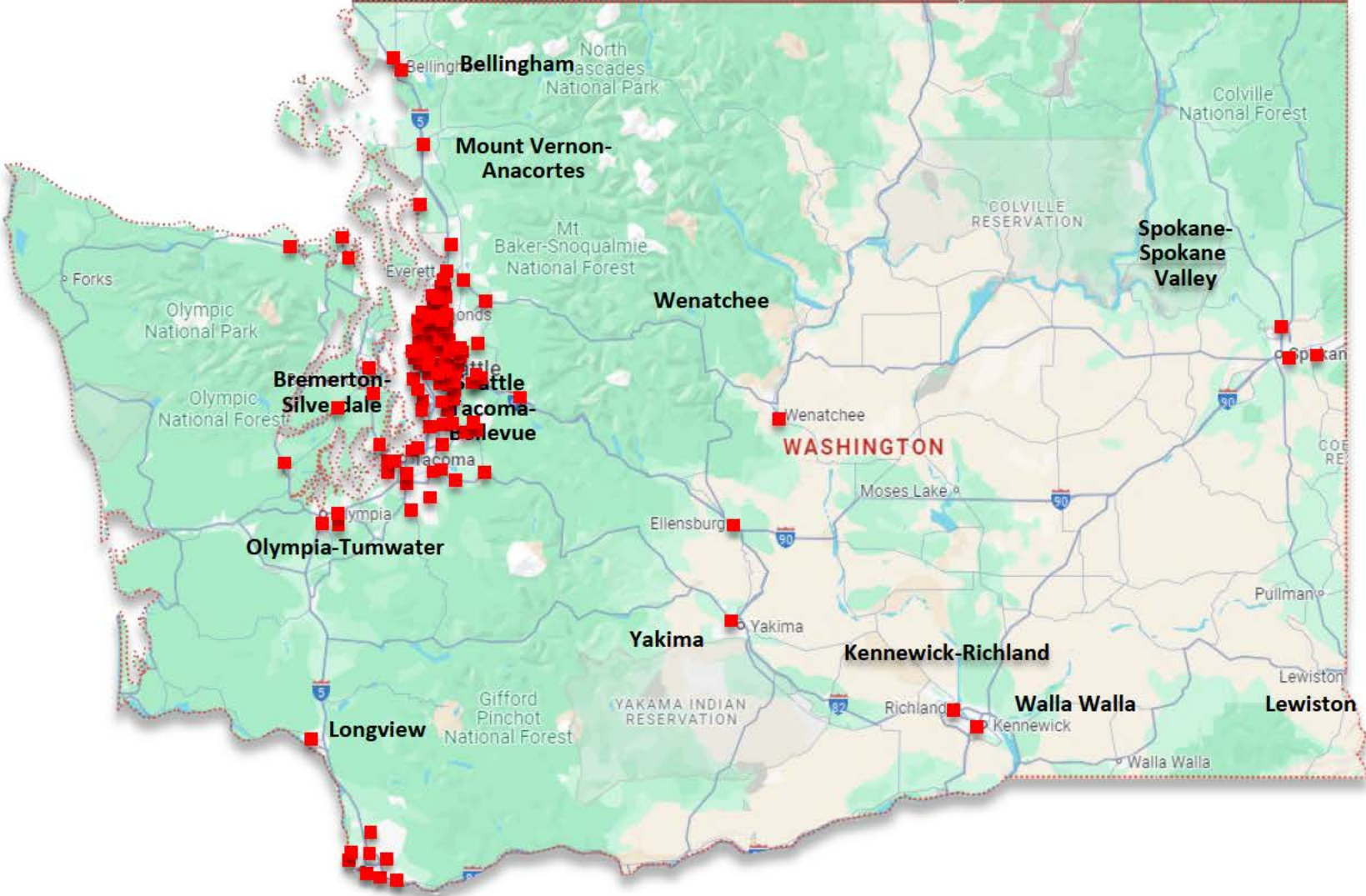


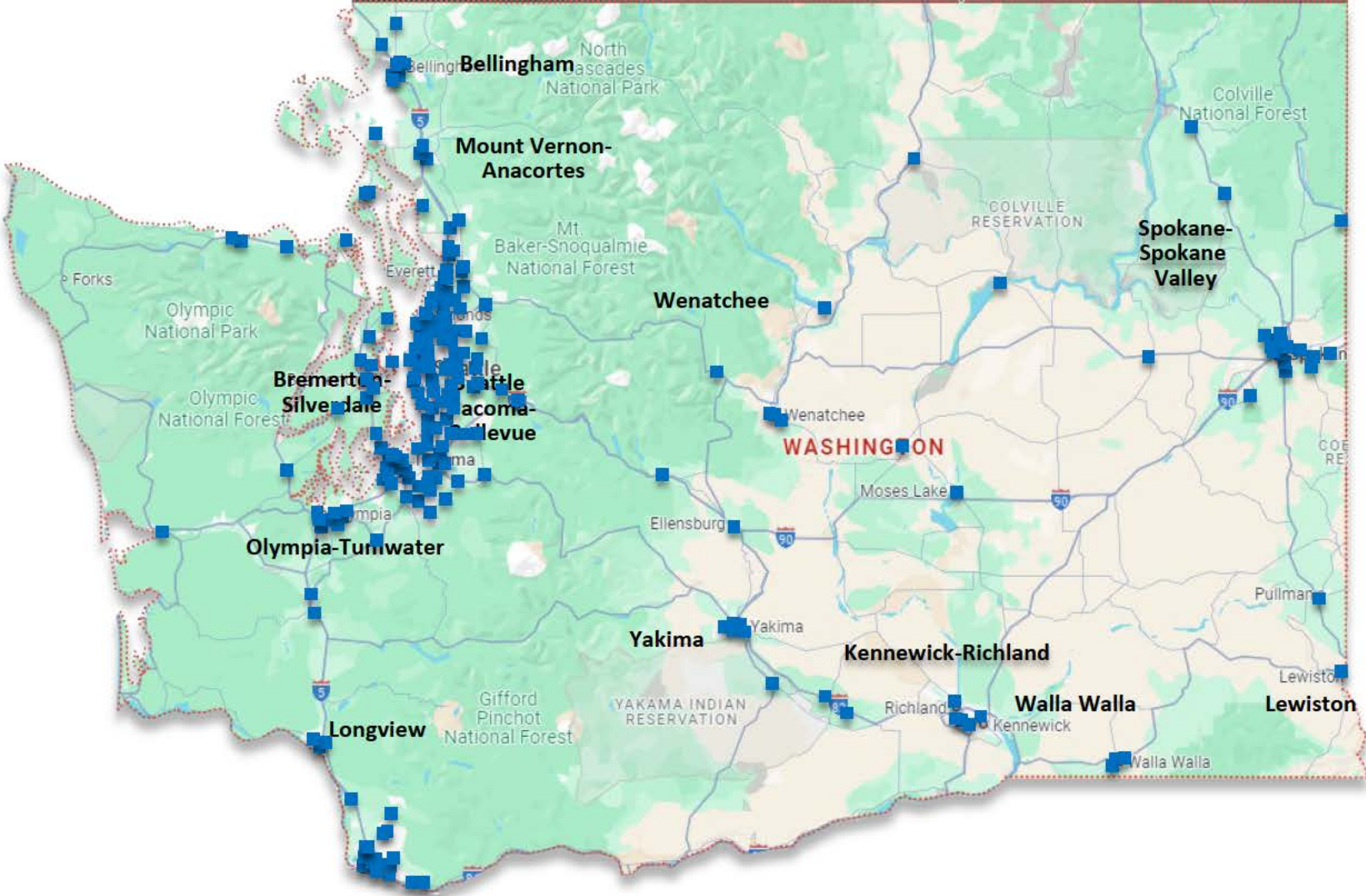
***State of Washington***  
**v.**  
***Kroger et al.***

Plaintiff's Opening Statement

# Kroger Store Locations in Washington



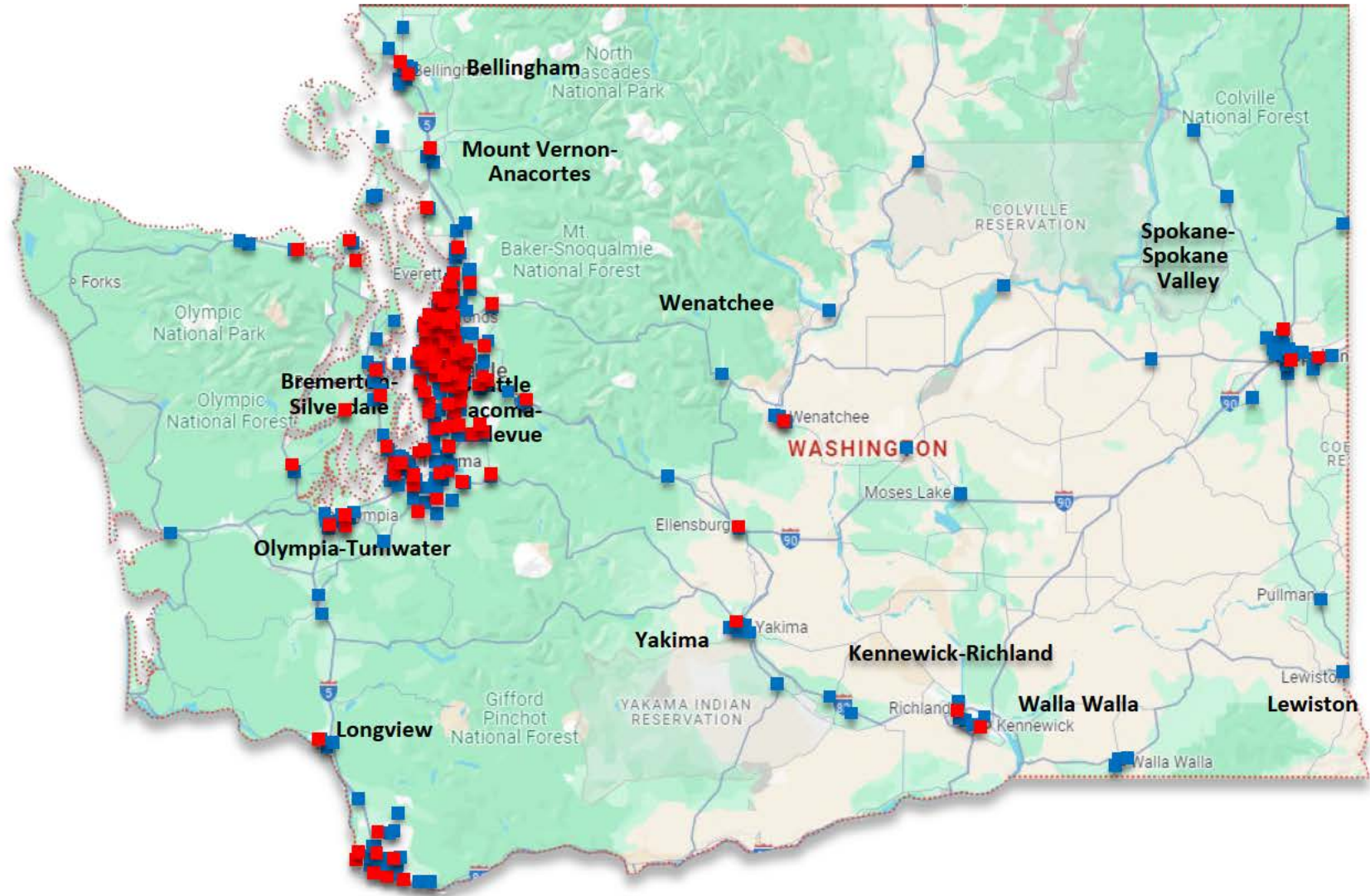
# Albertsons Store Locations in Washington



■ Albertsons



# Kroger and Albertsons Store Locations in Washington



■ Albertsons

■ Kroger





# “Just Careful with the FTC . . . We Want to Say We Can Run Them”

CONFIDENTIAL

Messages in chronological order (times are shown in GMT +00:00)

CHAT - CB024500 - 00232 - 5/1/2023

AF

Florenz, Alona  
Only other comment Bob made is we have an advantage of being the total package solution and so we may want to still lean on to that

5/1/2023, 1:40 PM

AF

Florenz, Alona  
To reflect Amazon in so think thru that

5/1/2023, 1:42 PM

SH

Sandeep Heda  
Fair. And I think what we could do is hit on some considerations for post acq on how to improve the package you get - eg future acquisitions you can rebrand, selling to independents to build scale for the DC, potential divest to another strategic if they exist etc

5/1/2023, 3:23 PM

AF

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

5/1/2023, 3:32 PM

SH

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

5/1/2023, 3:32 PM

AF

Florenz, Alona  
We also say we can run the program scores when a program is working on

5/1/2023, 4:00 PM



**Alona Florenz**  
Senior Vice President,  
Corporate Development, C&S

SH

**Sandeep Heda**

▶ 5/1/2023, 3:23 PM

Fair. And I think what we could do is hit on some considerations for post acq on how to improve the package you get - eg future acquisitions you can rebrand, selling to independents to build scale for the DC, potential divest to another strategic if they exist etc.

AF

**Florenz, Alona**

◀ 5/1/2023, 3:32 PM


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

CONFIDENTIAL

CONFIDENTIAL  
PX3348-002

SPX2407, FTC-CS-02293878





It shall be unlawful for any corporation to acquire, directly or indirectly, the whole or any part of the stock or assets of another corporation where the effect of such acquisition **may** be to substantially lessen competition or tend to create a monopoly in any line of commerce

RCW 19.86.060



- Fourth Largest Retailer of any kind in United States
- 2,700 stores across the country
- 25 different grocery banners
- More than \$150 Billion in revenue in 2023 alone



# Kroger Acquisitions Over the Years



1983



1999



2001

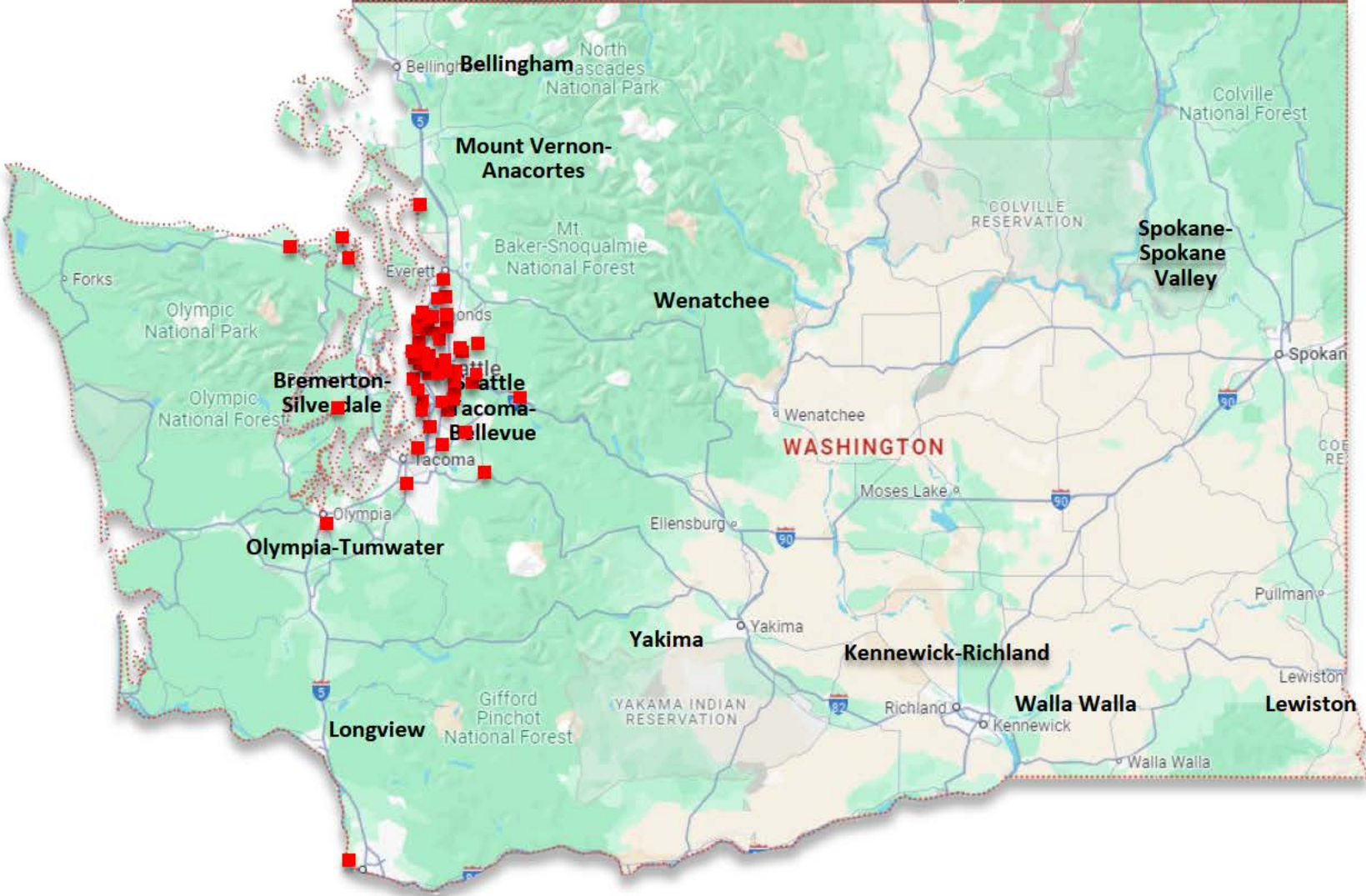


2014



2015

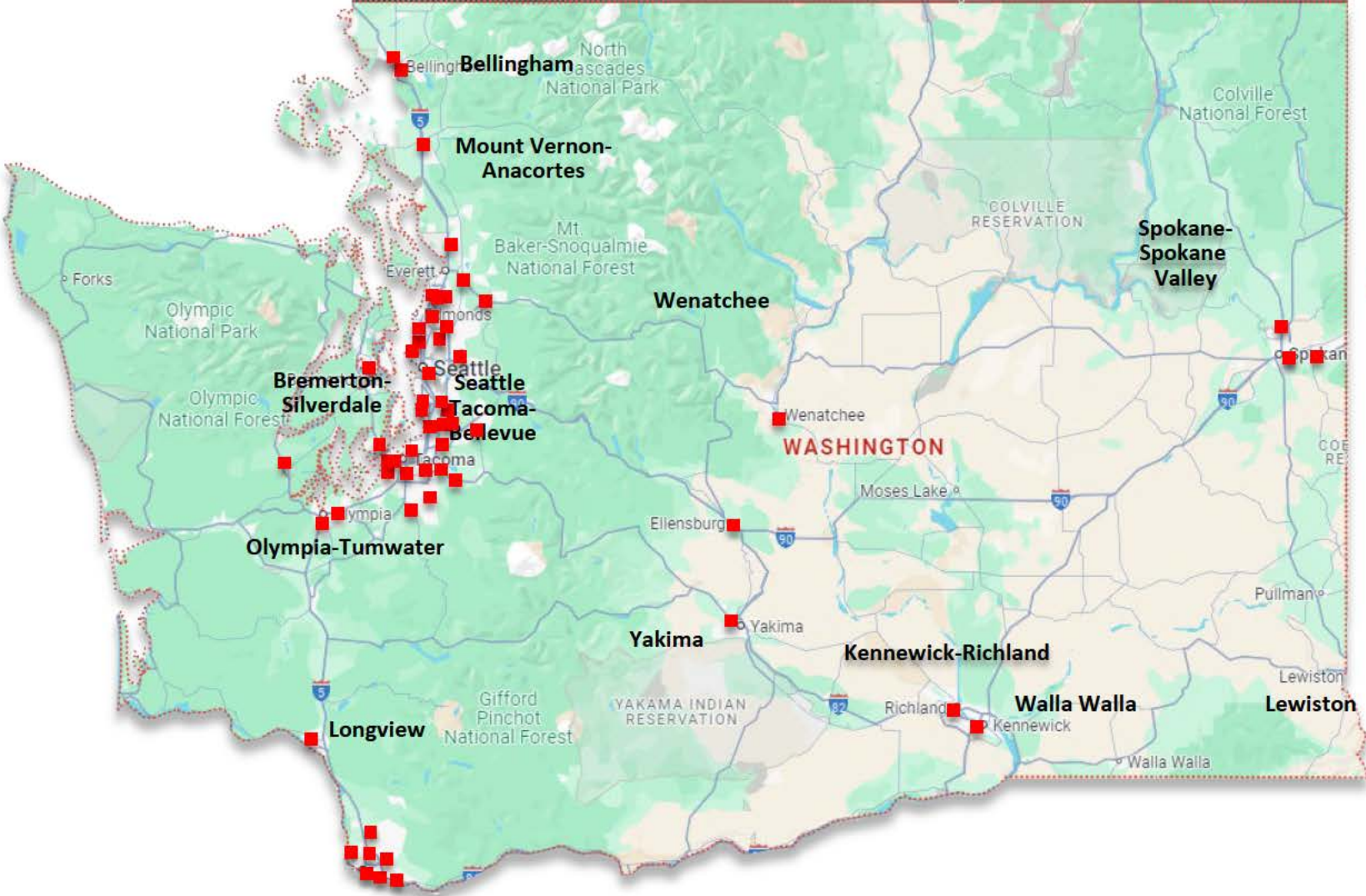
# QFC Store Locations in Washington



**55**  
Locations



# Fred Meyer Store Locations in Washington



**Fred Meyer®**

**59**  
Locations



- Tenth Largest Retailer of any kind in United States
- 2,200 stores across the country
- 15 different grocery banners
- More than \$77 Billion in revenue in 2023 alone

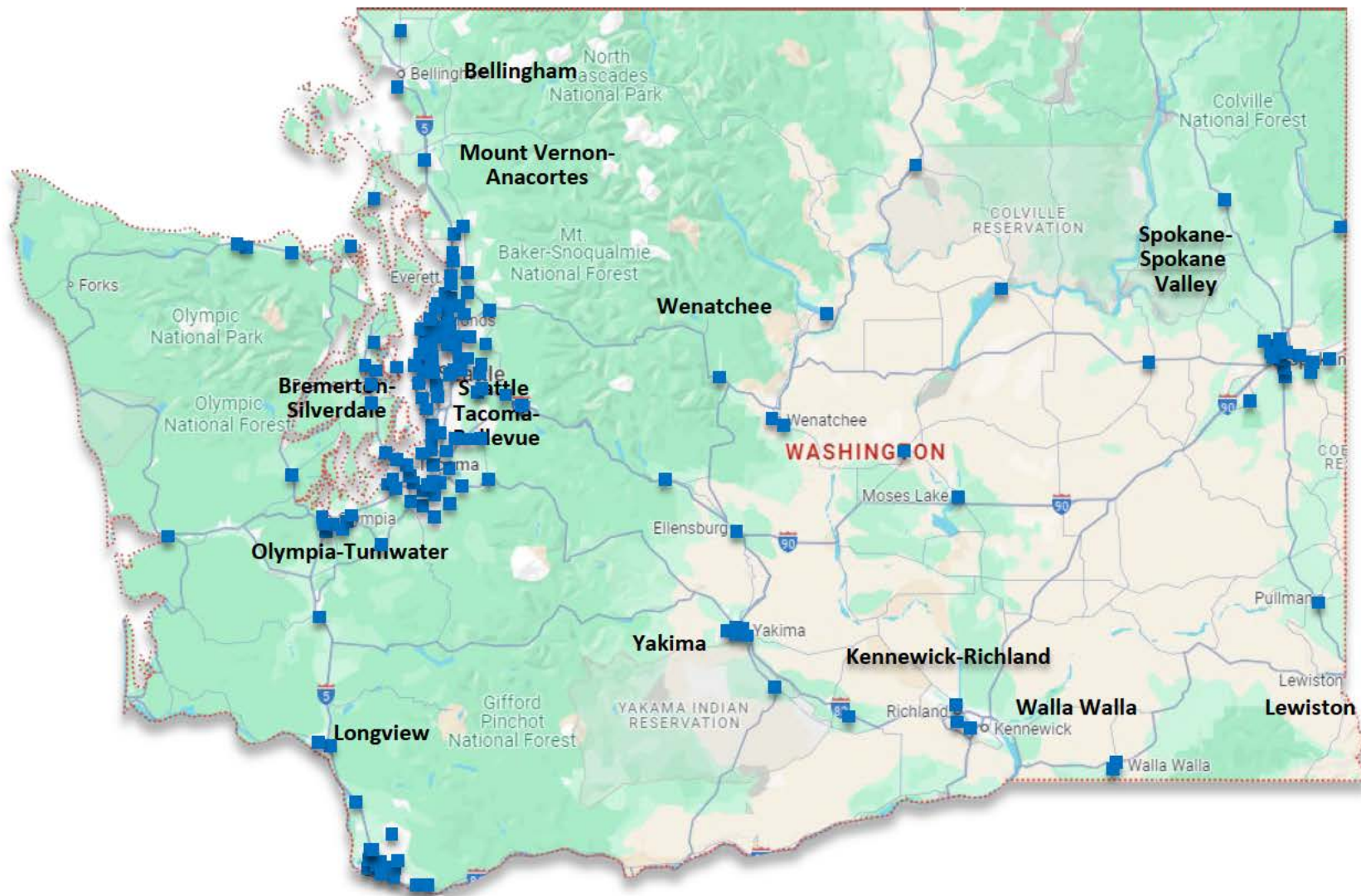


# Albertsons Acquisitions Over the Years



 1998	 1998	 1998	 2004	 2004	 2013
 2014	 2015	 2015	 2015	 2015	 2015
	 2015	 2015	 2021	 2021	

# Safeway Banner Locations in Washington



**SAFEWAY** 

**184**  
Locations



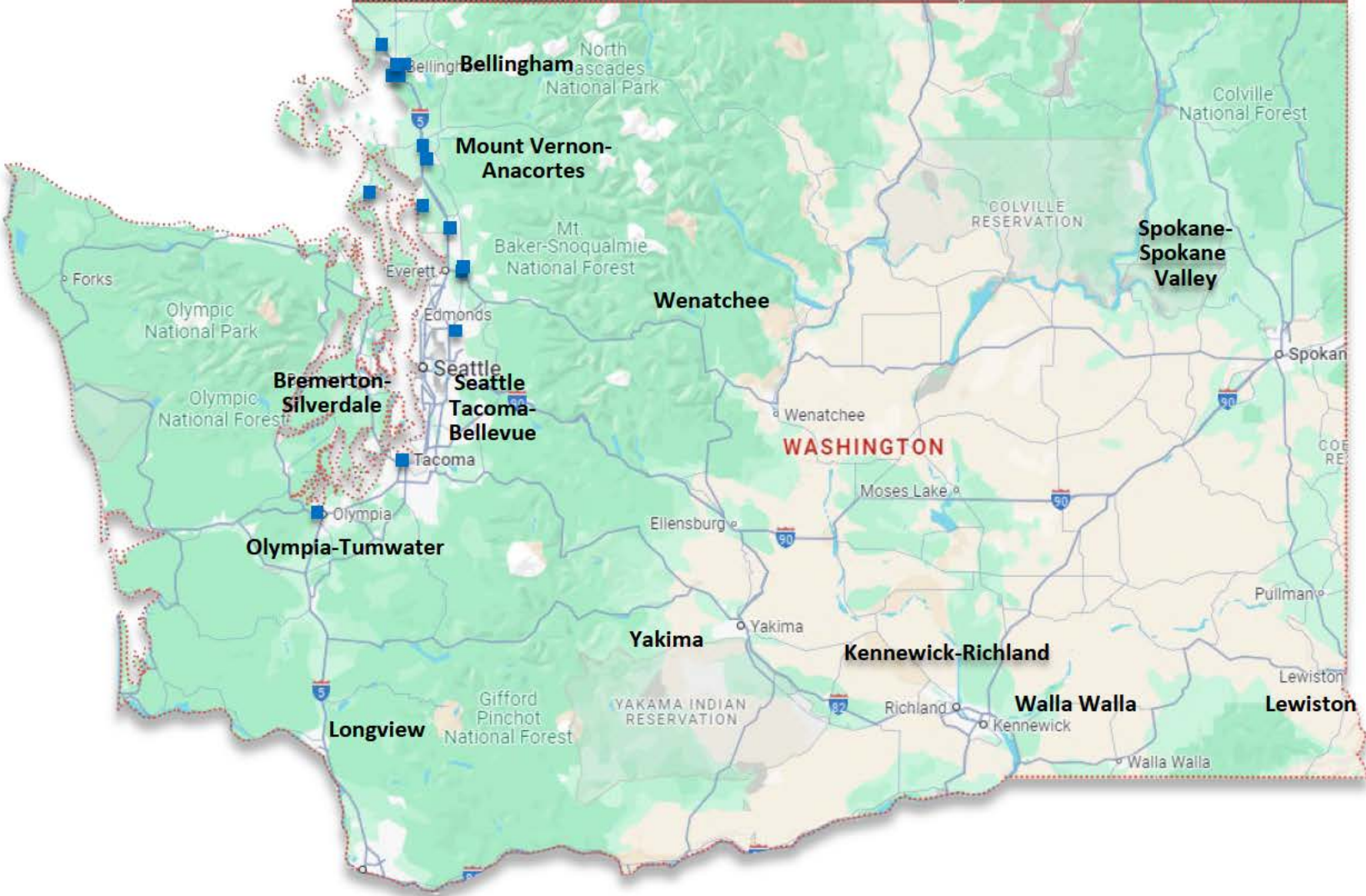
# Albertsons Banner Locations in Washington



**16**  
Locations



# Haggen Banner Locations in Washington



15  
Locations

# The New Kroger





# Courts Apply a Burden Shifting Framework

“Section 7 claims are typically assessed under a burden-shifting framework. The plaintiff must first establish a prima facie case that a merger is anticompetitive. The burden then shifts to the defendant to rebut the prima facie case. If the defendant successfully rebuts the prima facie case, the burden of production shifts back to the Government and merges with the ultimate burden of persuasion, which is incumbent on the Government at all times. . . . A prima facie case can be established simply by showing high market share.”

*St. Alphonsus Med. Ctr.-Nampa Inc. v. St. Luke's Health Sys., Ltd.*, 778 F.3d 775, 783, 785 (9th Cir. 2015) (cleaned up)

See also *United States v. Anthem, Inc.*, 855 F.3d 345, 349 (D.C. Cir. 2017); *F.T.C. v. Penn State Hershey Med. Ctr.*, 838 F.3d 327, 337-38 (3d Cir. 2016); *United States v. Waste Mgmt. Inc.*, 743 F.2d 976, 981 (2d Cir. 1984)



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## 1 The State's Prima Facie Case

- Relevant market (product market and geographic market)
  - Increased levels of concentration and market share
  - Proof of actual anticompetitive effects
    - Unilateral effects
    - Coordinated effects
- 

## 2 Defendants' Rebuttal and the State's Response

- Divestiture
  - Efficiencies
  - “Need” to merge
- 

## 3 Remedy

## 1 The State's Prima Facie Case

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## 2 Defendants' Rebuttal and the State's Response

- Divestiture
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  - "Need" to merge
- 

## 3 Remedy



# Supermarkets Offer a Broad Assortment of Products





# Supermarkets Offer a Wide Variety of Each Kind of Product





# Kroger Offers a One-Stop Shop

[illegible]

“The combo store...is successful because the stores are large enough to offer the specialty departments that customers desire for one-stop shopping, including natural food and organic sections, pharmacies, general merchandise, pet centers and high-quality perishables such as fresh seafood and organic produce”

SPX0928, Kroger, Annual Report, at 4 (Form 10-K) (March 29, 2022)



# COMPETE

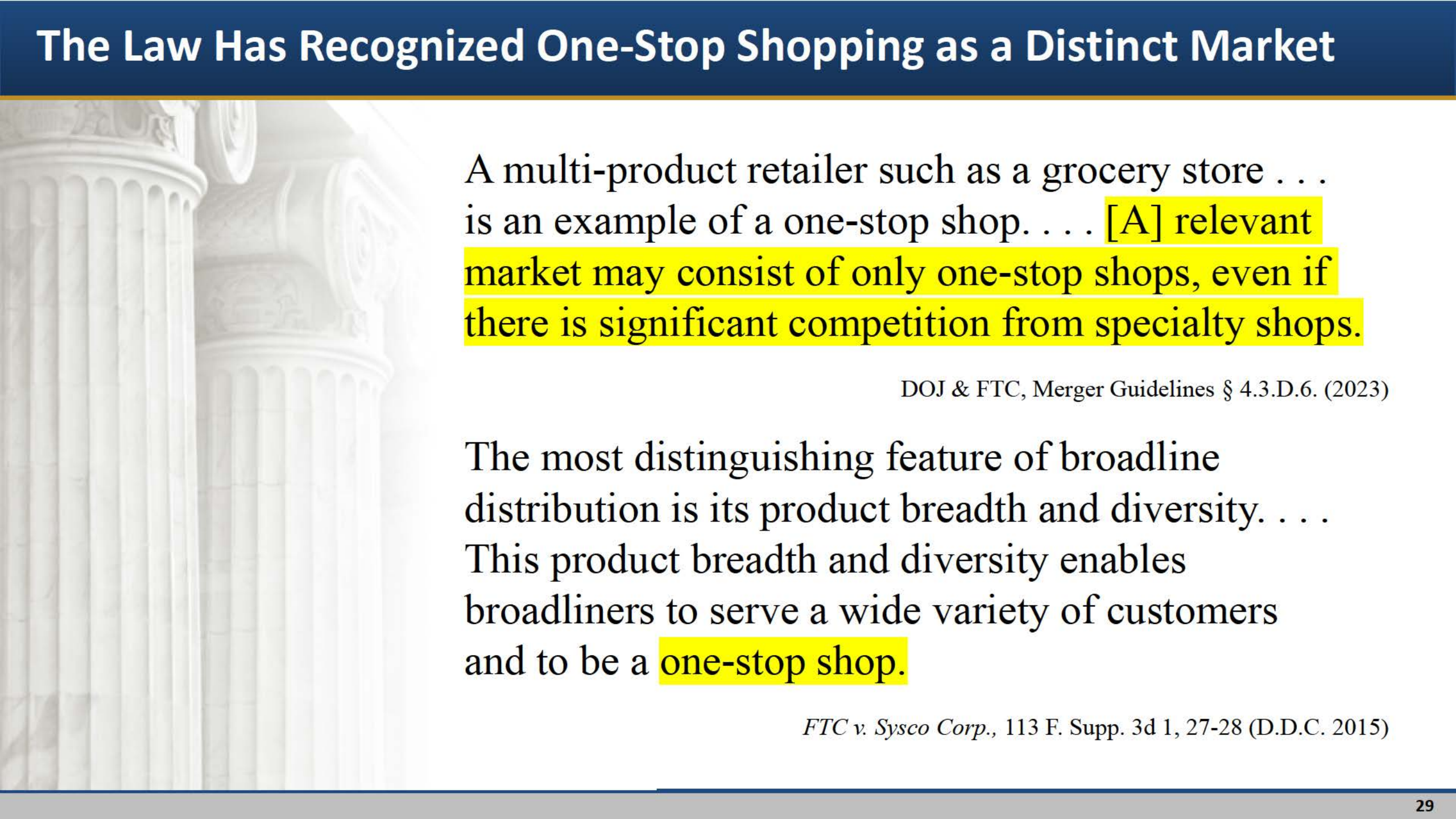
# Relevant Product Market

“The mere fact that a firm may be termed a competitor in the overall marketplace does not necessarily require that it be included in the relevant product market for antitrust purposes.”

*FTC v. Sysco Corp.*, 113 F. Supp. 3d 1, 26 (D.D.C. 2015) (cleaned up)



# The Law Has Recognized One-Stop Shopping as a Distinct Market

A background image of classical columns, likely from a government building, is visible on the left side of the slide.

A multi-product retailer such as a grocery store . . . is an example of a one-stop shop. . . . [A] relevant market may consist of only one-stop shops, even if there is significant competition from specialty shops.

DOJ & FTC, Merger Guidelines § 4.3.D.6. (2023)

The most distinguishing feature of broadline distribution is its product breadth and diversity. . . . This product breadth and diversity enables broadliners to serve a wide variety of customers and to be a one-stop shop.

*FTC v. Sysco Corp.*, 113 F. Supp. 3d 1, 27-28 (D.D.C. 2015)

# A Fruit Stand is not “Reasonably Interchangeable” with a Supermarket





# What Matters Is the Closeness of the Competition

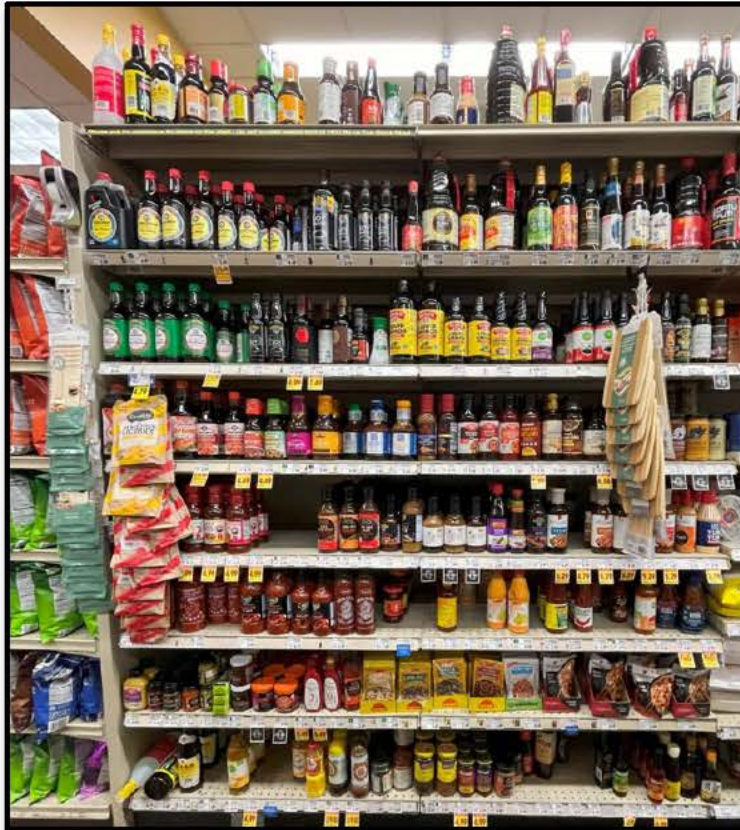
“Some substitutes may be closer, and others more distant, and defining a market necessarily requires including some substitutes and excluding others.”

DOJ & FTC, Merger Guidelines § 4.3 (2023)

“The key question for the Court is whether [the] products are sufficiently close substitutes to constrain any anticompetitive [] pricing after the proposed merger.”

*United States v. H & R Block, Inc.*, 833 F. Supp. 2d 36, 55 (D.D.C. 2011)

# Costco's Product Offering Is Fundamentally Different







# 2020 Albertsons Presentation to the FTC

## Acme Markets, Inc.'s Proposed Acquisition of 27 Specialty Stores from KB US Holdings

Presentation to the Federal  
Trade Commission

October 23, 2020

CONTAINS HIGHLY CONFIDENTIAL BUSINESS INFORMATION | CONFIDENTIAL SUBM

- Albertsons has agreed to purchase 27 Kings Food Markets and Balducci's Food Lover's Market stores from KB US Holdings following a comprehensive process and bankruptcy sale.
- There is no product overlap—the limited overlapping Albertsons stores (operating primarily under ACME and Safeway banners) are traditional supermarkets while Kings and Balducci's are specialty stores.
- There are limited geographic overlaps, none of which raise competitive concerns.
- The highly synergistic and complementary transaction expands and differentiates Albertsons' portfolio while generating significant cost savings through a more efficient and expanded distribution system that can be passed onto customers.



SPX0157



# Albertsons Distinguishes Supermarkets from Other Formats

Traditional Grocery		
Acme	Grants Supermarket	Ray's Food Place
<b>Albertsons</b>	<b>Haggen</b>	Roche Brothers
Albertsons Market	Hannaford	Rosauers/Rosauers Family Market
Albertsons Market Street	Harris Teeter	Roth's Fresh Market
Angelo Caputo's	Harvest Foods	Rouses
Arlans Market	H-E-B	<b>Safeway</b>
b'fresh	Hy Vee	Save Mart
Bakers	IGA	Seller Bros.
Bashas'	Jewel	Shaws
Berkota Super Foods	Joni's Marketplace	Shop N Save
Big Y	King Soopers	ShopRite
Bi-Mart	<b>Kroger</b>	Smith's/Smith's Food & Drug
Boyers Food Market	Kroger Signature	Star Market
Brookshire's	Lowes/Lowes Big &/Big &	Stater Bros
Brookshire Brothers	Lucky	Stop & Shop
Broulins	Market Basket	Strack & Van Til
Carrs	Market of Choice	Super Fresh
Cash Saver	Market Street	Supremos Food Market
Central Market	Mars Super Market	The Fresh Grocer
City Market	Martin's	The Market by Safeway
Don Quijote	Nob Hill Foods	The Market by Vons
Eagle Quality Center	Nugget Market	Thriftway
Farm Fresh Supermarket	Pavilions	Times Supermarkets
Food Lion	Price Chopper	Tom Thumb
Food Town	PriceRite	Tony's Finer Foods
Foodarama	Publix	Top Valu/Buy Low Market
Foodland	<b>QFC (Quality Food Centers)</b>	United
<b>Fred Meyer</b>	Raley's	Vons
Fry's Food and Drug	Ralphs	Walmart Neighborhood Market
Giant	Ralphs Fresh Fare	Weis
Giant Eagle	Randalls	Winn-Dixie

Specialty	
AJ's Fine Foods	PCC Natural Market
Andronico's Community Markets	Petes Fresh Market
Bel Air Market	Red Apple
Bristol Farms	Royal Blue
Butera Market	Safeway Community Markets
Central Market HEB	Sprouts
Fresh Thyme	The Fresh Market
Gelson's Market	Trader Joe's
Kings Food Markets	Trading Co.
Lassens Natural Foods & Vitamins	Wegmans
Mariano's	<b>Whole Foods</b>
Metropolitan Market	Whole Foods Market 365
MOM's Organic Market	Yoke's Fresh Market
Natural Grocers	Zupan's
New Seasons Market	

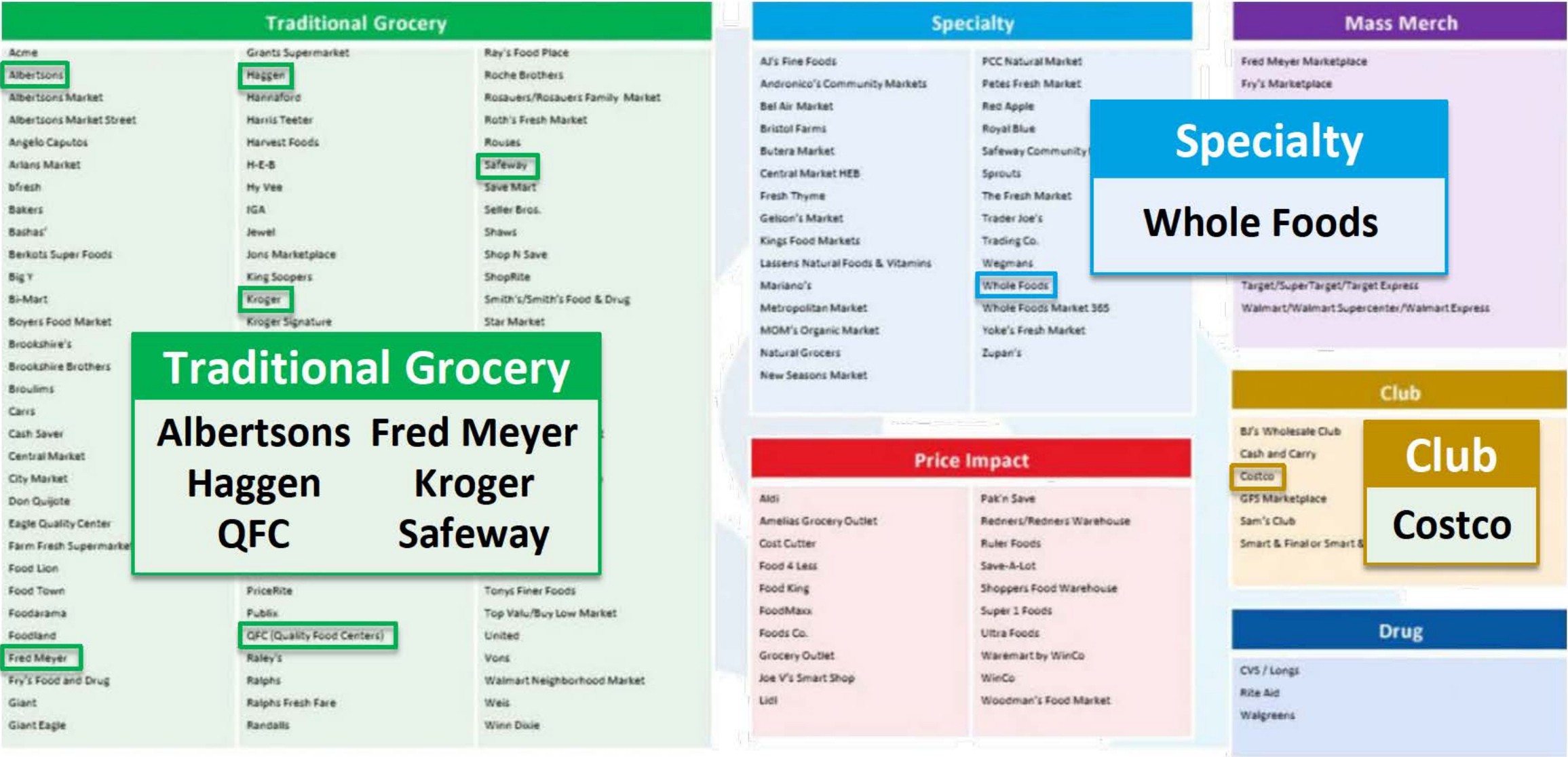
Mass Merch
Fred Meyer Marketplace
Fry's Marketplace
HEB Plus!
King Soopers Marketplace
Kmart
Kroger Marketplace
Meijer
Ralphs Marketplace
Shopko
Smith's Marketplace
Target/SuperTarget/Target Express
Walmart/Walmart Supercenter/Walmart Express

Price Impact	
Aldi	Pak'n Save
Amelias Grocery Outlet	Redners/Redners Warehouse
Cost Cutter	Ruler Foods
Food 4 Less	Save-A-Lot
Food King	Shoppers Food Warehouse
FoodMaxx	Super 1 Foods
Foods Co.	Ultra Foods
Grocery Outlet	Waremart by WinCo
Joe V's Smart Shop	WinCo
Lidl	Woodman's Food Market

Club
Bj's Wholesale Club
Cash and Carry
<b>Costco</b>
GPS Marketplace
Sam's Club
Smart & Final or Smart & Final Extra

Drug
CVS / Longs
Rite Aid
Walgreens

# Albertsons Distinguishes Supermarkets from Other Formats





## 1 The State's Prima Facie Case

- Relevant market (product market and geographic market)
  - Increased levels of concentration and market share
  - Proof of actual anticompetitive effects
    - Unilateral effects
    - Coordinated effects
- 

## 2 Defendants' Rebuttal and the State's Response

- Divestiture
  - Efficiencies
  - "Need" to merge
- 

## 3 Remedy

## Geographic Market

<b>UNITED STATES SECURITIES AND EXCHANGE COMMISSION</b> Washington, D.C. 20549 <b>FORM 10-K</b>		
<input checked="" type="checkbox"/> <b>ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934</b> The fiscal year ended January 23, 2022.		
OR		
<input type="checkbox"/> <b>TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934</b> For the transition period from _____ to _____ Commission File Number: 0-383		
<b>THE KROGER CO.</b> (Exact name of registrant as specified in its charter)		
(If the registrant is a foreign corporation, its jurisdiction of incorporation)	(If U.S., state of incorporation)	(If U.S., Employer Identification No.)
1000 Walnut Street, Cincinnati, OH (Address of principal executive offices)	OH	53292 (Zip code)
Registrant's telephone number, including area code (513) 762-6000		
Securities registered pursuant to Section 12(b) of the Act:		
1. <u>Class of securities</u>	Issuing Symbol	Name of each exchange on which registered
Common, 100 shares	KRO	New York Stock Exchange
Securities registered pursuant to Section 12(g) of the Act:		
NONE		
(Title of debt)		
The security described in this report has not been previously registered under the Securities Act.		
The security described in this report has not registered in the register pursuant to Section 12(b)(2) of the Act		
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“As of January 29, 2022, Kroger operates supermarkets under a variety of local banner names in 35 states and the District of Columbia... The combo store is the primary food store format. They typically draw customers from a 2-2.5 mile radius.”

SPX0928, Kroger, Annual Report, at 4 (Form 10-K) (March 29, 2022)



**Christine Albi**  
**Former President, QFC**

Q. Do you know about how far a typical customer travels to get to a QFC?

**A. I would think that no more than three to five miles.**

Deposition Testimony Tr: June 5, 2024, 34:14-34:21



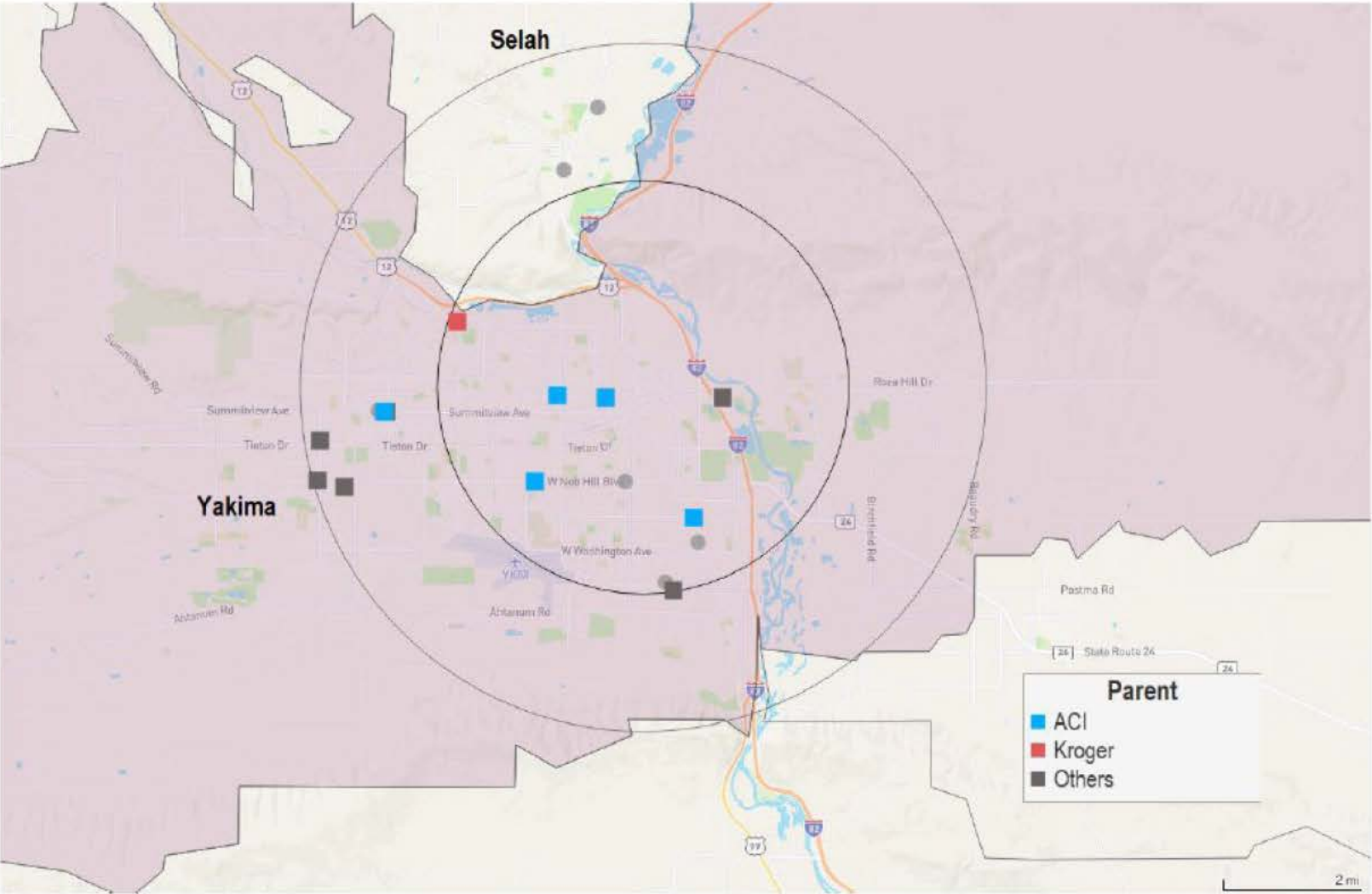


Dr. Nitin Dua

- Partner and co-chair of Antitrust and Competition Practice, Bates White Economic Consulting
- PhD, Economics, Florida State University
- 13-year competition economist
- Retained as an expert economist by the FTC, DOJ, State Attorneys General, and private parties to analyze proposed mergers

# City Areas: Yakima

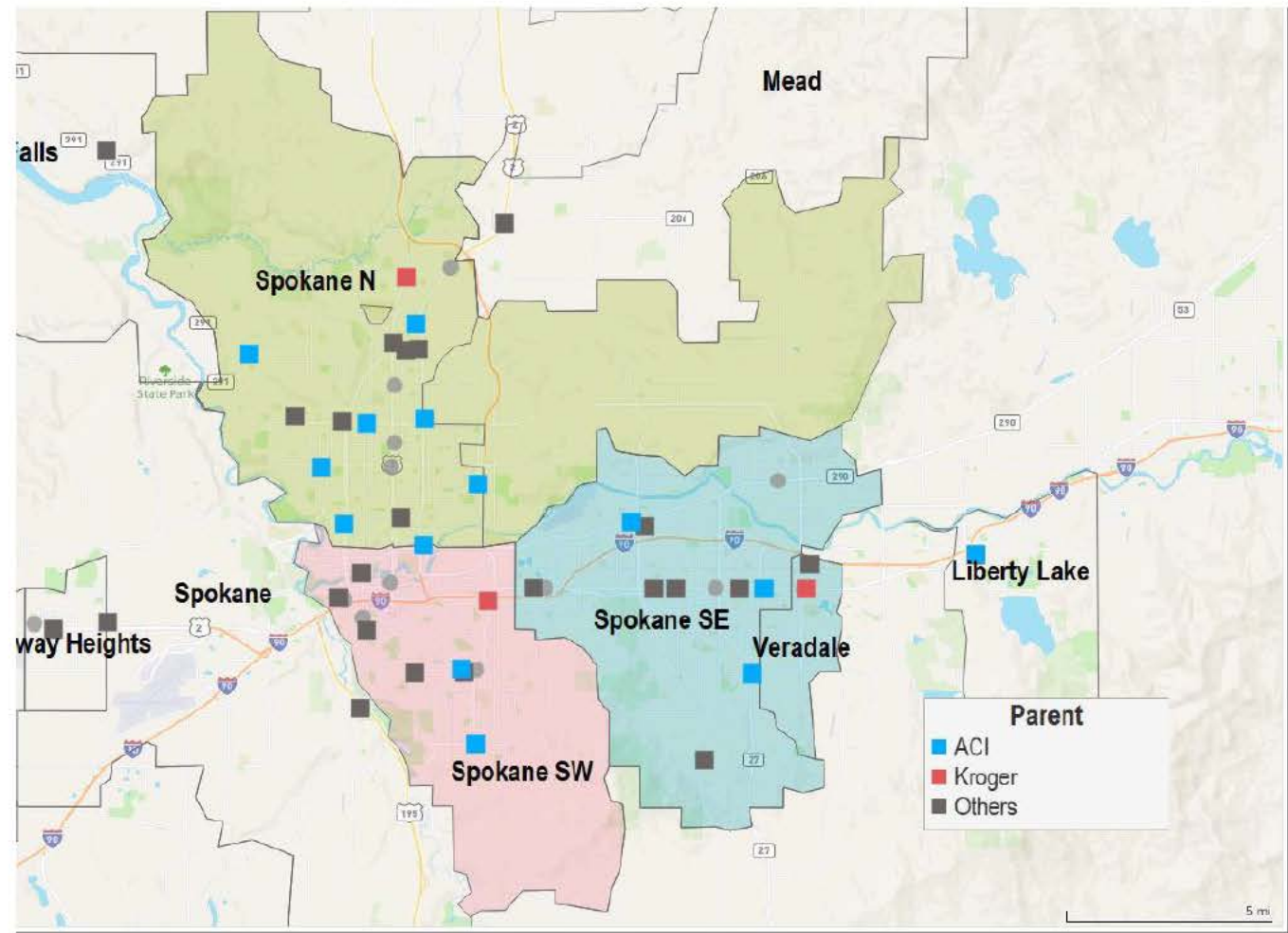
Figure 12. Yakima city area






# City Areas: Spokane

Figure 14. Spokane city areas



# Law Doesn't Require Precision for Geographic Markets



Geographic markets need not be defined  
“by metes and bounds as a surveyor would  
lay off a plot of ground.”

*United States v. Pabst Brewing Co.*, 384 U.S. 546, 549 (1966)



## 1 The State's Prima Facie Case

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  - Increased levels of concentration and market share
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- 

## 2 Defendants' Rebuttal and the State's Response

- Divestiture
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  - "Need" to merge
- 

## 3 Remedy

# Assessing the Structural Presumption



## Merger Guidelines

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

Issued: December 18, 2023

Indicator	Threshold for Structural Presumption
Post-merger HHI	Market HHI greater than 1,800 AND Change in HHI greater than 100
Merged Firm's Market Share	Share greater than 30% AND Change in HHI greater than 100

DOJ & FTC, Merger Guidelines § 2.1 (2023)



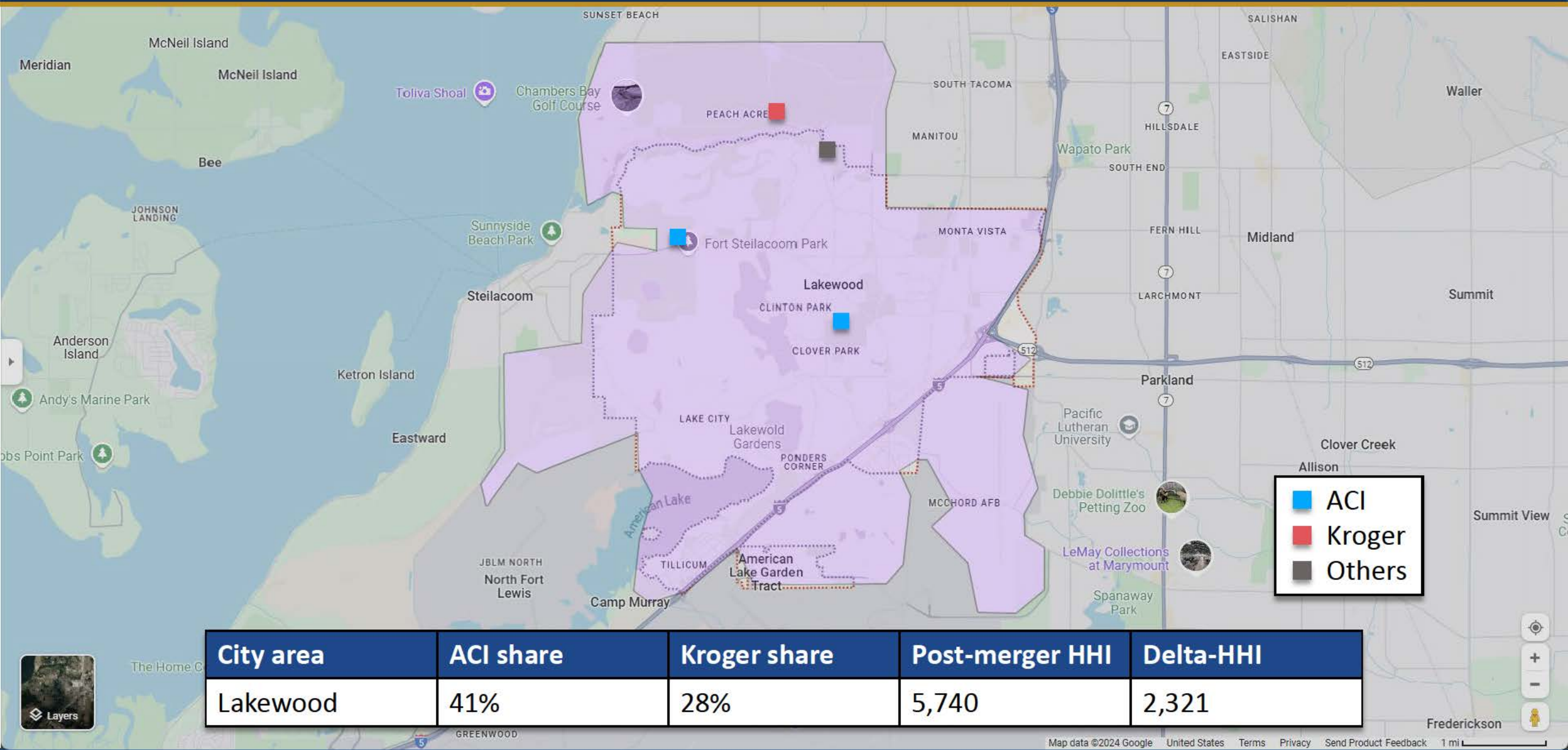
# HHIs and Market Shares

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: Combined sales data (2022).

# Lakewood City Area



City area	ACI share	Kroger share	Post-merger HHI	Delta-HHI
Lakewood	41%	28%	5,740	2,321



# Product Market Sensitivities

Geography	Product market	# Overlap markets	# Presumptively anticompetitive markets
City area	Supermarket	57	57
	Supermarket + Costco	57	57
	Supermarket Plus*	57	57

\* Supermarket Plus includes Costco, Whole Foods, Trader Joe’s, Sprouts, Grocery Outlet, and all other grocery stores larger than 9,000 square feet.

## 1 The State's Prima Facie Case

- Relevant market (product market and geographic market)
  - Increased levels of concentration and market share
  - Proof of actual anticompetitive effects
    - Unilateral effects
    - Coordinated effects
- 

## 2 Defendants' Rebuttal and the State's Response

- Divestiture
  - Efficiencies
  - "Need" to merge
- 

## 3 Remedy



# Kroger Eliminating Its “#1 Direct Competitor” in the State

On Nov 7, 2022, at 5:44 PM, Richard, David W <[REDACTED]> wrote:

Jenn,

I get the budget side and I don't want to call you out on the call, but you cannot say we are not in competition with Safeway/ABS. They are our #1 direct competitor....

Jenn Schmitz | Director  
Analytics & Execution, Private Execution | The Kroger Co.  
cell: [REDACTED]

On Nov 7, 2022, at 5:44 PM, Richard, David W <[REDACTED]> wrote:

Jenn,

I get the budget side and I don't want to call you out on the call, but you cannot say we are not in competition with Safeway/ABS. They are our #1 direct competitor.... I feel like I am not being given any real option. While my clientele is different, I really have concerns on how we maintain momentum. We definitely need to have a discussion around the plan for us. We get virtually zero media, we are not co-branding a common message with Fred Meyer, so I don't see how QFC gets supported? I appreciate the work for the company, just need to understand realistically how we make this work for a unique division like QFC.

Thank you,  
Dave Richard  
“Being lucky is when preparation meets opportunity”

On Nov 4, 2022, at 9:42 AM, Schmitz, Jenn <[REDACTED]> wrote:

Please see attached pre-read for our call on Monday.

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KRPROD-FTC-2R-002280438

Date: Saturday, November 5, 2022 10:05 AM  
Subject: Re: 2023 Circular Distribution Strategy (agenda below)  
From: [REDACTED]  
To: Kimball, Kenny <[REDACTED]>  
CC: Richard, David W <[REDACTED]>

Thanks Kenny, Dave and I both discussed yesterday and we are aligned. I agree that if Verisart no longer distributes ads that the impact is far less. However, I don't want to give ABS/SWY an extra advantage. More to come! We appreciate the support.

On Nov 5, 2022, at 06:59, Kimball, Kenny <[REDACTED]> wrote:

I agree and called Jenn. I think in the meeting next week is to give an overview of what's happening across the country.... I have asked that each division needs to have a separate call with the President and team.

I'm comfortable if nobody (all major competitors) don't have ads being mailed which would put us on equal ground. This would then become who has the best digital plan.

One other note is that in some markets where cost are escalating if we pull out the cost will be passed on to who ever is left or the distribution could stop and if a competitor doesn't have a good digital plan they would scramble and have a competitive disadvantage.

Hang tight and we will have more involvement.

Kenny Kimball

Date: Friday, November 4, 2022 08:05 PM  
Subject: FW: 2023 Circular Distribution Strategy (agenda below)  
From: Kammeyer, Todd D  
To: Kimball, Kenny <[REDACTED]>  
Attachments: image001[3].png; Division President Circular Distribution Review.pdf

chris.donohue@kroger.com; Kimball, Kenny <kenny.kimball@kroger.com>; Jabbay, Valerie <valerie.jabbay@kroger.com>

Kenny –

I have some big concerns with pulling all circular distribution with FM. Not sure how they think we're not in direct competition with ABS/SWY. They are our biggest competitors with 300+ stores. Plus, we have our GM ad piece to consider. Not sure how they think the PNW isn't up against competition as Ralph's, Fry's, etc.

# Kroger and Albertsons Are Laser Focused on One Another

From: Christopher Lanoue [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CDEDE9499EBE446FB9581EBC17049634-CLANO02]  
Sent: 11/1/2023 3:05:02 PM  
To: Sara Osborne [REDACTED]; Dan Ruff [REDACTED]; Jonathan Hunter [REDACTED]  
Subject: RE: Sweetened Beverage Tax - Tag / Receipt Change

Until the merge is approved, they are still our fiercest competitor.

Regardless of the direction the State wants to go, it should be a level playing field.

Chris

From: Sara Osborne [REDACTED]  
Sent: Wednesday, November 1, 2023 10:38 AM  
To: Christopher Lanoue [REDACTED]  
Subject: RE: Sweetened Beverage Tax - Tag / Receipt Change

Yes, I know who runs this program since it funds Fresh Bu

It is possible when I send this question in that it will implic

Are we OK with that?

From: Christopher Lanoue [REDACTED]  
Sent: Wednesday, November 01, 2023 9:43 AM  
To: Dan Ruff [REDACTED]; Jonathan Hunter [REDACTED]  
Subject: RE: Sweetened Beverage Tax - Tag / Receipt Change

Sara - If you want a good laugh, check out this email trail.

Is there a way we can connect someone that has responsibility over (past) theoretical implications of matching what Kroger does with so

merchandise these items within the city puts us at a competitive di

Chris

From: Dan Ruff [REDACTED]  
Sent: Wednesday, November 1, 2023 7:10 AM  
To: Christopher Lanoue [REDACTED]; Jonathan Hunter [REDACTED]  
Subject: RE: Sweetened Beverage Tax - Tag / Receipt Change

Today, we break out the amount of the .0173 per ounce on the Tax

retail price upfront and not added at the receipt since it is not a Ret

The way we did it today was the direction from them back in 2018 w

I still don't get how K&M/J&C can just put a call out "Plus Imposed sugar Expense", then on the receipt call out the added

\$100 BEV TAX.

HIGHLY CONFIDENTIAL

ACI\_LIT\_0009775209

**From:** Christopher Lanoue [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CDEDE9499EBE446FB9581EBC17049634-CLANO02]  
**Sent:** 11/1/2023 3:05:02 PM  
**To:** Sara Osborne [REDACTED]; Dan Ruff [REDACTED]; Jonathan Hunter [REDACTED]  
**Subject:** RE: Sweetened Beverage Tax - Tag / Receipt Change

Until the merge is approved, they are still our fiercest competitor.

Regardless of the direction the State wants to go, it should be a level playing field.

Chris



# QFC's Pricing Strategy Is "Match Safeway"



## Everyday Essentials – QFC Specifics

Primary strategy is match Safeway/Albertsons.

- Competitor Data
  - EDE normally requires store managers physically check competitors
  - For QFC, we will leverage Safeway/Albertson's web data



# Fred Meyer Compares Its Ads with Safeway's Every Week

## Competition Ad Recap

P5W1 – updated 05/23/2023

## FRED MEYER

Fred Meyer Portland vs. SW/ALB (97202)

OVERALL COMPARISON: **KROGER LOSE**

### Front Page DIRECT Comparable:

- Coke, Pepsi, 7-up 12-pack, 12 oz. cans 4/\$15 (\$2 digital coupon on Coke only) VS Coke, Pepsi, 7-up 12-pack, 12 oz. cans B2, G3
- Kroger Cheese 6-8 oz. (\$1.49) HDO VS Lucerne Cheese 6-8 oz. (\$.97) First 2 w/digital coupon **LOSE**
- Kroger Deluxe Ice Cream 48 oz. (\$1.99) HDO VS Signature SELECT Ice Cream 1.5 qt. (\$1.97) First 2 w/digital coupon **TIE**
- California Red Cherries (\$3.97 lb.) HDO VS Red Sweet Cherries (\$2.97 lb.) **LOSE**
- Colossal Raw Shrimp 16-20 ct. (\$6.99 lb.) VS Waterfront Bistro Raw Shrimp 16-20 ct. (B1G1)
- Lay's Kettle Cooked Potato Chips 4.75-8 oz. (\$1.99) MB4 VS Lay's Kettle Cooked Potato Chips 4.75-8 oz. (B2G2)
- Nabisco Snack Crackers 3.5-9 oz. (\$2.49) MB5 VS Nabisco Snack Crackers 3.5-9 oz. (\$2.47) MB5 **TIE**

### Front Page SIMILAR:

- T-Bone Steak (\$6.77 lb.) VS Ribeye Steak (\$4.97) First 1 w/digital coupon **LOSE**

### Other Callouts:

- For u Digital Only
  - Whole Seedless Watermelon (\$.23) lb.) First 1
  - White Claw/Truly/Topo Chico or Bud Light Seltzer 12-pack cans (\$11.99) First 2

#### Front Page DIRECT Comparable:

- Coke, Pepsi, 7-up 12-pack, 12 oz. cans 4/\$15 (\$2 digital coupon on Coke only) VS Coke, Pepsi, 7-up 12-pack, 12 oz. cans B2, G3
- Kroger Cheese 6-8 oz. (\$1.49) HDO VS Lucerne Cheese 6-8 oz. (\$.97) First 2 w/digital coupon **LOSE**
- Kroger Deluxe Ice Cream 48 oz. (\$1.99) HDO VS Signature SELECT Ice Cream 1.5 qt. (\$1.97) First 2 w/digital coupon **TIE**
- California Red Cherries (\$3.97 lb.) HDO VS Red Sweet Cherries (\$2.97 lb.) **LOSE**
- Colossal Raw Shrimp 16-20 ct. (\$6.99 lb.) VS Waterfront Bistro Raw Shrimp 16-20 ct. (B1G1)
- Lay's Kettle Cooked Potato Chips 4.75-8 oz. (\$1.99) MB4 VS Lay's Kettle Cooked Potato Chips 4.75-8 oz. (B2G2)
- Nabisco Snack Crackers 3.5-9 oz. (\$2.49) MB5 VS Nabisco Snack Crackers 3.5-9 oz. (\$2.47) MB5 **TIE**

#### Front Page SIMILAR:

- T-Bone Steak (\$6.77 lb.) VS Ribeye Steak (\$4.97) First 1 w/digital coupon **LOSE**
- Other Callouts:
  - For u Digital Only
    - Whole Seedless Watermelon (\$.23) lb.) First 1
    - White Claw/Truly/Topo Chico or Bud Light Seltzer 12-pack cans (\$11.99) First 2

#### QFC

QFC Seattle vs. SW/ALB (99004)

OVERALL COMPARISON: KROGER TIE

#### Front Page DIRECT Comparable:

- Fresh Oranger Valley Chicken Full Line (B1G1) VS Signature Farms Boneless Skinless Chicken Breast 16-20 ct. (\$8.99 lb.) VS Waterfront Bistro Extra Jumbo Raw Shrimp 16-20 ct. (B1G1)
- California Red Cherries (\$3.97 lb.) HDO VS Red Sweet Cherries (\$2.97 lb.) **LOSE**
- Kroger Butter 16 oz. (\$2.49) HDO VS Lucerne Butter 16 oz. (2/\$5) MB2 **WIN**

#### Front Page SIMILAR:

- Cheesecake 4.75-8 oz. (\$1.99) MB4 VS Cheesecake Party Size 8.25-17 oz. (\$5.99) MB3

#### Other Callouts:

- For u Digital Only
  - Signature SELECT Refreshing Drinking Water 24-pack (\$1.99)
  - Signature SELECT Wide Pan Bread or Giant Buns 15-24 oz. (\$2.49) L2
  - Ball Park Meat or Beef Franks 14-15 oz. (B1G1)
- For u Digital Only
  - Ringgold Cheddar 12-16 lb. (\$9.99) L2
  - Signature SELECT Ice Cream 1.5 qt. or Novelties 12 ct. (\$2.49) L2
  - USDA Choice Beef Ribeye or NY Strip Steak (\$9.97 lb.) L1

#### FRY'S

Fry's vs. ALB/SW – (Rhoenik 85353)

OVERALL COMPARISON: KROGER WIN – Better overall third page

#### Front Page DIRECT Comparable:

- Cheesecake 4.75-8 oz. (\$1.99) MB4 VS Cheesecake Party Size 8.25-17 oz. (\$5.99) MB3
- California Red Cherries (\$3.97 lb.) HDO VS Premium Red Cherries (\$2.97 lb.) **LOSE**
- Bud, Coors, Miller or Tecate 30 PK or Michelob Ultra 26 PK (\$16.57 Digital Coupon) vs Dots, Cosi, Tostitos 30 PK or Michelob Ultra 26 PK (\$16.97 Digital Deal) – **WIN**
- Lay's, Lay's Kettle, Cheetos, Fritos, or On the Border Chitos (\$1.99 MB4) vs Doritos, Cheetos, Fritos, Lay's or On the Border Chitos (\$1.97 MB3 Limit 1) – **TIE**
- Nabisco Snack Crackers, Ritz Crackers, Cheese Crackers, or Toasted Chips (\$2.49) vs Nabisco Snack Crackers, Ritz Crackers, Cheese Crackers, or Toasted Chips (\$2.47) – **TIE**
- Coke, Pepsi, or 7UP 12 PK or 8 PK (4/\$14 MB4 Limit 1 with \$25 Purchase) (\$2 off Dig. Coupon) vs 7UP 12 PK or 8 PK or Arrowhead Water 24 PK (4/\$13.88 MB4 Limit 1) – **TIE**

#### Front Page SIMILAR:

- Ringgold Cheddar 12-16 lb. (\$9.99) L2 or Split Breastbone-In (\$1.49 lb.) vs All-Natural Chicken Breast or Thighs (\$1.97 lb.)

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KRPROD-FTC-2R-021256241

SPX3459, KRPROD-FTC-2R-021256234, at -240-41



# Albertsons Seeks to Maintain a Pricing Spread to Fred Meyer & QFC

From: Dennis Schwarz [REDACTED]  
Date: Thursday, May 26, 2022 at 7:15 AM  
To: Kelly Griffith [REDACTED]  
Cc: Brad Street [REDACTED]  
Subject: RE: Operating Leadership Meeting - Sales and Gross Profit

Kelly,

As you know managing to our EBITDA and staying competitive with Fred Meyer is a challenge as they work on different margins than we do.

We generally price our goods between the traditional grocery retailers, (i.e., QFC, Rosaurer's, Yokes, etc.) and our modified low price operator, Fred Meyer.

Generally speaking and based on OMNI over a 9 quarter average from Q1 2020;

						QTR04 - 2021	
Division	ROG	Comp Facility #	Primary Competitor	Min CPI Goal	Max CPI Goal	Current Reg CPI	Current Shelf CPI
Denver	SDEN		King Soopers				
Intermountain	AIMT		Fred Meyer				
Jewel	AJWL		Marianos				
Mid Atlantic	ACME		Shoprite				
Mid Atlantic	SWMA		Giant				
NorCal - Base	SNCA		Lucky's				
NorCal - Hawaii	SHAW		Foodland				
Portland	SPRT		Fred Meyer				
Seattle - Alaska	SACG		Fred Meyer				
Seattle - Base	SSEA		Fred Meyer				
Seattle - Spokane	SSPK		Fred Meyer				
Shaws	ASHA		Stop & Shop				
SoCal	VSOC		Ralphs				
Southern	RDAL		Kroger				
Southwest	SPHO		Fry's				

SPX0627, ACI2R-0001194183, at -185

# Kroger and Albertsons Compete on Price

From: Jones, Carol [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=293C7C0D7A6943D0B44998897AE112CB-66VN63QR57]  
Sent: 3/21/2023 12:57:13 PM  
To: Grant, Michael Cincy  
Subject: RE: ID Fullbook Weekly Extracts

Hi Michael,

For QFC- since we match off of Safeway this is a non-issue for QFC  
For FM-

- 162 Hand Body & Facial Products- Base/AK
- Comm 162- they moved on Neutrogena which we mo higher.
- One thing to note this item was not on my weekly file and I are going to chat with Chadd next week.
- 167 Mult Cultural Health & Beauty
- Only had one item here to change
- 166 Hair Care Products
- Not due to cost increases these were just items where now
- 094 Infant Formula
- No change in cost. Due to this being sensitive commodity
- 168 Professional Hair Care
- No issues at FM on these
- 174 Sinus & Allergy
- AK moved up on this comm working them now. Some on the weekly report

**From:** Jones, Carol [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=293C7C0D7A6943D0B44998897AE112CB-66VN63QR57]  
**Sent:** 3/21/2023 12:57:13 PM  
**To:** Grant, Michael Cincy  
**Subject:** RE: ID Fullbook Weekly Extracts

Hi Michael,

For QFC- since we match off of Safeway this is a non-issue for QFC  
For FM-

- 166 Hair Care Products
- Not due to cost increases these were just items where I hadn't gotten them higher than the 10%. Working these now
- 094 Infant Formula
- No change in cost. Due to this being sensitive commodity I am not going higher than ACI



# Kroger and Albertsons Compete on Promotions

Date: Thursday, November 17, 2022 8:54 AM  
Subject: FW: QFC Thanksgiving Ad feedback  
From: Bottcher, Tammy  
To: Meador, Bradley H  
Attachments: image001.png; image007.png  
Hi Mark--this will be one of the top

Thank you!  
Tammy Bottcher  
Private Planning Group Lead  
Food Buyer, King's Supermarket, QFC, Kroger

From: Sparkman, Sarah  
Sent: Wednesday, November 16, 2022 8:09 PM  
To: Adams, Wendi M  
Subject: QFC Thanksgiving Ad feedback

Hi Mark--this will be one of the top  
The Thanksgiving Ads broke today and Safeway beat QFC up and down the front page. Here are some blocks for the group to review. QFC is banking margin in Grocery and Natural and we need to invest in the upcoming holiday ads to gain back lost market share and show our customers we have what they need at the best price in the Pacific Northwest. We appreciate the partnership from this group and I know we will get them in P12W2 and most importantly P12W3.

Hi Mark--this will be one of the top  
The Thanksgiving Ads broke today and Safeway beat QFC up and down the front page. Here are some blocks for the group to review. QFC is banking margin in Grocery and Natural and we need to invest in the upcoming holiday ads to gain back lost market share and show our customers we have what they need at the best price in the Pacific Northwest. We appreciate the partnership from this group and I know we will get them in P12W2 and most importantly P12W3.



**From:** Sparkman, Sarah  
**Sent:** Wednesday, November 16, 2022 8:09 PM  
**To:** Adams, Wendi M; Bottcher, Tammy; Foozer, Scott J  
; Kobos, Karyn; Stewart, Brent  
**Cc:** Aikens, Michelle E; Meador, Bradley H  
**Subject:** QFC Thanksgiving Ad feedback

Hello

The Thanksgiving Ads broke today and Safeway beat QFC up and down the front page. Here are some blocks for the group to review. QFC is banking margin in Grocery and Natural and we need to invest in the upcoming holiday ads to gain back lost market share and show our customers we have what they need at the best price in the Pacific Northwest. We appreciate the partnership from this group and I know we will get them in P12W2 and most importantly P12W3.

# Kroger and Albertsons Compete on Promotions

From: Gineal Davidson [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=340EE44B3A2D445AAD2E58242157F23B-GDAVI67]  
Sent: 6/3/2020 10:09:41 AM  
To: Kelly Mullin [REDACTED]  
Subject: RE: AD - Is it a win? Leaning in on Produce

We do have some great promotions. The grapes are maddening I agree. It looks like they are investing to keep driving their share and using produce to do it this week.. spending on the inside of the ad in produce as well. The buy 5 save \$1 on each is back. Some good items on the gates.

Punch FM in the throat today in the ad meeting  
Gineal

Gineal Davidson



From: Kelly Mullin  
Sent: Wednesday, June 3, 2020 7:03 AM  
To: Gineal Davidson  
Subject: RE: AD - Is it a win? Leaning in

With the exception of Produce, yes. The guard as they have typically come out of share, so they are fighting back. Ad me

Meal - we have Chicken at 1.69lb and Grocery - RFD Signature Water at 3. Cheese, etc. is a huge win vs. them on

From: Gineal Davidson  
Sent: Wednesday, June 3, 2020 6:57 AM  
To: Kelly Mullin  
Subject: AD - Is it a win? Leaning in on

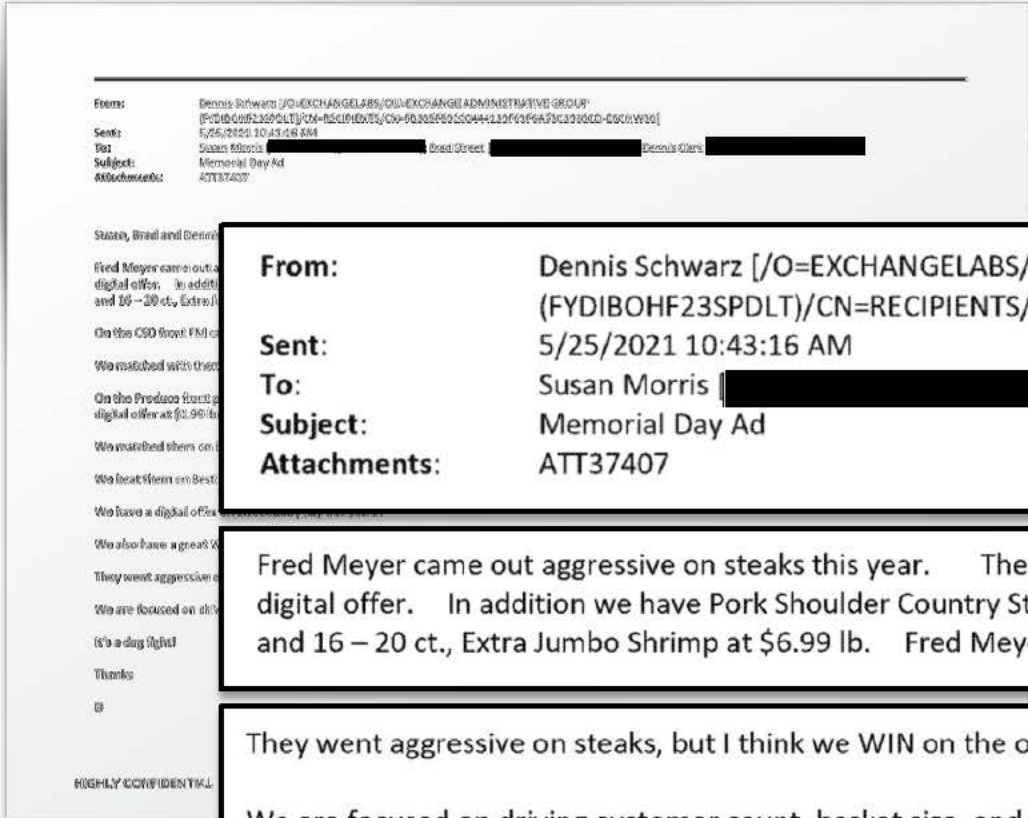
**From:** Gineal Davidson [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=340EE44B3A2D445AAD2E58242157F23B-GDAVI67]  
**Sent:** 6/3/2020 10:09:41 AM  
**To:** Kelly Mullin [REDACTED]  
**Subject:** RE: AD - Is it a win? Leaning in on Produce

We do have some great promotions. The grapes are maddening I agree. It looks like they are investing to keep driving their share and using produce to do it this week.. spending on the inside of the ad in produce as well. The buy 5 save \$1 on each is back. Some good items on the gates.

Punch FM in the throat today in the ad meeting 😊



# Kroger and Albertsons Compete on Promotions



**From:** Dennis Schwarz [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FB385F59200444139F69F6A73C3938CD-DSCHW36]  
**Sent:** 5/25/2021 10:43:16 AM  
**To:** Susan Morris [REDACTED]; Brad Street [REDACTED]; Dennis Clark [REDACTED]  
**Subject:** Memorial Day Ad  
**Attachments:** ATT37407

Fred Meyer came out aggressive on steaks this year. They ran T-Bones at \$5.77 lb. with rising costs. Last year they were \$6.99 lb. We are \$6.99 lb. on a digital offer. In addition we have Pork Shoulder Country Styles at \$1.99 lb., Signature Farms Chicken Breasts at \$2.99 lb., Extra Lean 93% Grind at \$3.99 lb., and 16 – 20 ct., Extra Jumbo Shrimp at \$6.99 lb. Fred Meyer secondary meat items are; BOGO Pork Spareribs, and Atlantic Salmon at \$6.99 lb.

They went aggressive on steaks, but I think we WIN on the overall ad. We have a good well rounded invitation.

We are focused on driving customer count, basket size, and market share!

It's a dog fight!

# Kroger and Albertsons Compete on Quality

Instant Message : Microsoft Teams  
From Christopher Lanoue 18:38:19  
[REDACTED]  
and yes w/ Seafood, we kick the shit out of Fred Meyer in terms of quality and assortment. it can be a differentiator

Instant Message : Microsoft Teams  
From Daniel Pereira 18:41:13  
[REDACTED]  
Some cool new items in seafood for OB

Instant Message : Microsoft Teams  
From Daniel Pereira 18:41:44  
[REDACTED]  
How do you grow OB there , already close to 30

Instant Message : Microsoft Teams  
From Christopher Lanoue 18:42:02  
[REDACTED]  
exactly

Instant Message : Microsoft Teams  
From Christopher Lanoue 18:42:16  
[REDACTED]  
Gineal wants 30

Instant Message : Microsoft Teams  
From Christopher Lanoue 18:38:19  
[REDACTED]  
and yes w/ Seafood. we kick the shit out of Fred Meyer in terms of quality and assortment. it can be a differentiator

# "No Comp" Zones

Date: Wednesday, April 13 2022 02:00 PM  
Subject: FW: King Soopers | Western Slope Ad Version  
From: Bottcher, Tammy  
To: Meyer, Matt [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.

Thank you

Tammy  
Bottcher, Tammy | Western Slope Ad Version  
image002.png

From: Bottcher, Tammy  
Sent: Wednesday, April 13, 2022 1:40 PM  
To: Meyer, Matt [REDACTED]; Schmitz, Jenn [REDACTED]  
Cc: King, Mike [REDACTED]  
Subject: FW: King Soopers | Western Slope Ad Version  
Importance: High

Mike—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.

Thank you

Tammy  
Bottcher, Tammy | Western Slope Ad Version  
image002.png

From: Bottcher, Tammy  
Sent: Wednesday, April 13, 2022 1:37 PM  
Subject: FW: King Soopers | Western Slope Ad Version  
Importance: High

Good afternoon,  
In working with the pricing team and 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.

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

@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.

CONFIDENTIAL

KRPROD-FTC-2R-001036417

SPX2698, KRPROD-FTC-2R-001036417



# “No Comp” Zones Work – Kroger Is Looking for More

Date: Tuesday, February 28 2023 11:47 AM  
Subject: RE: 620 Kings Program Analysis  
From: Groff, Andy  
To: St Clair, Chadd  
Attachments: images001.png; images002.png; images003.png

Agree that it is very different than what we talked about with Juan, but I look at the other. Unfortunately, I don't think we have too many geographic areas with situation at Kings. Most probably look more like what we tried in Louisville a couple years ago.

From: St Clair, Chadd  
Sent: Tuesday, February 28, 2023 11:23 AM  
To: Groff, Andy  
Subject: RE: 620 Kings Program Analysis

Agreed, that's why I was asking with you. This one has been a win. Definitely remembering the process, we were able to carve out these stores based on what we're saying in other areas in discussion. It will be interesting to see characteristics.

Thanks,  
Chadd St. Clair  
Divisional Portfolio Lead – Pricing Strategy & Execution

From: Groff, Andy  
Sent: Tuesday, February 28, 2023 11:27 AM  
To: St Clair, Chadd  
Subject: RE: 620 Kings Program Analysis

Thanks, Tyler – can you add gross margin rate TY and LY to both charts?  
Chadd – the next obvious question is... where else in the Enterprise do we potentially have the same opportunity?  
Andy

From: St Clair, Chadd  
Sent: Tuesday, February 28, 2023 11:27 AM  
To: Groff, Andy  
Subject: FW: 620 Kings Program Analysis

This is an example of a big win.  
Thanks,  
Chadd St. Clair  
Divisional Portfolio Lead – Pricing Strategy & Execution

**From:** St Clair, Chadd  
**Sent:** Tuesday, February 28, 2023 10:47 AM  
**To:** Groff, Andy  
**Subject:** FW: 620 Kings Program Analysis

This is an example of a **big win.**

**From:** Groff, Andy  
**Sent:** Tuesday, February 28, 2023 11:27 AM  
**To:** St Clair, Chadd; Powell, Tyler  
**Subject:** RE: 620 Kings Program Analysis

Thanks. Tyler – can you add gross margin rate TY and LY to both charts?

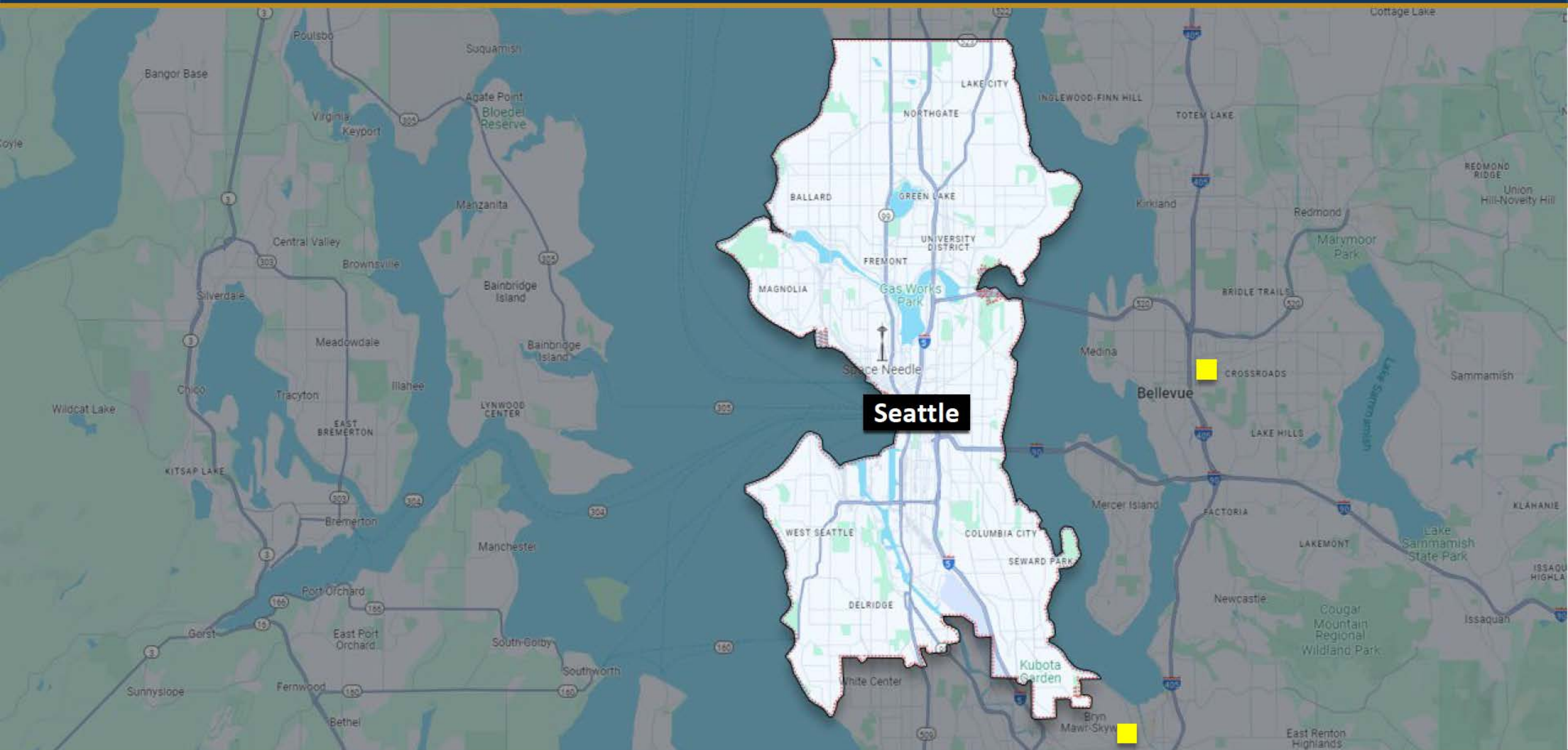
Chadd – **the next obvious question is... where else in the Enterprise do we potentially have the same opportunity?**

CONFIDENTIAL

KRPROD-FTC-2R-020803474

SPX3394, KRPROD-FTC-2R-020803474

# There Are No Walmarts in Seattle



# With No Walmart, Kroger Follows Albertsons

Date: Tuesday, December 27 2022 02:35 PM  
Subject: FRED MEYER Everyday Essentials Retails executed effective 12/28/2023  
From: [REDACTED]  
To: [REDACTED]  
CC: Everyday Essentials Admins [REDACTED]  
Attachments: 701 Division Reporting 12-27-2022.xlsx

**FRED MEYER Everyday Essentials Retails**

All retails on the attached file have been executed effective 12/28/2023

**Overall Weekly impact is \$76,474 vs prior week**

WM moved up .20 we probed. If No WM we followed ACI (Safeway/Albertsons)

**Major Items**

Egg investment \$70,474 vs prior week  
Overall Dozen Large Egg Retails changed an average of \$0.28 per dozen

37 Price Zones remained at the same retail as last week  
56 Price Zones increased an average of \$0.42 per unit vs last week  
0 Price Zones decreased vs last week

**Attachment Detail:**

1<sup>st</sup> Tab "Market-Store Key" - List of Stores and the Market/Price Zone that they belong to  
2<sup>nd</sup> Tab "Retails by Price Zone" - Detail competitive information submitted by Stores and Web Scrapers  
3<sup>rd</sup> - 6<sup>th</sup> Tabs "92 X3 Retail Suggestions" - New retails by Price Zone and competitive data used to derive the retail  
blue highlighted "New Retail" columns shows the retail loaded by Price Zone  
7<sup>th</sup> Tab "Financial Impact" - This shows the estimated weekly financial impact assuming flat units  
8<sup>th</sup> Tab "Summary by PMKT" - This shows the competitive data grouped by RSP market for major items

Please call if you have any questions

Thank You,

Everyday Essentials Team

**Date:** Tuesday, December 27 2022 02:35 PM  
**Subject:** FRED MEYER Everyday Essentials Retails executed effective 12/28/2023  
**From:** Jones, Carol

**FRED MEYER Everyday Essentials Retails**

All retails on the attached file have been executed effective 12/28/2023

**Overall Weekly impact is \$76,474 vs prior week**

WM moved up .20 we probed. If No WM we followed ACI (Safeway/Albertsons)



## 1 The State's Prima Facie Case

- Relevant market (product market and geographic market)
  - Increased levels of concentration and market share
  - Proof of actual anticompetitive effects
    - Unilateral effects
    - Coordinated effects
- 

## 2 Defendants' Rebuttal and the State's Response

- Divestiture
  - Efficiencies
  - "Need" to merge
- 

## 3 Remedy

# Kroger Uses Pricing “Probes” to “Lead Market Up”

**Date:** Tuesday, February 9, 2010 12:55 AM  
**Subject:** Q4-4 Pricing notes  
**From:** GSKK, Andy  
**To:** Murphy, Mike; [REDACTED]; Meyer, Matt;  
**CC:** GSKK, Andy; [REDACTED]  
**Attachments:** Q4 Full Basis - Walker, Moller, Satoway-Albertson.pdf

Mike and Matt,  
Good morning. Below are some notes on the quarter for Pricing. I have also attached the Walmart, Meijer, and AuB/SFP full books. I am still awaiting the final ID sales file from Accounting so I can complete my quarter reports. I will share the full notes after I get the ID Sales file.

**Date:** Tuesday, February 9 2021 06:45 AM  
**Subject:** Qtr 4 Pricing notes  
**From:** Groff, Andy  
**To:** Murphy, Mike [REDACTED] Meyer, Matt  
**CC:** Groff, Andy [REDACTED]  
**Attachments:** Q4 Full Books - Walmart\_Meijer\_Safeway-Albertsons.pdf

- **Bananas:** Cost is up YoY \$0.05. Our probe helped lead markets up, but this has now stabilized, and we made adjustments P1 W2 to move off of \$0.65 where comp has not moved over \$0.59.

- **Regression Analysis**
  - **Regression** measures the relationship between two variables
    - **Dependent Variable** = variable being measured
    - **Independent Variable** = variable being used to explain the dependent variable
  - **Regression Line** = line of best fit
    - **Intercept** = value of dependent variable when independent variable is zero
    - **Slope** = change in dependent variable for each unit change in independent variable
  - **Regression Equation** = equation that describes the relationship between the two variables
    - **Dependent Variable** =  $Y$
    - **Independent Variable** =  $X$
    - **Intercept** =  $a$
    - **Slope** =  $b$
  - **Regression Analysis** = process of estimating the relationship between the two variables
    - **Dependent Variable** =  $Y$
    - **Independent Variable** =  $X$
    - **Intercept** =  $a$
    - **Slope** =  $b$

KRPROD-FTC-2R-001519827

SPX2737, KRPROD-FTC-2R-001519827, at -28

## 1 The State's Prima Facie Case

- Relevant market (product market and geographic market)
  - Increased levels of concentration and market share
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    - Unilateral effects
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- 


## 2 Defendants' Rebuttal and the State's Response

- Divestiture
  - Efficiencies
  - "Need" to merge
- 

## 3 Remedy



# Defendants Bear the Burden on Divestiture



“Defendants have the burden to show that a proposed divestiture will replace the merging firm’s competitive intensity.”

*FTC v. RAG-Stiftung*, 436 F. Supp. 3d 278, 304 (D.D.C. 2020)

# The Divestiture Must Replace the Lost Competitive Intensity

The divestiture must “replace the competitive intensity lost as a result of the merger.”

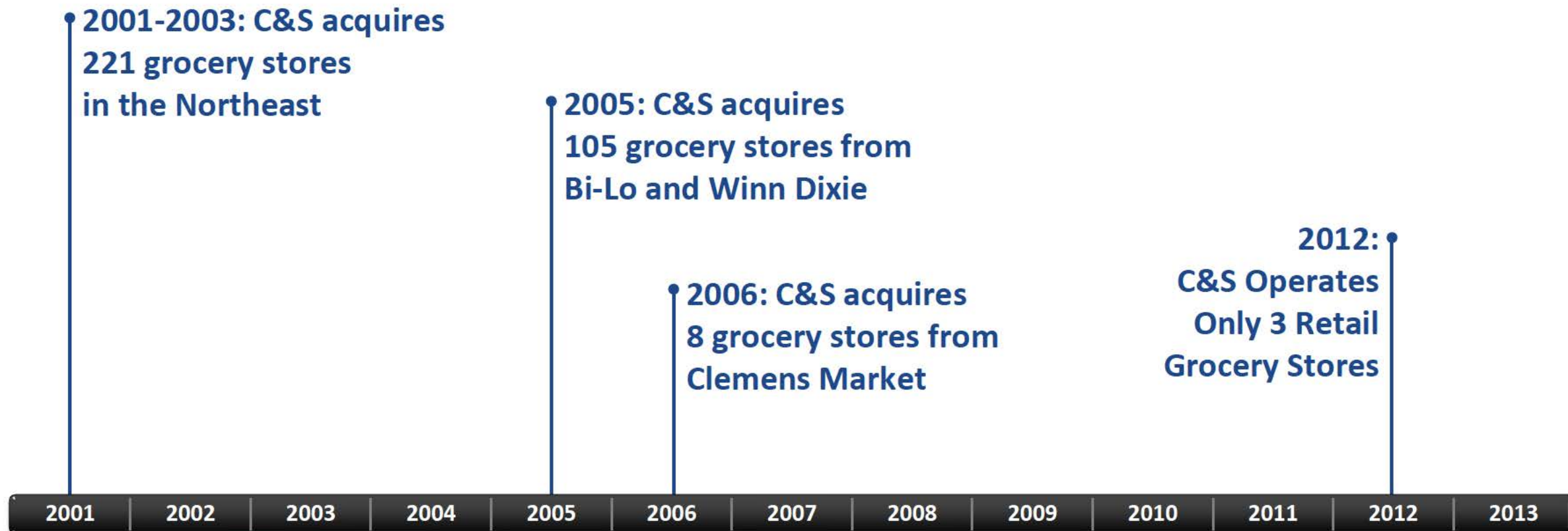
*United States v. Aetna Inc.*, 240 F. Supp. 3d 1, 60 (D.D.C. 2017) (cleaned up)



C&S  
*Wholesale  
Grocers*



# C&S Sells or Closes Retail Grocery Stores that It Acquires



# C&S Sells or Closes Retail Grocery Stores that It Acquires





# Albertsons' Seattle Division President on C&S

Instant Message: Native Messages  
From: Marty Reeser 12:46:26  
Agree. I cant believe they went for so little money

Instant Message: Native Messages  
From: Marty Reeser 12:47:21  
Per box

Instant Message: Native Messages  
From: Marty Reeser 12:47:36  
And C&S sucks ass

Instant Message: Native Messages  
From: Brad Street 12:52:28  
Totally agree

End Thread

Thread Statistics	
Instant Message	Count
8	

Instant Message: Native Messages

From

12:47:36

Marty Reeser

And C&S sucks ass

Instant Message: Native Messages

From

12:52:28

Brad Street

Totally agree





# C&S Not the Author of Its Own Journey



**Eric Winn**

CEO, C&S  
Wholesale Grocers

- Q. I'm just looking for like a summary of how C&S went from the 541 store package in January 2024 to the 579 store package in April 2024.
- A. I would say we were generally responding to what Kroger was presenting us with. And so I would say we weren't really authors of that journey in terms of the stores.**

Deposition Testimony Tr: May 29, 2024, 245:14-21

# C&S Getting the “Wors[t] Chains”

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Messages in chronological order (times are shown in GMT +00:00)

908771617794 - 2023-11-19

Have you all fed into the market perception of QFC? Everyone on those forums says their pricing is terrible and they have a bad reputation because of it.

Josephine Granger 11/19/2023 8:27 AM

Jonathan Granger <https://doi.org/10.1016/j.jml.2019.05.001>

11/19/2023, 8:27 AM

Have you all looked into the market perception of QFC? Everyone on those forums says there pricing is terrible and they have a bad reputation because of it.

File #252  
01/10/2005

Alfred E. Brown - 11/18/2023 8:47 AM

Alena Florenz

11/19/2023, 8:51 AM

Kroger gave us their worse chains including Ralph's

A. Wilson et al.

Alma Fluxus: [REDACTED] 11/10/2023, 8:51 AM  
View description standpoint

Yeah I already knew about Ralph's everyone on the forums have been saying that chain was linked and lost market share for a long time

11/17/2023, 8:51 AM

Jonathan Granger [REDACTED] 11/19/2023 8:52 AM

J. Jonathan Chamberlain [REDACTED] 11/19/2023, 8:52 AM

CONFIDENTIAL.—FTC Docket No. 9428.

CS-01304045

SPX4398, CS-01304044



# C&S's Consultants Agree QFC Is a "Weak Brand"

## Key Takeaways

Bas{ion} Insights

Market penetration and density matters – and has a material impact on over brand perception and the shopper metrics that indicate success.

### Implications:

Need to achieve density in the markets we plan to serve.

### On conveyed / licensed brands:

- Mariano's and Carrs have strong positions in their respective markets. The opportunity is to continue to enhance their differentiation.
- QFC has a weak brand and requires significant attention in re-positioning the brand.
- Albertsons' strength varies by market, and within the licensed states (CA, AZ, WY, CO) is relatively weak.

### Implications:

Focused effort on strengthening the QFC brand will be crucial, especially if we want to expand the geography of that brand.

-We may want to re-think the use of Albertsons brand in certain markets or negotiate for a different brand.

## Key Takeaways

Bas{ion}

### On conveyed / licensed brands:

- Mariano's and Carrs have strong positions in their respective markets. The opportunity is to continue to enhance their differentiation.
- QFC has a weak brand and requires significant attention in re-positioning the brand.
- Albertsons' strength varies by market, and within the licensed states (CA, AZ, WY, CO) is relatively weak.

SPX4003, CS-00038244, at 7

# Kroger Is Keeping Its Prime Washington Assets



**Mafaz Maharroof**

Vice President, Strategic  
Finance, Kroger

Q. Based on this spreadsheet, could you please tell me the banner of the 25 most profitable stores in Washington?

**A. Fred Meyer.**

Q. Kroger is retaining all of those stores, correct?

**A. I cannot confirm the individual -- yes, we don't have any in the package, so, yes.**

Deposition Testimony Tr: Vol. 2, June 5, 2024, 361:16-23

# Kroger Is Keeping Its Prime Washington Assets

On Sep 14, 2022, at 7:14 AM, Maharoof, Mafaz <[REDACTED]> wrote:

Good morning Chris-

Would you have some time this morning to do a bit of digging on the store below (#807 I believe). Rodney mentioned this store has real estate that is worth a lot and it is currently on a potential divestiture list. Wanted to get more info on the potential value and see if there is another store (Acorn store ideally) that can be divested instead.

Thanks.

Would you have some time this morning to do a bit of digging on the store below (#807 I believe). Rodney mentioned this store has real estate that is worth a lot and it is currently on a potential divestiture list. Wanted to get more info on the potential value and see if there is another store (Acorn store ideally) that can be divested instead.

Thanks.

Sent from iPhone  
Begin forwarded message:

From: "Tinkelman, David" <[REDACTED]>  
Date: September 13, 2022 at 10:59:10 AM EDT  
To: "Maharoof, Mafaz" <[REDACTED]>  
Subject: RE: Store in Seattle

\*\*\*[EXTERNAL EMAIL]: Do not click links or open attachments unless you recognize the sender and know the content is safe.\*\*\*

2746 NE 45th St Seattle, WA

Date: Friday, September 16 2022 10:13 AM

Subject: Re: Store in Seattle

From: [REDACTED]

To: Maharoof, Mafaz [REDACTED]

Thanks. Can you confirm with Mike we can take this off the list and replace with Acorn store, especially as it doesn't affect Acorn package.

Date: Friday, September 16 2022 10:13 AM  
Subject: Re: Store in Seattle  
From: [REDACTED]  
To: Maharoof, Mafaz [REDACTED]

Thanks. Can you confirm with Mike we can take this off the list and replace with Acorn store, especially as it doesn't affect Acorn package.

Sent from my iPad

On Sep 15, 2022, at 9:15 AM, Maharoof, Mafaz <[REDACTED]> wrote:

Agreed. See below for another opinion on the value of the store (from Lindsey). This is actually more in line with what I would have expected the value of real estate to be:

"So, we own about 7 acres. The owner (Stuart Sloan) used to own QFC. Everything is going vertical all around the store. We built a huge garage because the development to the west really impacted our parking. The garage supports the whole lot. 60% of our customers park on the surface lot. Our store is about 70k SF and make around \$150k/month in tenant revenue from the storage above it. There is a separate building for the liquor store.

The lot for the garage only is worth \$30M+. That's without development.

Everything is priced on the FAR ratio (floor area ratio). So, how many acres you have multiplied by current FAR zoning.

Total 7 acres x 43600 N 100 S220M. That's my best guess. Even at 75, we are north of \$150M. Store and garage: scrape and rebuild"

Thanks.



# C&S Faces Enormous Challenges

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5. BIG Concern: We have a monumental task which is VERY risky and that is changing merchandising, loyalty, brand, pos, pharmacy and DCs all at about the same time. This is unheard of. The level of planning required here is off the charts. The need for test is absolutely necessary and I am not sure yet how we will do that. We will need to really think about this. I say we do that after we do the exercise on the timeline. This stuff has to install flawlessly and repetitively. IF you spread things out, you lessen the risk but will extend the timeline. As we do the timeline, we can look at different scenarios.

6. VENDOR discuss check stack good on the

7. You are be imp didn't author They know style

The R

CONFIDENTIAL - FTC Docket No. 9428

CS-00344684

SPX0700, CS-00344684

# Rebannering May Lead to Sales Loss of 20%+

Louis Wolff  
Senior Manager  
Sales & Company

Blain Corp. | Confidential

On Fri, Jun 23, 2023 at 5:53 PM Wolff, Louis [REDACTED] wrote:

- Customer churn is a more significant risk here, as discussed today. Based on customer feedback, we estimate up to ~5-10% revenue risk if executed properly, though this could rise to ~20%+ if new banners are meaningfully less attractive, not introduced to a market properly, and/or not transitioned well at the store-level
- At ~100 stores per year, rebannering could take 3-4 years for 338/400 stores or 5-6 years for 554/650 stores, not including the up-front planning runway. These rebannering activities, plus having to introduce new Private label brands, will increase integration complexity and stretch focus, so would require an even more sophisticated program

• Customer churn is a more significant risk here, as discussed today. Based on customer feedback, we estimate up to ~5-10% revenue risk if executed properly, though this could rise to ~20%+ if new banners are meaningfully less attractive, not introduced to a market properly, and/or not transitioned well at the store-level

• At ~100 stores per year, rebannering could take 3-4 years for 338/400 stores or 5-6 years for 554/650 stores, not including the up-front planning runway. These rebannering activities, plus having to introduce new Private label brands, will increase integration complexity and stretch focus, so would require an even more sophisticated program

As mentioned below, we'd like to join a discussion on this early next week. In the meantime, hope you all have a great weekend.

CONFIDENTIAL. TREATMENT REQUESTED

FTC-CS-00506015

SPX0441, FTC-CS-00506013



Sudhakar Lingineni,  
CIO, C&S

**“It is a massive undertaking and a complex one.”**

Deposition Testimony Tr. , May 30, 2024, 152:6-7.



# Divestiture Buyers Must Be “Truly Independent Competitors”

“[C]urative divestitures must be made to . . . a willing, independent competitor capable of effective production.”

*FTC v. CCC Holdings*, 605 F. Supp. 2d 26, 59 (D.D.C. 2009) (cleaned up)

Under the Transition Services Agreement, PFG will have complete access to USF private label products for three years at its new distribution centers, and therefore will be relying on the merged entity to license those products to PFG. PFG will also have the right to license USF's database for at least five years, with a continuing option for five more. PFG, therefore, will not be a truly independent competitor.

*FTC v. Sysco Corp.*, 113 F. Supp. 3d 1, 77–78 (D.D.C. 2015) (cleaned up)



# C&S Can Go Back to Its Playbook

CONTINUED

Message

From: Eric Winn  
on behalf of Eric Winn  
Sent: 9/8/2023 4:36 AM  
To: Robert Palmer  
Subject: Re: Walnut: antitrust communications

As of an hour ago we thought everything was done

On Fri, Sep 8, 2023 at 4:36 AM Robert Palmer <[REDACTED]> wrote:  
Thanks Eric! Do we know yet whether Kroger

Sent from my iPhone

On Sep 8, 2023, at 4:36 AM, Eric Winn <[REDACTED]> wrote:

Hi - I have below the customer list again (added that I took during our call today. Bob also sent a similar so we can sync tomorrow.

-Trust you have seen this morning's announcement  
-First - we wanted to make sure we could answer  
-The other reason for our call - wanted to give you moving forward assuming this deal closes, we are focused on being a great wholesaler/retailer to will be managed very independently with its own  
-As you know we have Mark McGowan on board to lead us further  
-Also we believe this will make us stronger as a overall a stronger/broader distribution network, forward

(If asked about process and/or ability to buy stores who have all asked)

-You know as well as anyone that this has to go in front of the govt and we are committed to getting this done

-No guarantee that the FTC will approve this deal - we will have to see how this plays out

-We are committed to being a much larger wholesaler than retailer so we are focused on excellence in being a wholesaler and growing our wholesale business

-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

On Sep 8, 2023, at 4:36 AM, Eric Winn <[REDACTED]> wrote:

(if asked about process and/or ability to buy stores / and/or for specific customers - e.g. Shane, Kurt, Carlos who have all asked)

-You know as well as anyone that this has to go in front of the govt and we are committed to getting this done

-No guarantee that the FTC will approve this deal - we will have to see how this plays out

-We are committed to being a much larger wholesaler than retailer so we are focused on excellence in being a wholesaler and growing our wholesale business

-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

SPX2299, FTC-CS-00094901



# C&S Knows It Is Likely to Close Stores

Message

From: Eric Winn [REDACTED]  
on behalf of Eric Winn [REDACTED]  
Sent: 9/3/2023 7:38:11 AM  
To: Eric Winn [REDACTED]  
Subject: Re: Comments on PR

Eric Winn [REDACTED]  
C&S Winn [REDACTED]  
Website: [REDACTED]  
Email: [REDACTED]  
Visit us at [REDACTED]

On Sun, 9/3/2023 7:38:11 AM, Eric Winn [REDACTED] wrote:  
Take out [REDACTED]  
Change to [REDACTED]

Let's soften this. Additionally, TRUYER is also a values-driven organization that is committed to ending hunger while on [REDACTED]

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

Eric Winn [REDACTED]  
C&S Winn [REDACTED]  
Website: [REDACTED]  
Email: [REDACTED]  
Visit us at: [www.ccsa.com](http://www.ccsa.com)

CONFIDENTIAL TREATMENT REQUESTED

FTC-CS-00060603

# Haggen Disaster

Case 16-51204-KG Doc 194 Filed 01/26/18 Page 1 of 186

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

HH LIQUIDATION, LLC, *et al.*

Debtors.

OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS OF HH LIQUIDATION, LLC, *et al.*

Plaintiffs,

v.

COMVEST GROUP HOLDINGS, LLC, COMVEST  
INVESTMENT PARTNERS III, L.P., COMVEST  
INVESTMENT PARTNERS IV, L.P., COMVEST  
HAGGEN HOLDINGS III, LLC, COMVEST  
HAGGEN HOLDINGS IV, LLC, COMVEST  
ADVISORS, LLC, HAGGEN PROPERTY  
HOLDINGS, LLC, HAGGEN PROPERTY SOUTH,  
LLC, HAGGEN PROPERTY NORTH, LLC, HAGGEN  
PROPERTY HOLDINGS II, LLC, HAGGEN SLB,  
LLC, JOHN CAHILL, CRISTO RODRIGUEZ,  
MICHAEL NIEGSCHE, JOHN CLOUGHER, BLAKE  
BARNETT, WILLIAM SHANER and  
DERRICK ANDERSON.

Defendants.

Chapter 11

Case No.: 15-11874 (KG)  
(Jointly Administered)

Adv. No. 16-51204 (KG)

Re: D.L. 142

CORRECTED<sup>1</sup>

FINDINGS OF FACT AND CONCLUSIONS OF LAW<sup>2</sup>

INTRODUCTION

On September 8, 2015, Haggen filed for bankruptcy under Chapter 11 of the  
Bankruptcy Code, 11 U.S.C. § 101, *et seq.* The filing took place a few months after

<sup>1</sup> The Findings of Fact and Conclusions of Law is corrected to remove the final sentences  
at the bottom of page 123.

<sup>2</sup> These Findings of Fact and Conclusions of Law utilize many defined terms. The Court  
will use the glossary which the Committee provided. The glossary is at the rear of this document.

HIGHLY CONFIDENTIAL

ACI2R-0025036515

103. The consequences of these decisions and deficiencies were immediate and catastrophic. By April 2015, just a few weeks after closing on the first store, Haggen was already falling well short of projections across all converted stores. Trial Tr. (10/16) at 151:25-152:3; PX 11.003. By June 2015, the IC was informed that same store sales were “down 20-25% since Haggen took ownership of the stores.” Trial Tr. (10/16) at 155:8-11; PX 16.004.

ACI2R-025036515, at -53

85

## 1 The State's Prima Facie Case

- Relevant market (product market and geographic market)
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  - Unilateral effects
  - Coordinated effects

---

## 2 Defendants' Rebuttal and the State's Response


- Divestiture
- Efficiencies
- "Need" to merge

---

## 3 Remedy



# Extraordinary Efficiencies Are Required Here



“[P]roof of ‘extraordinary efficiencies’ is required to offset the anticompetitive concerns in highly concentrated markets.”

*St. Alphonsus Med. Ctr. v. St. Luke's Health Sys.*, 778 F.3d 775, 790 (9th Cir. 2015)



Dr. David J. Balan

- Managing Director, Econ One
- PhD, Economics, University of Illinois at Urbana-Champaign
- Former FTC Staff Economist, 2000-2022
- Former Senior Economist for the Council of Economic Advisers, 2013-2014
- Publications on Merger-Specificity of Cost Efficiencies and Retrospective Merger Analyses

## 1 The State's Prima Facie Case

- Relevant market (product market and geographic market)
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- 

## 2 Defendants' Rebuttal and the State's Response

- Divestiture
  - Efficiencies
  - “Need” to merge
- 

## 3 Remedy



# The Supposed “Existential” Threat

1	FILED	Hon. Marshall L. Ferguson
2	2024 SEP 09 04:06 PM	Trial Date: September 16, 2024
3	KING COUNTY	
4	SUPERIOR COURT CLERK	
5	E-FILED	
6	CASE #: 24-2-00977-9 SEA	
7		
8	SUPERIOR COURT OF WASHINGTON FOR KING COUNTY	
9	STATE OF WASHINGTON,	No. 24-2-00977-9 SEA
10	Plaintiff,	DEFENDANTS' PRETRIAL BRIEF
11	v.	
12	THE KROGER CO., ET AL.,	
13	Defendants,	
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22		
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26		

DEFENDANTS' PRETRIAL BRIEF  
NO. 24-2-00977-9 SEA - 1

KAL GAYENIA  
SOLICITOR GENERAL  
KING COUNTY  
JANUARY 14, 2024  
CLERK OF COURT  
JANUARY 14, 2024

The reason for the merger is **existential**: Kroger must expand, adapt, and (most importantly) continue to lower its prices in order to compete effectively with **global behemoths** like Walmart, Costco, and Amazon, all of whom have expanded aggressively to dominate the modern grocery retail landscape. In this evolving and highly competitive environment, the

Defendants' Pretrial Brief, *Washington v. Kroger Co.* (September 9, 2024)

# Kroger's Message to Investors 6 Months Before the Merger



**Rodney McMullen**

CEO, Kroger

**“Kroger is better positioned today than at any time in our history to drive sustainable growth.”**



**Gary Millerchip**

Former CFO, Kroger

**“Kroger is operating from a position of strength.”**

**“[W]e believe our [total shareholder return] model will be delivered without the need for inorganic or M&A activity.”**

# Vivek Sankaran Testimony in FTC Proceedings



**Vivek Sankaran**  
CEO, Albertsons

Q. And you said something about – that you may have to do more with less. Are **layoffs** something you might have to consider?

**A. I would have to consider that.**

Q. And **Store closures**? Is that something –

**A. I would have to consider that.**

Q. What about potentially **exiting certain markets**?

**A. I would have to consider that.**

*FTC v. Kroger Trial Tr. Sept. 4, 2024, 1728:12-19*



# Albertsons: “We Are Confident in the Financial Future of the Company”

10. In summary, and as described in greater detail below, we are confident in the financial future of the Company and its continued ability to compete in its ferociously competitive industry, and we have absolutely no concerns about our ability to pay the Special Dividend.

1 of the combined company to compete with Amazon, Costco, Wal-Mart, and many others in the  
2 industry.  
3  
4  
5 62. Albertsons does not expect to be a “failing firm” and will not make any such  
6 argument during the merger review process. To the contrary, it is essential that we be able to  
7 compete during the lengthy interval while the antitrust review is pending. And in the unfortunate  
8 event that the merger ultimately is not approved, then of course it is essential that ACI continue  
9 as a vibrant separate company.  
10  
11  
12  
13  
14 63. One of the AG’s primary arguments appears to be that because Albertsons needs  
15 \$10 billion to operate this year, it cannot afford to pay a \$4 billion Special Dividend. This  
16 argument is wrong and appears to be based on a fundamental misunderstanding of the facts.  
17  
18  
19  
20  
21 64. First, the \$10 billion referenced by the AG is derived from a disclosure in the  
22 Company’s Form 10-Q for the quarter ended September 10, 2022, filed on October 19, 2022.  
23

62. Albertsons does not expect to be a “failing firm” and will not make any such argument during the merger review process. To the contrary, it is essential that we be able to compete during the lengthy interval while the antitrust review is pending. And in the unfortunate event that the merger ultimately is not approved, then of course it is essential that ACI continue as a vibrant separate company.

21 Dividend.  
22  
23 C. The Company’s Strategic Review Process and Plan to Return Capital to  
24 Stockholders  
25  
26 11. Beginning in November 2021, long before Albertsons and Kroger commenced  
27 discussions relating to a potential transaction, ACI commenced a broad-ranging review of  
28 strategic alternatives for the Company, including, among other things, a potential sale of the  
29 Company, a third-party investment in the Company, a recapitalization of the Company, or sale of  
30 some or all of its assets to maximize stockholder value.  
31  
32  
33  
34 12. We hired two preeminent banking firms, Goldman, Sachs & Co. (“Goldman  
35 Sachs”) and Credit Suisse Group AG (“Credit Suisse”) to serve as our financial advisors in  
36 connection with the strategic review.  
37  
38  
39  
40 13. From the beginning, returning capital to the Company’s stockholders was an  
41 important goal of the strategic review process, and each of the strategic alternatives considered  
42  
43  
44  
45

DECLARATION OF SHARON MCCOLLAM - 4

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## 1 The State's Prima Facie Case

- Relevant market (product market and geographic market)
  - Increased levels of concentration and market share
  - Proof of actual anticompetitive effects
    - Unilateral effects
    - Coordinated effects
- 

## 2 Defendants' Rebuttal and the State's Response

- Divestiture
  - Efficiencies
  - "Need" to merge
- 

## 3 Remedy

