Newsroom

AG Racine Sues Albertsons and Kroger in Federal Court to Halt $4 Billion Cash Handout to Shareholders

November 2, 2022

Lawsuit and Temporary Restraining Order Follow Albertsons' & Kroger's' Refusal to Stop the Private Equity Cash-Grab that Would Hamstring Albertsons' Ability to Compete & Hurt Jobs of Safeway Employees

WASHINGTON, D.C. – Attorney General Karl A. Racine today announced a new lawsuit in federal court against Albertsons Companies Inc. and The Kroger Co. (Albertsons and Kroger) and is seeking a temporary restraining order (TRO) to stop a nearly $4 billion payout to Albertsons' shareholders—a payout 57 times greater than the historic dividends Albertsons has provided—until a full review of their proposed merger is complete.

Albertsons owns Safeway, which operates 13 grocery stores across the District and is a critical source of affordable fresh food for District residents. Kroger owns Harris Teeter, also prevalent in the District and a close competitor to Safeway. This lawsuit follows AG Racine's effort last week (https://oag.dc.gov/release/ag-racine-leads-bipartisan-group-ags-calling) in leading a bipartisan group of state attorneys general to call on Albertsons to stop the payout until the proposed merger's impact on workers, consumers, and competition can be fully assessed. Albertsons and Kroger told the attorneys general they would continue with the payout. On October 14, Albertsons announced the special dividend in direct connection with their merger with Kroger (https://www.albertsonscompanies.com/newsroom/press-releases/news-details/2022/Albertsons-Companies-Announces-Special-Dividend-in-Connection-with-Signing-of-Merger-Agreement/default.aspx).

"Albertsons' rush to secure a record-setting payday for its investors threatens District residents' jobs and access to affordable food and groceries in neighborhoods where no alternatives exist," said AG Racine. **"This would have a particularly devastating impact on struggling people and families with access to fewer grocery stores during a time of historically high inflation. My office will use all our authority to stop this cash grab and protect District workers, families, and consumers."**

District residents depend on close and ready access to fresh food and also depend on employment by these companies. Organizations knowledgeable about labor conditions, including the UFCW local 400 (which represents Safeway workers in the District), have raised substantial concerns that this dividend will make it more difficult for Albertsons to compete for labor by reducing Albertsons' ability to offer wage increases, pensions, or store improvements.

"As the union of grocery workers in the District of Columbia and beyond, we applaud Attorney General Karl Racine for taking action to halt the brazen attempt to loot Albertsons through an unprecedented special dividend payment," said Mark Federici, President of United Food & Commercial Workers Local 400. **"If allowed to occur, this payout will leave Albertsons largely depleted of liquid assets and put the livelihoods of countless grocery workers in jeopardy. Instead of using their increased profits on exorbitant executive compensation packages and enriching Wall Street investors, Albertsons should invest in the essential workers who make the grocery company successful in the first place – the same workers who risked their lives to keep food on America's tables throughout the pandemic."**

On October 14, when Albertsons and Kroger announced their proposed merger, Albertsons also announced a "special dividend" to go out to shareholders on November 7 at $6.85 per share—totaling nearly $4 billion, which is more than two years of profits for the company. The "special dividend" risks significantly limiting their ability to operate and properly compete with Kroger and other supermarkets, which could seriously impact consumers, workers, and the grocery industry writ-large before regulators even have the chance to review the deal.

The giveaway to private equity would severely limit Albertsons' cash-on-hand and deprive it of money needed to compete effectively. In the District, because of the essential and constant need for food, even a short-term reduction in competition in the District's neighborhoods, especially those where Harris Teeter and Safeway compete, can result in higher prices and reductions in quality that can significantly harm consumers. This impact intensifies with inflation at historically high levels, as consumers' grocery prices rose 12.2% from last summer to this summer, the biggest jump in over 40 years. Meanwhile, the private equity investors who control the grocery chains will have gained profits nine times larger (https://www.inquirer.com/business/acme-albertsons-kroger-lubert-adler-dividend-20221022.html) than their original investments in 2006, if the merger is approved.

OAG's allegations against Albertsons & Kroger

The Office of the Attorney General (OAG) alleges that the proposed special dividend would violate federal and District antitrust law because:

- Issuing the payout will render Albertsons less able to compete effectively with other supermarkets, including Kroger, and restrain trade in violation of Section 1 of the Sherman Act (///C:/Users/AMcDonough/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JPQJXWHH/will%20lead%20to%20a%20reduction%20in% and D.C. Code § 28–4502 (https://code.dccouncil.gov/us/dc/council/code/sections/28-4502.html#:~:text=Search...-,%C2%A7%2028%E2%80%934502.,is%20declared%20to%20be%20illegal.).
- Albertson being strapped for cash will likely hamper its ability to advertise, provide promotions, price competitively, and maintain staffing and staff wages and benefits.

With this lawsuit, OAG is asking that the Court block Albertsons from issuing the payout to shareholders until a full review of the proposed merger agreement can be completed and is seeking a temporary restraining order (TRO) for immediate relief.

Last week, AG Racine also announced that OAG is starting a formal investigation into the Albertsons-Kroger proposed merger and its impact on workers and consumers, separate from the lawsuit being filed today. Kroger and Albertsons have more than 710,000 employees in nearly 5,000 stores across 48 states and D.C., reinforcing that all corners of the country would feel the effects of the proposed merger.

This lawsuit was joined by the Office of the Attorney General for the States of California and Illinois and filed under seal in the U.S. District Court for the District of Columbia.

This case was handled by Kathleen Konopka, Senior Advisor to the Attorney General for Competition Policy, Section Chief Adam Gitlin of OAG's Public Integrity Section, Assistant Attorneys General William Margrabe, Geoffrey Comber, and Elizabeth Arthur, and Paralegals Jesse Zweben and Amanda Bangle.

Read the complaint. (https://oag.dc.gov/sites/default/files/2022-11/DC%20et%20al%20v.%20Kroger%20et%20al%20Redacted%20Complaint.pdf)

Background on OAG's Antitrust Enforcement Actions
OAG has a long record of holding companies accountable for antitrust violations. In May 2021, OAG filed a lawsuit (https://oag.dc.gov/release/ag-racine-files-antitrust-lawsuit-against-amazon) against Amazon alleging that the company is fixing online retail prices through contract provisions that prevent third-party sellers to offer their products on other platforms. OAG also joined a coalition of attorneys general in filing a lawsuit against Facebook Inc (https://oag.dc.gov/release/ag-racine-joins-multistate-lawsuit-seeking-end). in December 2020, alleging that the company has engaged in a pattern of illegal acquisitions and exclusionary conduct to stifle competition and maintain its overwhelming market dominance. In addition, OAG also joined a multistate group of attorneys general in suing Google, Inc. (https://oag.dc.gov/release/ag-racine-joins-multistate-lawsuit-seeking-end-0) in December 2020 for exclusionary conduct to maintain or establish its dominance in several product markets. And OAG sued Facebook (https://oag.dc.gov/release/ag-racine-sues-facebook-failing-protect-millions)over the Cambridge Analytica scandal.

OAG joined in multistate settlements with several banks, including Deutsche Bank (https://oag.dc.gov/release/ag-racine-announces-220-million-multistate), Barclays (https://oag.dc.gov/release/attorney-general-racine-announces-100-million), and UBS (https://oag.dc.gov/release/ag-racine-announces-68-million-multistate), worth hundreds of millions of dollars, for fraudulent and anticompetitive conduct during the 2007-2008 financial crisis and its aftermath. OAG is actively litigating antitrust cases in the pharmaceutical industry, including a multistate antitrust lawsuit (https://oag.dc.gov/release/ag-racine-announces-68-million-multistate) against the manufacturers of Suboxone, a prescription drug used to treat opioid addiction, for engaging in an anticompetitive scheme to block generic competition for Suboxone. OAG is also litigating multistate lawsuits (https://oag.dc.gov/release/ag-racine-joins-coalition-filing-third-lawsuit) against several manufacturers of generic drugs for allegedly conspiring to fix drug prices, thwart competition, and engage in illegal and anticompetitive trade practices with regard to more than 40 drugs. Additionally, OAG has opposed anti-competitive mergers such as those between T-Mobile and Sprint (https://oag.dc.gov/release/ag-racine-joins-multistate-coalition-block-t), Anthem-Cigna and Aetna-Humana (https://oag.dc.gov/release/attorney-general-racine-joins-state-federal), Staples and Office Depot (https://oag.dc.gov/release/dc-joins-federal-trade-commission-pennsylvania), Sysco and U.S. Foods (https://oag.dc.gov/release/attorney-general-racine-welcomes-federal-judges), and fantasy sports sites DraftKings and FanDuel (https://oag.dc.gov/release/dc-joins-federal-trade-commission-california). Last week (https://oag.dc.gov/release/ag-racine-leads-bipartisan-group-ags-calling), AG Racine led a bipartisan group of state attorneys general calling on Albertsons to stop the payout until the proposed merger's impact can be fully assessed.

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