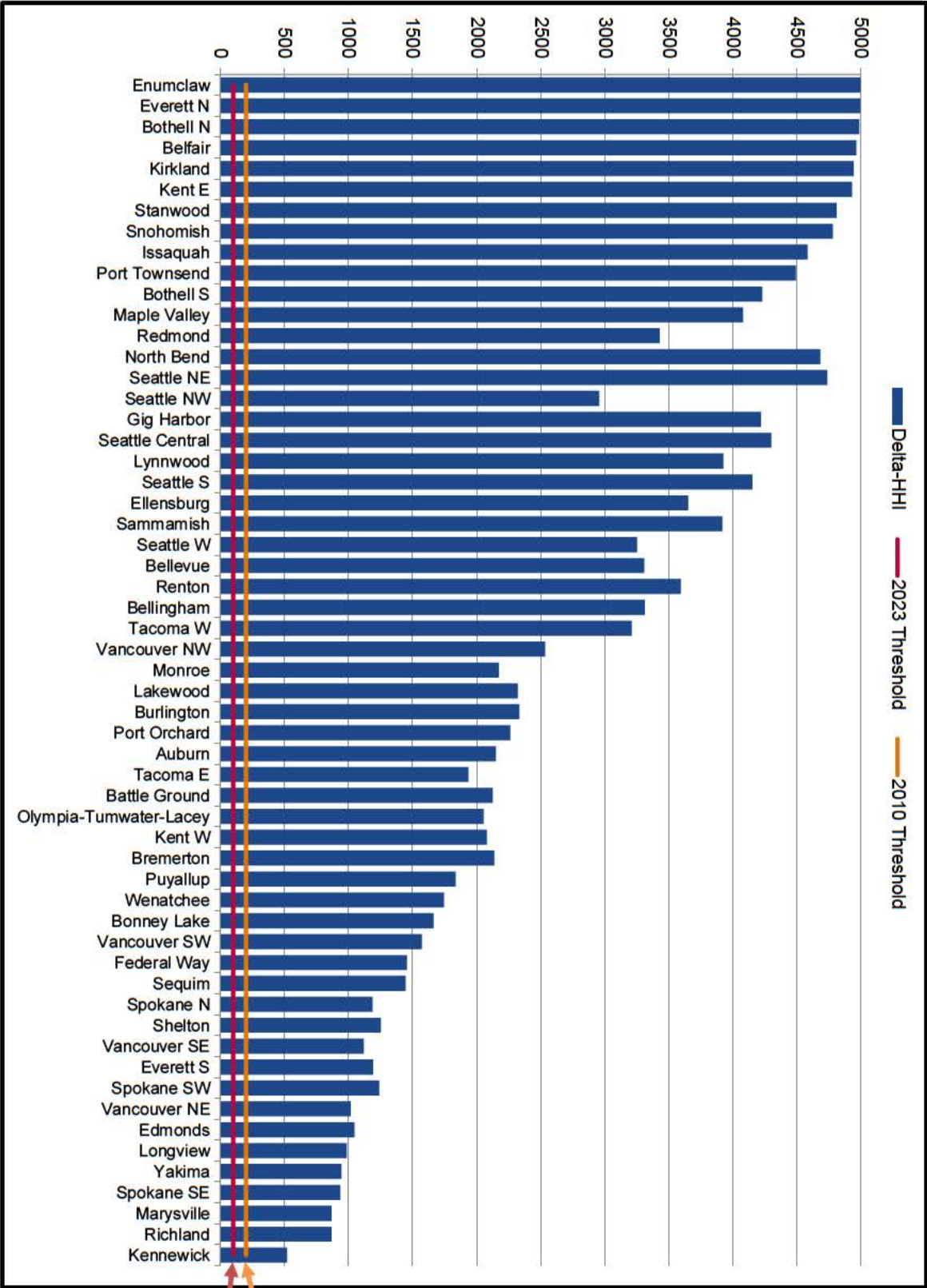
**100 Competitors (Equal Shares) HHI =  $1^2 \times 100 = 100$**

# Presumption of Harm from Undue Concentration

	Threshold for Presumption of Harm to Competition
Post merger HHI	HHI > 1,800 AND $\Delta$ HHI > 100
Merged Firm's Market Share	Market Share > 30% AND $\Delta$ HHI > 100

Note: The 2010 Merger Guidelines use an HHI threshold at 2,500 and a Delta-HHI threshold of 200.

# Post-Merger Delta HHI in Washington City Areas

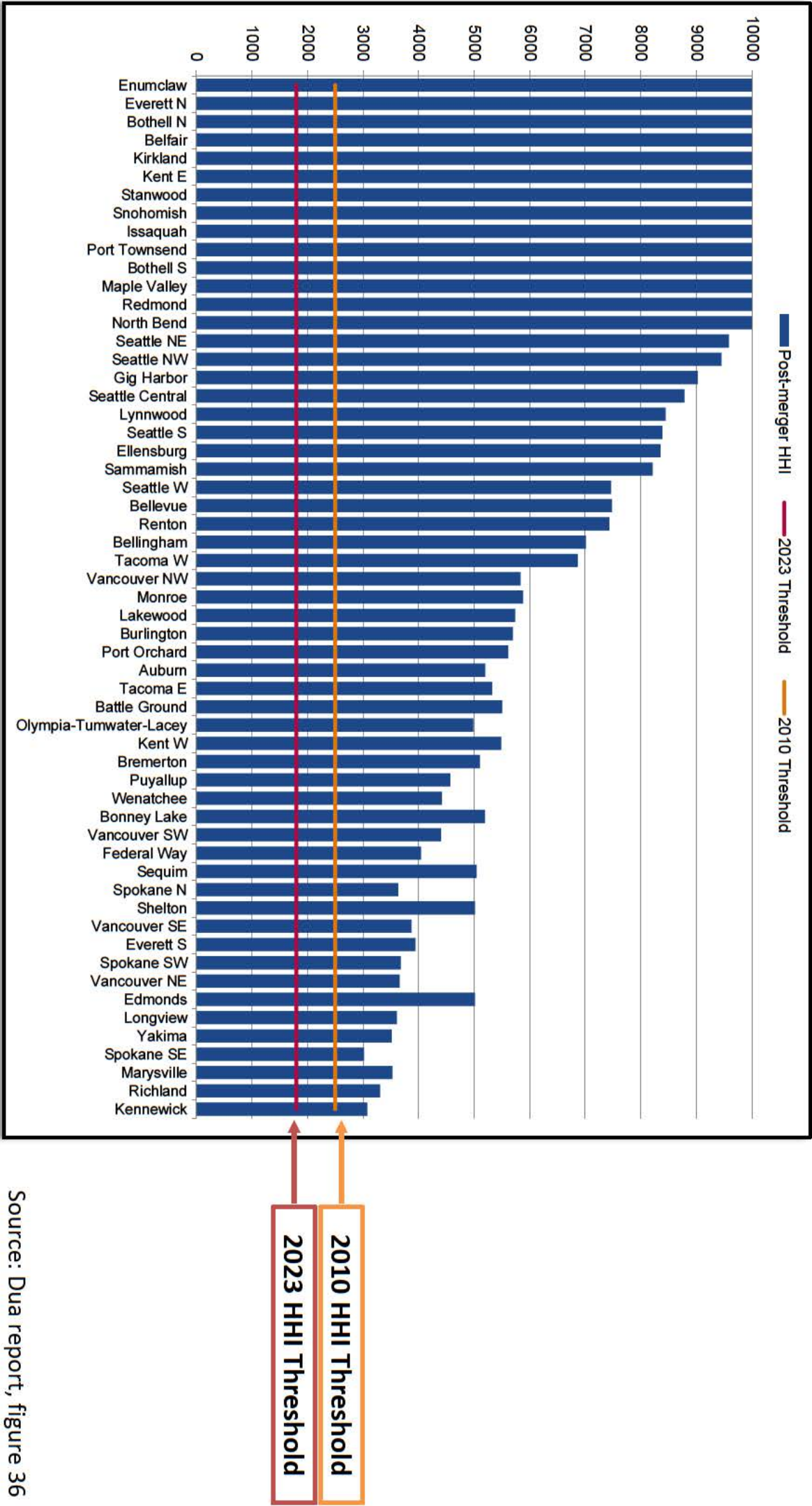


2010 HHI Threshold

2023 HHI Threshold

Source: Dua report, figure 36

# Post-Merger HHIs in Washington City Areas



Source: Dua report, figure 36



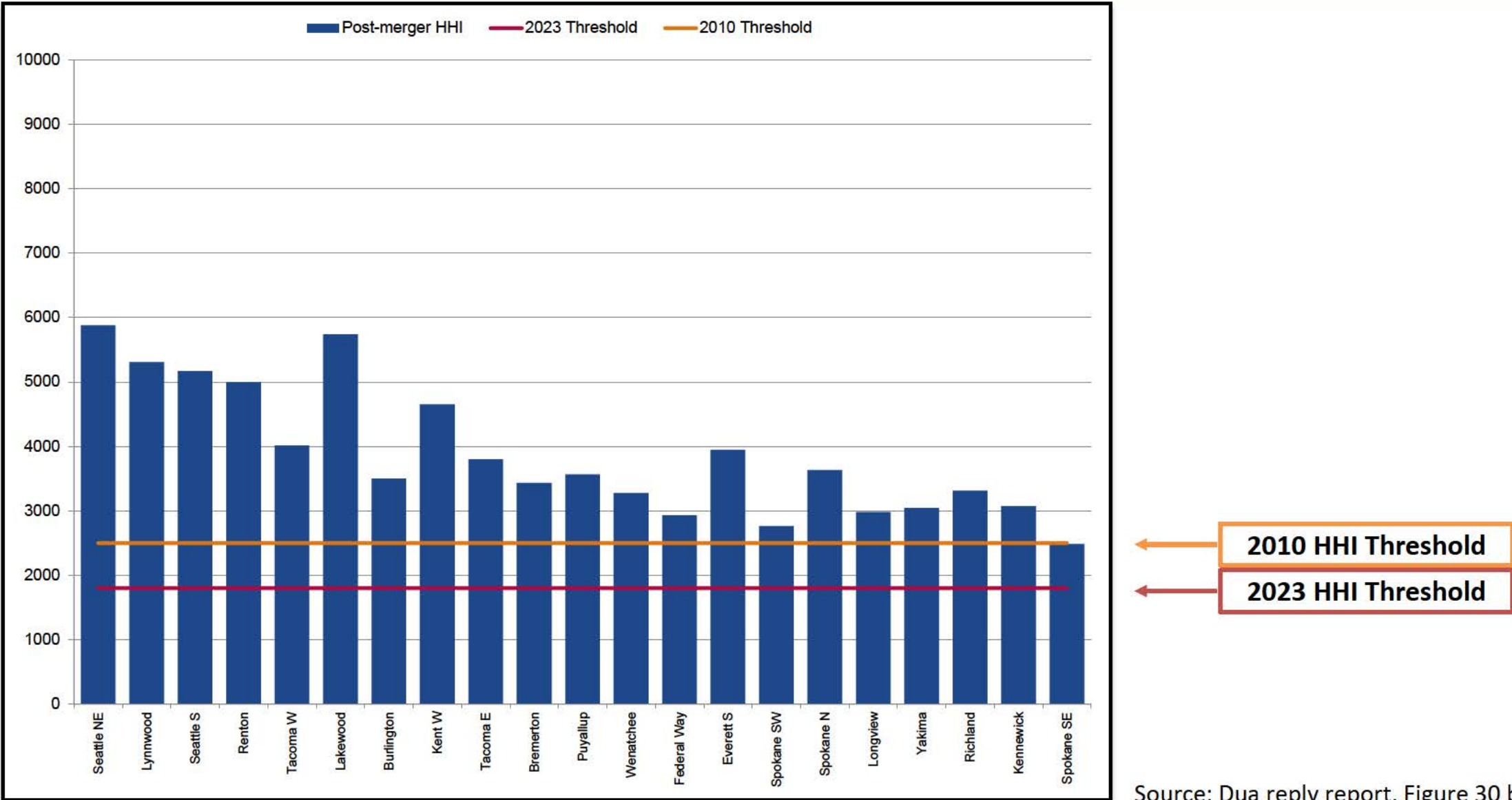
# HHIs and Market Shares

City area	ACI share	Kroger share	Post-merger HHI	Delta-HHI
Auburn	38%	28%	5,200	2,150
Battle Ground	28%	38%	5,509	2,125
Belfair	54%	46%	10,000	4,964
Bellevue	29%	56%	7,484	3,308
Bellingham	37%	44%	7,010	3,313
Bonney Lake	22%	38%	5,195	1,665
Bothell N	53%	47%	10,000	4,986
Bothell S	30%	70%	10,000	4,230
Bremerton	31%	34%	5,100	2,137
Burlington	38%	31%	5,699	2,335
Edmonds	18%	30%	5,015	1,046
Ellensburg	30%	61%	8,354	3,650
Enumclaw	51%	49%	10,000	4,996
Everett N	52%	48%	10,000	4,994
Everett S	33%	18%	3,944	1,191
Federal Way	21%	35%	4,047	1,456
Gig Harbor	59%	36%	9,026	4,219
Issaquah	36%	64%	10,000	4,583
Kennewick	13%	21%	3,075	521
Kent E	44%	56%	10,000	4,931
Kent W	27%	39%	5,490	2,079
Kirkland	45%	55%	10,000	4,944
Lakewood	41%	28%	5,740	2,321
Longview	27%	18%	3,609	985
Lynnwood	34%	57%	8,447	3,925
Maple Valley	29%	71%	10,000	4,080
Marysville	24%	18%	3,531	867
Monroe	22%	49%	5,882	2,172
North Bend	37%	63%	10,000	4,683

City area	ACI share	Kroger share	Post-merger HHI	Delta-HHI
Olympia-Tumwater Lacey	41%	25%	4,985	2,054
Port Orchard	37%	31%	5,613	2,261
Port Townsend	66%	34%	10,000	4,491
Puyallup	35%	26%	4,571	1,836
Redmond	22%	78%	10,000	3,430
Renton	45%	40%	7,437	3,593
Richland	21%	20%	3,311	869
Sammamish	53%	37%	8,214	3,919
Seattle Central	53%	40%	8,786	4,300
Seattle NE	44%	54%	9,585	4,738
Seattle NW	19%	78%	9,451	2,956
Seattle S	47%	44%	8,392	4,152
Seattle W	58%	28%	7,464	3,252
Sequim	33%	22%	5,045	1,445
Shelton	18%	35%	5,017	1,253
Snohomish	40%	60%	10,000	4,780
Spokane N	39%	15%	3,633	1,188
Spokane SE	22%	21%	3,019	937
Spokane SW	26%	23%	3,680	1,239
Starwood	40%	60%	10,000	4,810
Tacoma E	44%	22%	5,326	1,937
Tacoma W	44%	36%	6,866	3,211
Vancouver NE	16%	32%	3,659	1,017
Vancouver NW	30%	42%	5,832	2,534
Vancouver SE	15%	37%	3,875	1,119
Vancouver SW	35%	22%	4,404	1,573
Wenatchee	35%	25%	4,418	1,745
Yakima	26%	18%	3,517	945

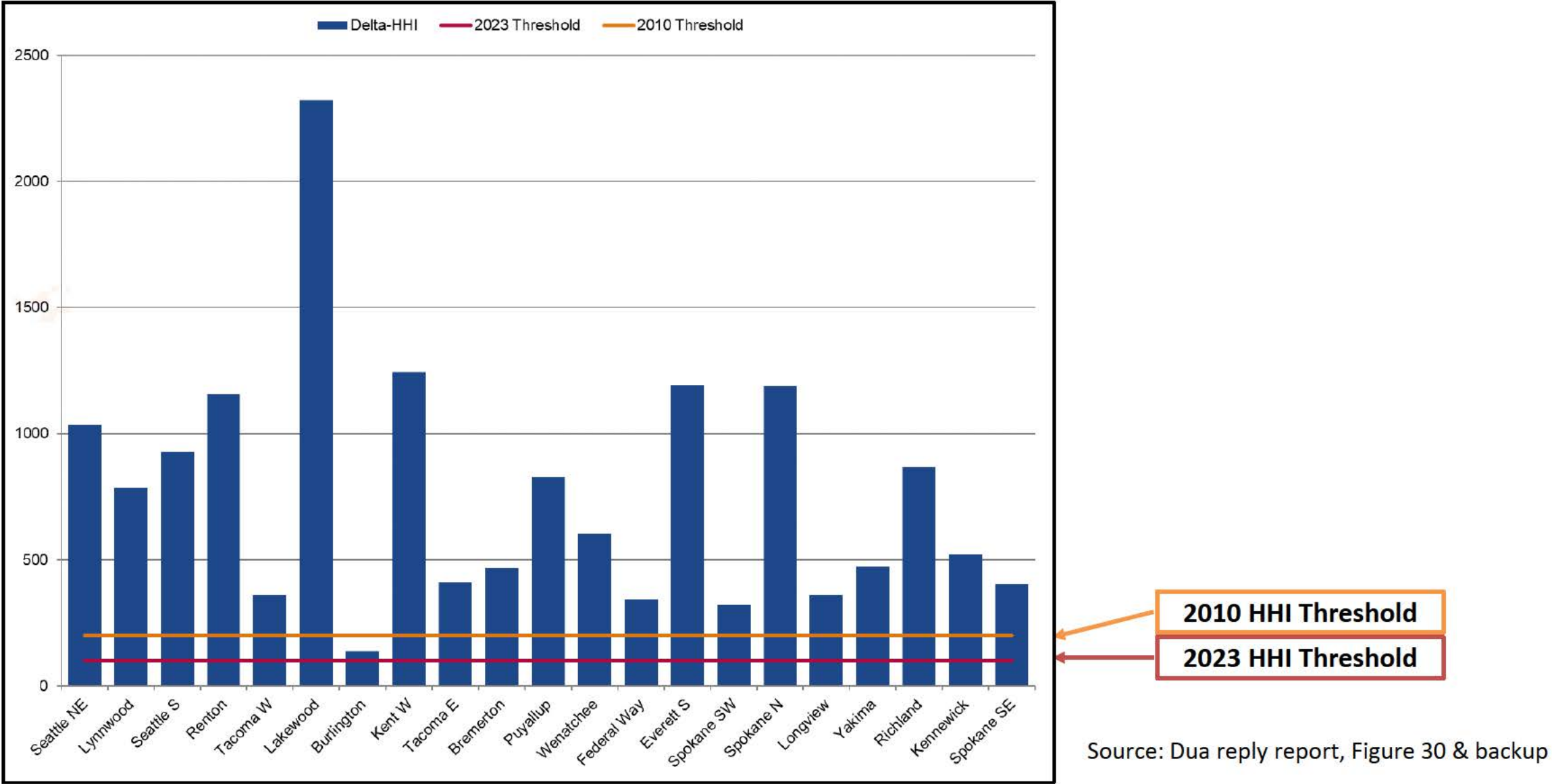
Source: Dua report, figure 36

# HHI of all Presumptively Anticompetitive Markets Post-Divestiture



Source: Dua reply report, Figure 30 backup

# Delta HHI of all Presumptively Anticompetitive Markets Post-Divestiture





# Post-Divestiture Market Share and Concentration

City Area	Merged Kroger Share	C&S Share	Post-merger HHI	Delta-HHI
Bremerton	48%	17%	3,432	469
Burlington	43%	25%	3,501	137
Everett S	51%	0%	3,944	1,191
Federal Way	43%	13%	2,932	341
Kennewick	33%	0%	3,075	521
Kent W	59%	7%	4,654	1,243
Lakewood	69%	0%	5,740	2,321
Longview	37%	9%	2,982	359
Lynnwood	69%	23%	5,307	785
Puyallup	51%	10%	3,565	830
Renton	67%	18%	5,000	1,156
Richland	42%	0%	3,311	869
Seattle NE	72%	26%	5,881	1,033
Seattle S	67%	24%	5,168	928
Spokane N	55%	0%	3,633	1,188
Spokane SE	36%	7%	2,486	404
Spokane SW	38%	12%	2,763	322
Tacoma E	51%	15%	3,799	411
Tacoma W	54%	26%	4,015	360
Wenatchee	48%	12%	3,277	604
Yakima	38%	6%	3,045	473

Source: Dua Reply Report Figure 30 & backup





# Alternative Market Definitions

Geography	Product market	# Overlap markets	# Presumptively anticompetitive markets (2023 Guidelines)		# Presumptively anticompetitive markets (2010 Guidelines)	
			No divestiture	After divestiture	No divestiture	After divestiture
City area	Supermarket	57	57	21	57	19
	Supermarket + Costco	57	57	19	56	14
	Supermarket Plus	57	57	19	53	12
MSA	Supermarket	11	11	9	11	7
	Supermarket + Costco	11	11	7	9	3
	Supermarket Plus	11	11	6	8	1
3-mile	Supermarket	262	262	108	262	97
	Supermarket + Costco	262	262	97	259	83
	Supermarket Plus	262	262	94	253	70
5-mile	Supermarket	293	293	148	293	118
	Supermarket + Costco	293	293	122	285	79
	Supermarket Plus	293	293	112	273	47

- The Supermarket + Costco market includes all Supermarkets and Costco.
- The Supermarket Plus market includes all grocery retailers with selling space of greater than 9,000 square feet.

Source: Dua reply report, Figure 30

# Summary of Conclusions

- The Proposed Transaction Will Lead to Undue Concentration in Relevant Markets Across Washington
- **The Merger Will Likely Cause a Substantial Loss of Competition Regardless of How Markets Are Defined**
- Defendants' Proposed Divestiture Will Not Restore the Competitive Intensity Lost as a Result of the Merger



## Merger Guidelines

U.S. Department of Justice and the Federal Trade Commission

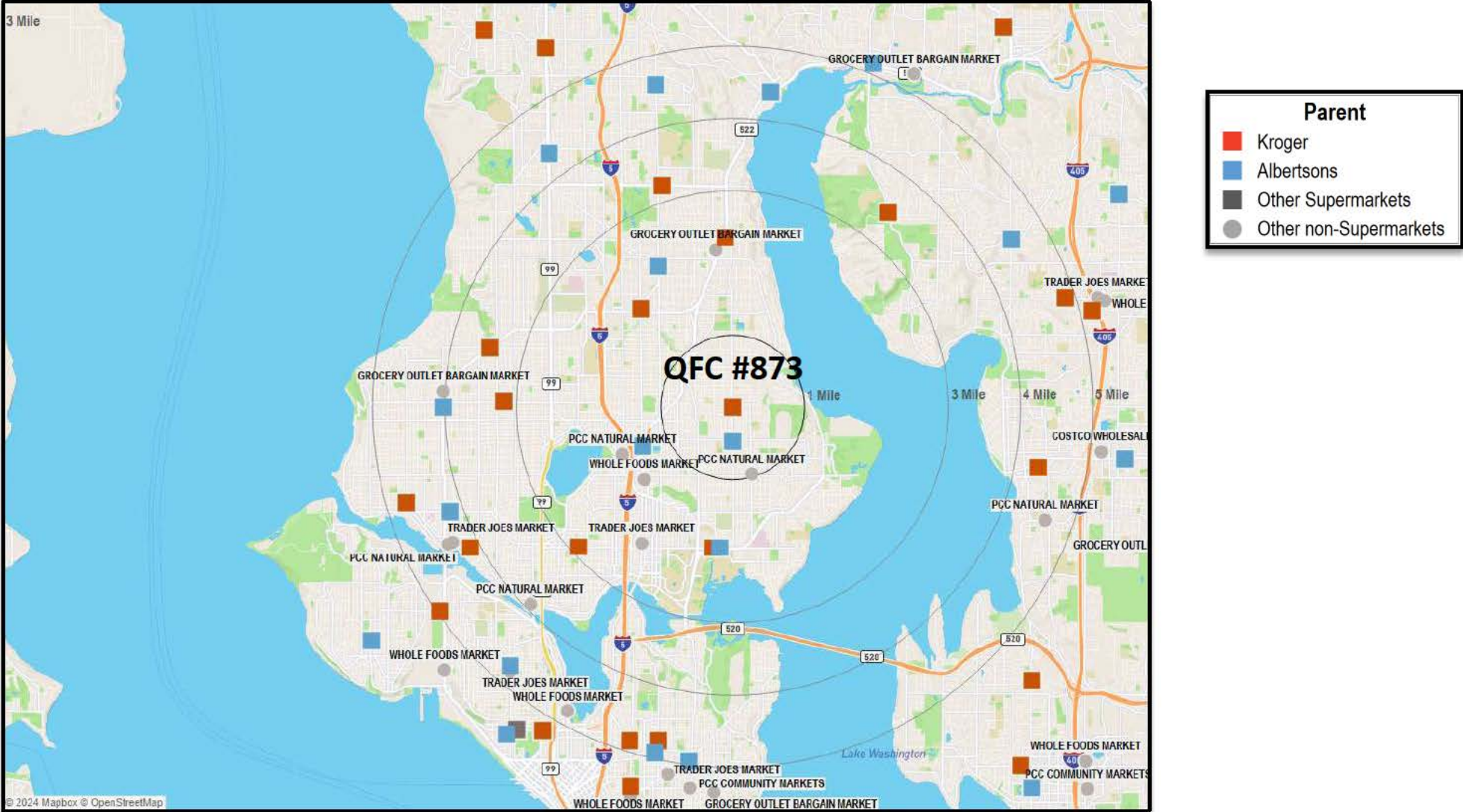
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“If evidence demonstrates substantial competition between the merging parties prior to the merger, that ordinarily suggests that the merger may substantially lessen competition.”

Horizontal Merger Guidelines § 2.2

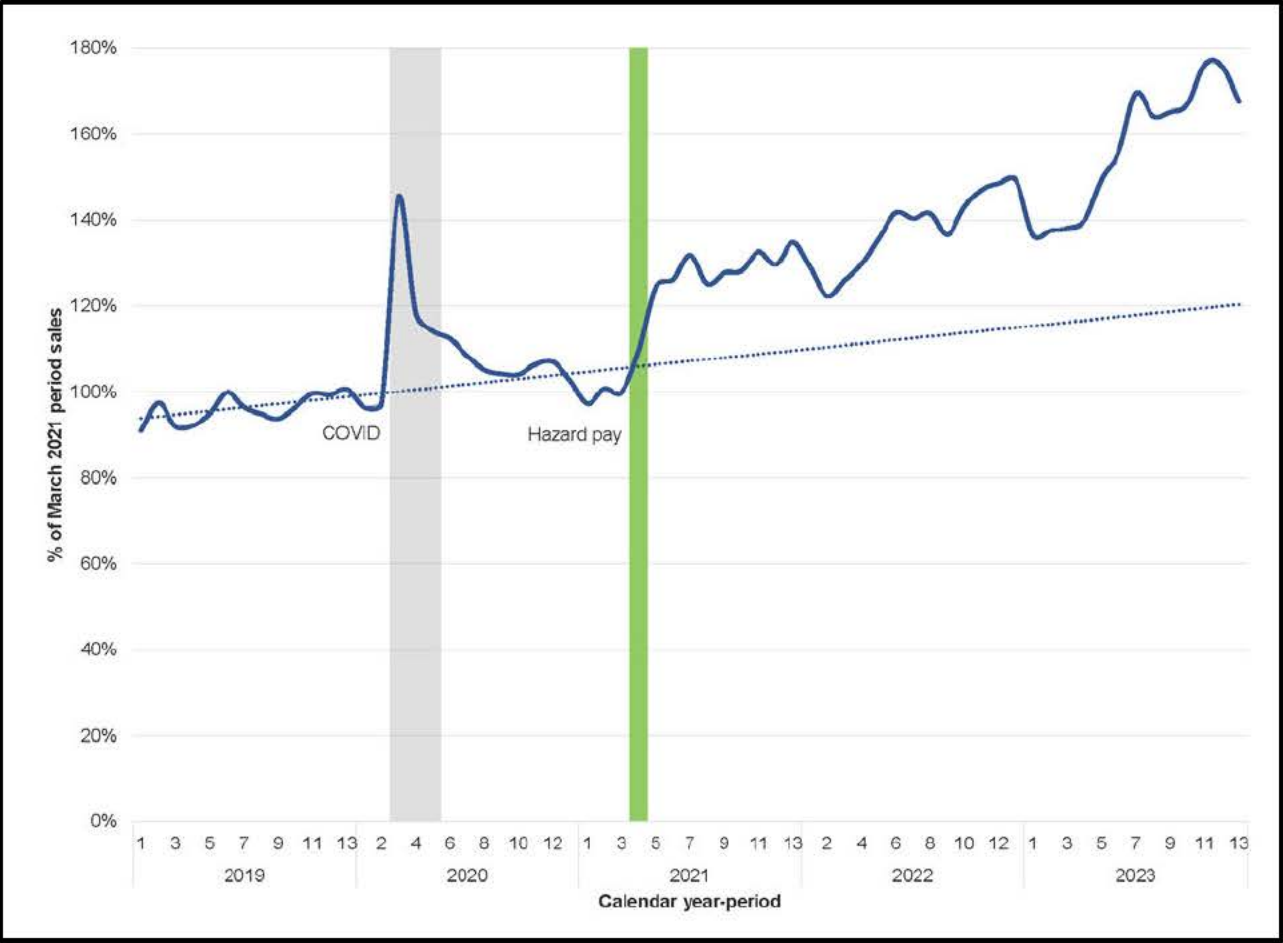


# 2021 QFC Store Closure Analysis: Wedgwood Store



Source: Dua reply report, Figure 16

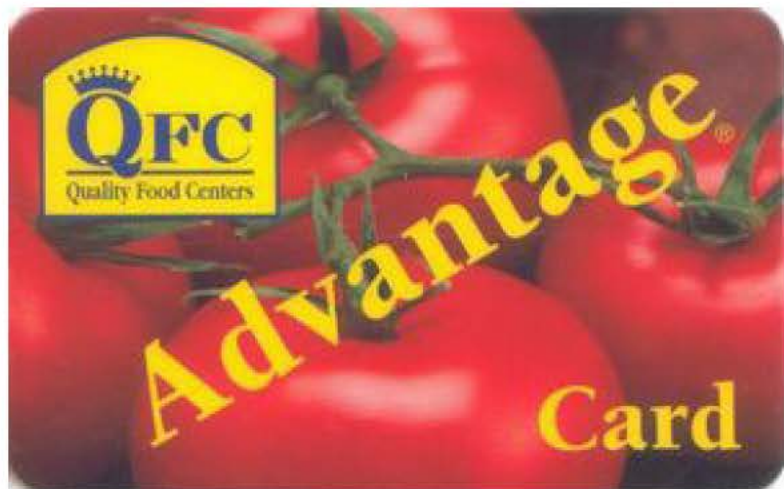
# Adjusted Sales of Safeway Nearest Closed Wedgwood QFC



## Sales Impact

Dependent variable = 4-week Albertsons sales (\$Millions)	Closest Albertsons to Wedgwood QFC		
	(1)	(2)	(3)
=1 if the Kroger store has exited	0.641***	0.517***	0.563***
	(0.043)	(0.052)	(0.044)
=1 if in three months following covid announcement			0.364***
			(0.125)
Linear time trend		0.002***	0.001***
		(0.001)	(0.000)
R2	0.760	0.778	0.804
Observations	128	128	128
<b>Diversion ratio</b>	<b>68%</b>	<b>55%</b>	<b>60%</b>
Standard errors in parentheses			
* p<0.10, ** p<0.05, *** p<0.01			

# Loyalty Card-Based Diversion Analysis



	Estimated Diversion
ACI to Kroger	51%
Kroger to ACI	59%

Source: Dua report, Figure 29



# Consistently High Estimated Diversion Among Kroger and Albertsons

Analysis	Estimated Diversion
King Soopers Strike	55%
QFC Store Closures	50% - 70%
Loyalty Card Data	51% - 59%

Source: Dua report, Figures 29, 48, and 49



# Upward Pricing Pressure Inputs

**1 Merging Parties' Prices**

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**2 Diversions Between Merging Parties**

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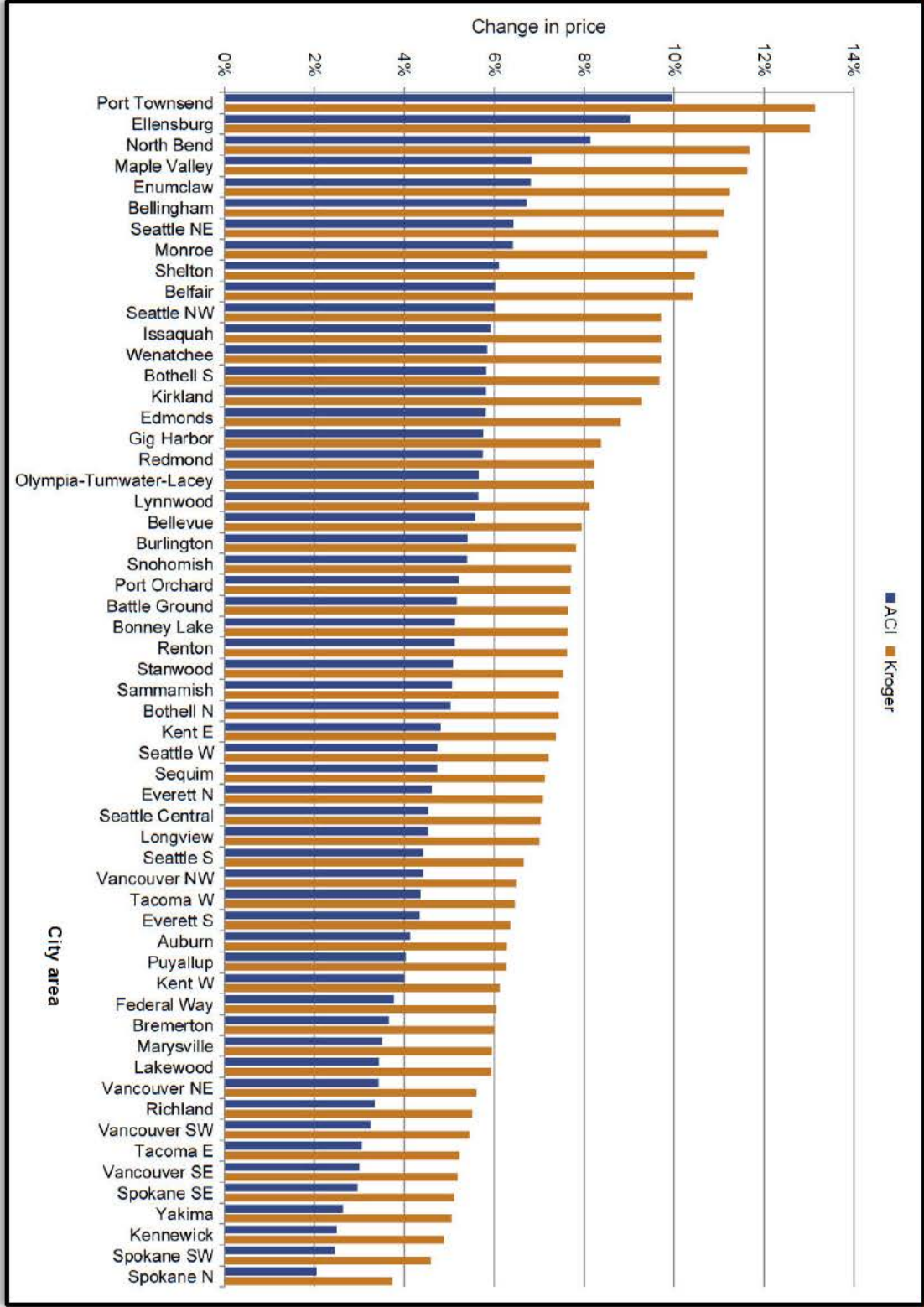
**3 Margins**

# Upward Pricing Pressure and Consumer Harm in Washington

Average Price Increase		Consumer Harm (\$ Millions Per Year)
Albertsons	Kroger	
5%	8%	> \$800

Source: Dua report, ¶ 195 & Figure 31

# Upward Pricing Pressure by City Area



Source: Dua report, Figure 31



## Merger Guidelines

U.S. Department of Justice and the Federal Trade Commission

Issued: December 18, 2023

### 2.3. Guideline 3: Mergers Can Violate the Law When They Increase the Risk of Coordination.

The Agencies determine that a merger may substantially lessen competition when it meaningfully increases the risk of coordination among the remaining firms in a relevant market or makes existing coordination more stable or effective.<sup>19</sup> Firms can coordinate across any or all dimensions of competition, such as price, product features, customers, wages, benefits, or geography. Coordination among rivals lessens competition whether it occurs explicitly—through collusive agreements between competitors not to compete or to compete less—or tacitly, through observation and response to rivals. Because tacit coordination often cannot be addressed under Section 1 of the Sherman Act, the Agencies vigorously enforce Section 7 of the Clayton Act to prevent market structures conducive to such coordination.


Tacit coordination can lessen competition even when it does not rise to the level of an agreement and would not itself violate the law. For example, in a concentrated market a firm may forego or soften an aggressive competitive action because it anticipates rivals responding in kind. This harmful behavior is more common the more concentrated markets become, as it is easier to predict the reactions of rivals when there are fewer of them.

Horizontal Merger Guidelines, § 2.3




# Pricing Probes Are Used Systematically


## Everyday Essentials




Comp Range	Strategy
0.00-0.94	
0.95-1.19	
1.20-1.29	
1.30-1.39	
1.40-1.49	
1.50-1.59	
1.60-1.69	
1.70-1.79	
1.80-1.89	
1.90-2.09	
2.10-2.19	
2.20-2.29	
2.30-2.39	
2.40-2.49	
2.50-2.59	
2.60-2.69	
2.70-2.79	
2.80-2.99	
3.00-3.09	
3.10-3.19	
3.20-3.29	
3.30-3.39	
3.40+ *	




Comp Range	Strategy
0.00-0.48	
0.49-0.54	
0.55-0.58	
0.59-0.64	
0.65-0.68	
0.69-0.74	
0.75-0.78	
0.79-0.84	
0.85-0.88	
0.89-0.99	
1.00-1.09	
1.10-1.19	
1.20-1.29	
1.30-1.39	
1.40-1.49	
1.50-1.59	
1.60-1.69	
1.70-1.79	
1.80+ *	




Comp Range	Strategy
0.00-1.59	
1.60-1.69	
1.70-1.79	
1.80-1.89	
1.90-2.09	
2.10-2.19	
2.20-2.29	
2.30+	



Comp Range	Strategy
0.00-0.49	
0.50-0.53	
0.54+	



Comp Range	Strategy
0.00-0.99	
1.00-1.14	
1.15-1.24	
1.25-1.34	
1.35-1.44	
1.45-1.54	
1.55+	



\* We adhere to state dairy laws

Systematically probe to encourage market increases

Source: KRPROD-FTC-2R-000788646, 14, Dua report, footnote 352

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# Efficiencies: CMCR Analysis

	No Feedback	With Feedback
Albertsons	16%	40%
Kroger	24%	49%

Source: Dua reply report paragraph 126 & n.284

# Summary of Conclusions

- The Proposed Transaction Will Lead to Undue Concentration in Relevant Markets Across Washington
- The Merger Will Likely Cause a Substantial Loss of Competition Regardless of How Markets Are Defined
- **Defendants' Proposed Divestiture Will Not Restore the Competitive Intensity Lost as a Result of the Merger**

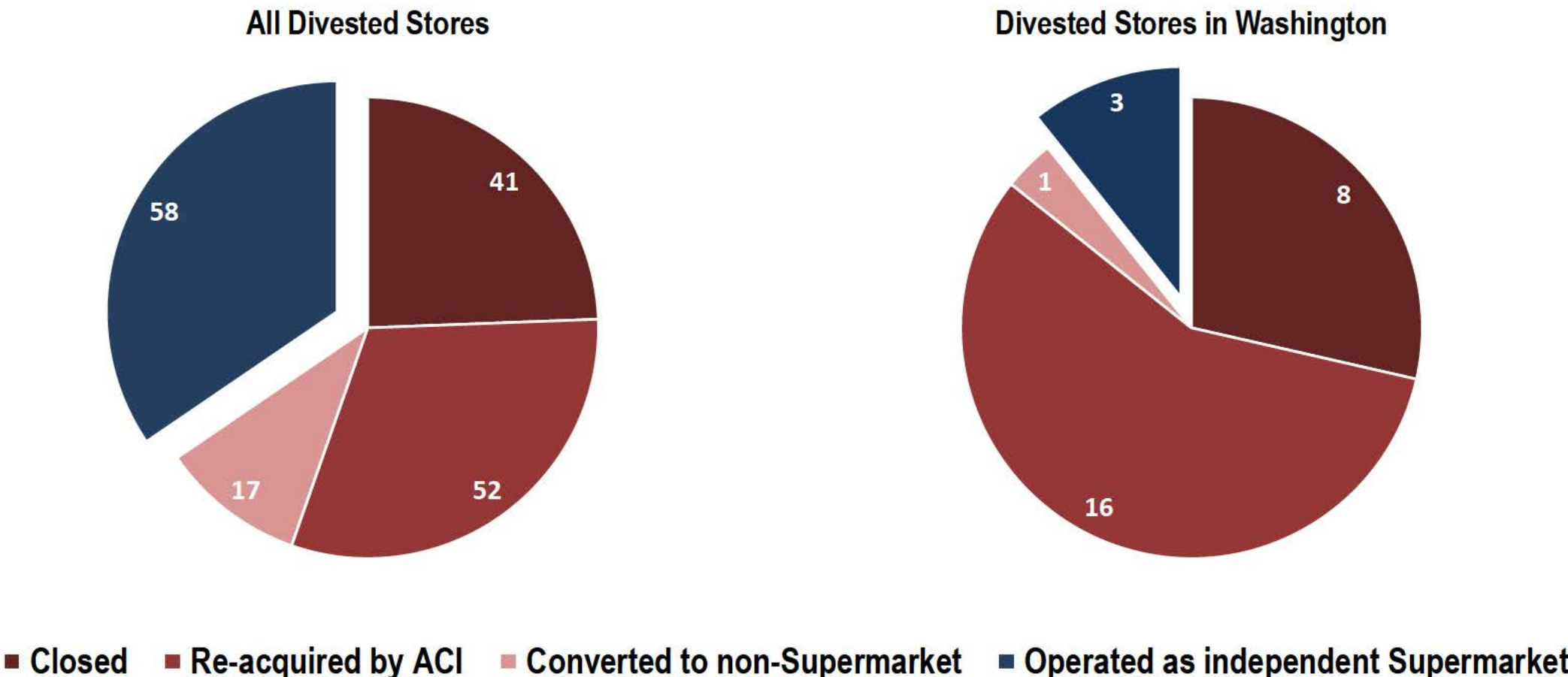


# Post-Divestiture Market Share and Concentration

City Area	Merged Kroger Share	C&S Share	Post-merger HHI	Delta-HHI
Bremerton	48%	17%	3,432	469
Burlington	43%	25%	3,501	137
Everett S	51%	0%	3,944	1,191
Federal Way	43%	13%	2,932	341
Kennewick	33%	0%	3,075	521
Kent W	59%	7%	4,654	1,243
Lakewood	69%	0%	5,740	2,321
Longview	37%	9%	2,982	359
Lynnwood	69%	23%	5,307	785
Puyallup	51%	10%	3,565	830
Renton	67%	18%	5,000	1,156
Richland	42%	0%	3,311	869
Seattle NE	72%	26%	5,881	1,033
Seattle S	67%	24%	5,168	928
Spokane N	55%	0%	3,633	1,188
Spokane SE	36%	7%	2,486	404
Spokane SW	38%	12%	2,763	322
Tacoma E	51%	15%	3,799	411
Tacoma W	54%	26%	4,015	360
Wenatchee	48%	12%	3,277	604
Yakima	38%	6%	3,045	473

Source: Dua Reply Report Figure 30 & backup



# Outcomes for Supermarkets Divested in 2015 ACI-Safeway Merger



- 58 out of 168 stores divested operate as independent competitors today. 52 are operated by the merged ACI.
- In Washington, 3 out of 28 stores divested operate as independent competitors. 16 are operated by the merged ACI.

Source: Dua reply report, Figure 34

# C&S Sales at Stores Acquired in Price Chopper-Tops Divestiture

	% sales loss (pre-divestiture to 2023)
Nominal	
Inflation Adjusted	

Source: Dua reply report paragraphs 190, 196

# Presumptively Anticompetitive Markets

Number of presumptively anticompetitive markets depending on sales retained by C&S

Product market	# of markets	# of presumptively anticompetitive markets, under 2023 guidelines, if C&S retain				# of presumptively anticompetitive markets, under 2010 guidelines, if C&S retain			
		100% sales	90% sales	70% sales	50% sales	100% sales	90% sales	70% sales	50% sales
Supermarket	57	21	26	46	52	19	23	37	51
Supermarket + Costco	57	19	27	48	53	14	17	35	49
Supermarket Plus	57	19	24	42	51	12	13	24	39

Source: Dua reply report, Figure 39



# Harm to Competition

% Sales retained by C&S	Avg. Price Change (%)		Consumer harm (in \$million)
	ACI	Kroger	
100%	0%	2%	\$151
90%	1%	2%	\$172
80%	1%	2%	\$194
70%	1%	2%	\$217
50%	1%	3%	\$271

# Summary of Conclusions

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