

AG Ferguson files lawsuit to block Kroger-Albertsons merger

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Deal to merge Washington's two largest supermarket companies will significantly impact prices, choice, competition

SEATTLE — Attorney General Bob Ferguson filed a lawsuit today to block the proposed Kroger-Albertsons grocery merger. Ferguson asserts the proposed merger of the two largest supermarket companies in Washington state will severely limit shopping options for consumers and eliminate vital competition that keeps grocery prices low.

Ferguson also asserts that a proposal by Kroger and Albertsons to mitigate the impacts of their merger, which includes selling off more than 100 stores in Washington, does not change the fact that Kroger would still enjoy a near-monopoly in many markets in the state. In addition, the plan to sell the stores to a company that is primarily a wholesale supplier could set up many of the divested supermarkets to fail, endangering Washington jobs and further diminishing choices for Washington shoppers.

“This merger is bad for Washington shoppers and workers,” Ferguson said. “Free enterprise is built on companies competing, and that competition benefits consumers. Shoppers will have fewer choices and less competition, and, without a competitive marketplace, they will pay higher prices at the grocery store. That’s not right, and this lawsuit seeks to stop this harmful merger.”

The lawsuit, filed today in King County Superior Court (https://agportal-s3bucket.s3.us-west-2.amazonaws.com/uploadedfiles/Another/News/Press_Releases/Complaint_Court_REDACTED.pdf) seeks to block the merger of Kroger and Albertsons nationwide. Ferguson asserts the merger eliminates Kroger’s closest competitor and decreases customer choice by significantly increasing the concentration of stores owned by the same company throughout Washington.

Even company executives have expressed that the merger might be illegal. After rumors of the proposed merger surfaced, a vice president with Albertsons wrote that “you are basically creating a monopoly in grocery with the merger... [it] makes no sense.”

An Albertson’s Human Resources director wrote of the merger: “It’s all about pricing and competition and we all know prices will not go down.”

Kroger and Albertsons are the two largest supermarket chains in Washington and the second and fourth largest supermarket operators in the country. They currently have more than 700,000 employees in nearly 5,000 stores across 49 states. They have combined annual revenue in excess of \$200 billion.

Kroger alone has more than 21,000 workers in Washington.

Companies own more than half of Washington supermarkets

More than half of all supermarkets in Washington state are currently owned by either Kroger or Albertsons, and they account for more than 50% of all supermarket sales in the state. Albertsons owns Safeway and Haggen, while Kroger owns QFC and Fred Meyer. Collectively, Kroger and Albertsons operate more than 300 supermarkets in Washington, including approximately 194 in the Seattle-Tacoma-Bellevue metropolitan area.

After the companies announced their proposed merger, *The Seattle Times*, citing numbers from Nielsen, reported that more than half of households in the Seattle metro area alone most frequently shop at a store owned by one of the companies (<https://www.seattletimes.com/seattle-news/data/grocery-chain-merger-would-affect-majority-of-seattle-area-households/>).

The proposed merger will eliminate head-to-head competition between the two largest grocery operators in the state. Ferguson’s lawsuit details that QFC — which is owned by Kroger — considers Safeway/Albertsons as its main competitor in the Seattle area. Across Washington, Albertsons considers either Fred Meyer or QFC — also Kroger owned — its primary competitor in every local market in Washington.

The supermarkets monitor each other’s prices and adjust the cost of products as part of that competitive relationship. Albertsons’ Seattle Division, for example, has lowered its prices to compete with Fred Meyer and QFC, and highlighted in its advertisements products where it offers a better deal.

The merger eliminates that competition.

In late August 2023, the companies proposed to sell off 413 stores nationwide — 104 in Washington — plus some distribution and brand assets to diminish concerns about the new combined company’s market dominance.

However, Ferguson asserts the plan does not do enough to address that dominance, and it could actually decrease competition.

The stores would be sold to C&S Wholesale Grocers, a wholesale distributor that does not currently operate any supermarkets in Washington. If the merger succeeds, C&S would become the second-largest supermarket operator in the state nearly overnight.

Plan to sell off stores inadequate

Under Kroger’s and Albertsons’ plan, the stores will be sold to C&S Wholesale Grocers, which is primarily a wholesale supplier, and currently only operates 23 supermarkets. The plan means C&S would go from operating 23 supermarkets to nearly 450 around the country — including 104 in Washington.

C&S would also take over any pharmacies and fuel centers associated with the stores it is acquiring. C&S currently operates only one pharmacy in New York, and does not operate any fuel centers.

The newly combined Kroger-Albertsons brands will be immediately positioned to outcompete their former supermarkets while they transition to a new owner — one that is still trying to adjust to becoming a large-scale nationwide supermarket operator.

If those stores fail, hundreds of Washingtonians could lose their jobs and grocery choice could be diminished even further for Washington shoppers. Even if the locations are ultimately sold off to another company better equipped to operate them, a second sale only increases the time these supermarkets are in transition, giving the newly merged company a further competitive advantage.

Previous divestment failed

Washington has seen a very similar divestiture plan fail in the not-too-distant past.

The current proposed divestiture plan bears a striking resemblance to Albertsons' failed divestiture of Washington-based stores to a similarly unqualified buyer, Washington-based Haggen, less than a decade ago. As a part of Albertsons' 2015 merger with Safeway, 146 Albertsons and Safeway stores — including 26 in Washington — were sold to Haggen. At the time, Haggen was a regional supermarket chain with only 18 stores that lacked the infrastructure to rapidly expand to a multi-state, national grocery retailer.

It struggled to operate the divested stores, and less than a year later, Haggen was forced to file for bankruptcy.

Albertsons was able to reacquire more than 50 of its divested stores, including 14 Washington locations, in some cases paying only \$1 per store at auction. It now owns and operates Haggen stores in Washington.

If C&S fails, it is also possible Kroger could be allowed to reacquire its divested supermarkets, just like Albertsons did after Haggen's failure.

Lawsuit seeks a permanent injunction blocking the merger nationwide

Ferguson's lawsuit asks the court to find that the merger violates Washington antitrust law, and to issue an injunction permanently blocking the merger nationwide.

Assistant Attorneys General Paula Pera, Miriam Stiefel, Helen Lubetkin and Amy Hanson, paralegals Michelle Oliver and Kate Iiams, and Litigation Support Manager Kimberly Hitchcock are handling the case for Washington.

The Office of the Attorney General's Antitrust Division is responsible for enforcing the antitrust provisions of Washington's Consumer Protection Act and federal antitrust laws. The division investigates and litigates complaints of anticompetitive conduct and reviews potentially anticompetitive mergers. The division also brings actions in state and federal courts to enforce antitrust laws. It receives no general fund support, funding its own actions through recoveries made in other cases.

For information about filing a complaint about potential anticompetitive activity, visit <https://fortress.wa.gov/atg/formhandler/ago/AntitrustComplaint.aspx> (<https://fortress.wa.gov/atg/formhandler/ago/AntitrustComplaint.aspx>).

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