

From: Vedova, Holly L.
Sent: Fri, 4 Nov 2022 15:13:13 +0000
To: Howard, Jennifer; Wilkins, Elizabeth; Sussman, Shaoul; Nathan, Jon J.; Lovinger, Michael; Dahdouh, Thomas N.; Zhao, Daniel; Rindfuss, Peter
Cc: Rao, Rahul
Subject: FW: Kroger, Albertsons unions, antitrust experts urge FTC to block merger - letter
Attachments: 20221101-Kroger-Albertsons FTC letter SIGNED.pdf

All,

See attached and below, the letter.

Holly

From: Dickinson, Charles <cdickinson@ftc.gov>
Sent: Friday, November 4, 2022 9:48 AM
To: Seidman, Mark <MSEIDMAN@ftc.gov>; Vedova, Holly L. <HVEDOVA@ftc.gov>; Rodger, Stephen <srodger@ftc.gov>; Pai, Rohan <rpai@ftc.gov>
Subject: RE: Kroger, Albertsons unions, antitrust experts urge FTC to block merger -letter

Holly, here is that letter from the grocery unions, also signed by Open Markets Institute, American Economic Liberties Project, etc. It came in last night, and we are reaching out to the sender today.

Thanks,
Charlie

From: Seidman, Mark <MSEIDMAN@ftc.gov>
Sent: Thursday, November 3, 2022 3:55 PM
To: Vedova, Holly L. <HVEDOVA@ftc.gov>; Rodger, Stephen <srodger@ftc.gov>; Dickinson, Charles <cdickinson@ftc.gov>
Subject: RE: Kroger, Albertsons unions, antitrust experts urge FTC to block merger -letter

Thanks Holly. We have not seen this letter. It's possible they submitted it to the antitrust@ftc.gov email address – there have been thousands of letters and we haven't been through all of them (but Alan Friedman usually flags the ones from organizations). If it went to the Chair's office, they would have sent it to you, right?

Nevertheless, we will try to track it down and look for contact information for the complainants.

-Mark

From: Vedova, Holly L. <HVEDOVA@ftc.gov>
Sent: Thursday, November 3, 2022 3:30 PM
To: Seidman, Mark <MSEIDMAN@ftc.gov>; Rodger, Stephen <srodger@ftc.gov>; Dickinson, Charles

<cdickinson@ftc.gov>

Subject: FW: Kroger, Albertsons unions, antitrust experts urge FTC to block merger -letter

See below --- have we gotten that letter yet?

From: Farrar, Douglas <dfarrar@ftc.gov>

Sent: Thursday, November 3, 2022 3:15 PM

To: Howard, Jennifer <jhoward1@ftc.gov>; Vedova, Holly L. <HVEDOVA@ftc.gov>; Sussman, Shaoul <ssussman@ftc.gov>; Nathan, Jon J. <jnathan@ftc.gov>; Lovinger, Michael <mlovinger@ftc.gov>; Dahdouh, Thomas N. <TDAHDOUH@ftc.gov>; Zhao, Daniel <dzhao@ftc.gov>; Rindfuss, Peter <prindfuss@ftc.gov>

Cc: Wilkins, Elizabeth <ewilkins1@ftc.gov>; Kaplan, Peter P. <pkaplan@ftc.gov>

Subject: RE: Kroger, Albertsons unions, antitrust experts urge FTC to block merger -letter

+ Peter

E: dfarrar@ftc.gov | M: (b)(6)

From: Howard, Jennifer <jhoward1@ftc.gov>

Sent: Thursday, November 3, 2022 3:12 PM

To: Vedova, Holly L. <HVEDOVA@ftc.gov>; Sussman, Shaoul <ssussman@ftc.gov>; Nathan, Jon J. <jnathan@ftc.gov>; Lovinger, Michael <mlovinger@ftc.gov>; Dahdouh, Thomas N. <TDAHDOUH@ftc.gov>; Zhao, Daniel <dzhao@ftc.gov>; Rindfuss, Peter <prindfuss@ftc.gov>

Cc: Wilkins, Elizabeth <ewilkins1@ftc.gov>; Farrar, Douglas <dfarrar@ftc.gov>

Subject: Kroger, Albertsons unions, antitrust experts urge FTC to block merger -letter

Did we receive this letter yet?

<https://www.reuters.com/markets/deals/kroger-albertsons-unions-antitrust-experts-urge-ftc-block-merger-letter-2022-11-03/>

Jen Howard
Federal Trade Commission

E: jhoward1@ftc.gov

M: (b)(6)

November 3, 2022

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chair Khan:

On behalf of our organizations' collective members—who include grocery workers, consumers, community activists, clergy, and other interested parties—we are writing to express our opposition to Kroger Company's proposed \$24.6 billion acquisition of Albertsons Companies, Inc., and Albertsons' related plan to make an unusual up to \$4 billion special dividend payment to its shareholders on November 7.

These monopolistic machinations will inevitably cause worker layoffs, impose downward pressure on wages and other job standards, raise food prices for hard-hit consumers, increase the prevalence of food deserts in lower-income communities and the number of food-insecure Americans, and squelch competition in this essential industry.

It will also further exacerbate income inequality, with private equity pocketing billions of dollars while many thousands of workers are poised to earn less and consumers to pay more for the essentials of living. Everything about this proposed merger is a classic example of how ultra-wealthy interests game the system to further amass power and treasure at the expense of the rest of society.

The most immediate matter at hand is Albertsons' up to \$4 billion special dividend payment scheme. This is nothing less than an out-and-out looting of the company by a consortium of investors led by the private equity firm Cerberus Capital Management, which together own 70 percent of Albertsons. The dividend payment amounts to the entirety of Albertsons' \$3.4 billion in cash and cash equivalents and \$651,700 in net receivables listed in the company's latest 10-Q filing.¹ If allowed to occur, it will leave the company largely depleted of liquid assets, carrying \$6.55 billion in debt, \$4.7 billion in unfunded pension liabilities, and unsustainable as an ongoing concern.

Not only would this unjustly enrich Cerberus' private equity billionaires—it is seemingly a brazen attempt to manufacture new facts on the ground by destabilizing Albertsons' competitive position and jeopardize the FTC's ability to fully exercise its statutorily-mandated antitrust oversight, because the self-sabotaged shell of Albertsons that remains will likely argue that it will fail if the merger is rejected.

Simply put, this is an appalling abuse of the system, and we urge you to investigate whether it amounts to unlawful collusion between the companies.

But whether or not Albertsons' dividend scheme actually transpires, the merger should be blocked, as it would harm workers, consumers and communities.

In many markets across the country, grocery competition would cease, likely resulting in employee layoffs and higher prices. The companies' proposal to divest between 100 and 375 stores into a new SpinCo company is no solution, as the 2015 Albertsons-Safeway merger makes clear. At the FTC's direction, that merged company sold 168 stores, most of which were purchased by Haggen Holdings LLC. But months later, Haggen filed for bankruptcy, enabling Albertsons to buy back many of these same stores,ⁱⁱ thus negating any pro-competitive effects of the divestment. There is no reason to think the outcome of a Kroger-Albertsons merger would be any different, especially with SpinCo likely to be undercapitalized and indebted from the start. Simply put, Kroger and Albertsons have no reason to setup SpinCo to be a successful competitor and plenty of incentive to ensure its failure.

With 5,000 stores and 710,000 workers between them, Kroger and Albertsons already have an unhealthy share of the grocery market. Further consolidation would only worsen outcomes for workers.

As an Economic Roundtable survey found, "The living and working conditions of Kroger workers have declined markedly over the past 20 years. Kroger's current low-wage, part-time workforce strategy relies on poorly paid, part-time workers with constantly changing schedules... More than two-thirds of Kroger workers struggle for survival due to low wages and part-time work schedules. Nine out of ten Kroger workers report that their wages have not increased as much as basic expenses such as food and housing have increased."ⁱⁱⁱ

Kroger's actions during the COVID pandemic further demonstrate the company's contempt for those whose hard work earns the company its profits—it actually closed stores to avoid paying an extra \$4/hour in hazard pay mandated by local ordinances.^{iv}

With a far larger market share than it already has, Kroger's callous approach to its workforce will only expand and is likely decimate working and living conditions for all industry workers.

And considering that Kroger engaged in \$1 billion stock buyback programs in 2021 and again in 2022, there is no reason to think that the merged company would suddenly prioritize the living standards of its workers over further enriching its shareholders.

Consumers—meaning all of us, because every human being needs food to survive—would fare no better, as Kroger's and Albertsons' unrestrained profiteering during the pandemic makes clear. In a time of crisis and need, both companies prioritized lining shareholders' pockets before any sense of social responsibility.

People living in poverty will suffer most of all—not only because of skyrocketing prices as competition vanishes, but through probable store closures. As *Forbes* recently noted, "There are already 30% fewer grocery stores than a few decades ago and most major metropolitan areas

The Honorable Lina Khan

November 3

Page 3

(with the exception of New York City) are heavily concentrated among just a handful of grocery chains.”^v Post-merger, the number of stores would shrink further and the areas most likely impacted by closures would be lower-income communities that would be turned into food deserts.

The bottom line is that this proposed merger is bad for workers, bad for consumers, bad for communities, bad for the economy—indeed, bad for everyone not associated with Cerberus Capital Management or owning shares in these two companies. We urge you to take immediate action to stop the special dividend payment and block this merger altogether.

Sincerely,

Action Center on Race & the Economy
American Economic Liberties Project
Americans for Financial Reform Education Fund
Baltimore Musicians Association - Local 40-543
Baltimore-D.C. Building Trades
Center for Economic and Policy Research
DC Jobs With Justice
DC Nurses Association
Demand Progress Education Fund
Farm Action
Institute for Local Self-Reliance
Jobs With Justice
Lake Research Partners
Local 40-543, American Federation of Musicians
Local 881 UFCW
Metro Washington Labor Council AFL-CIO
National Employment Law Project
Open Markets Institute
Private Equity Stakeholder Project
Revolving Door Project
United Food & Commercial Workers 3000
United Food & Commercial Workers 367
United Food & Commercial Workers Local 1442
United Food & Commercial Workers Local 770
United Food & Commercial Workers Local 400
United Food & Commercial Workers Local 324

ⁱ <https://d18rn0p25nwr6d.cloudfront.net/CIK-0001646972/303661af-9690-401b-8887-87557fef01c4.pdf>

ⁱⁱ www.wsj.com/articles/albertsons-to-buy-back-33-stores-it-sold-as-part-of-merger-with-safeway-1448411193?mod=article_inline

ⁱⁱⁱ <https://economics.org/publication/hungry-at-the-table/>

^{iv} <https://www.washingtonpost.com/business/2021/02/03/ralphs-kroger-pandemic-pay-mandate/>

^v <https://www.forbes.com/sites/erolschweizer/2022/10/13/why-a-krogeralbertsons-merger-is-a-bad-idea/?sh=2a58ac1e53af>