

Judge rules AG Ferguson challenge to Kroger-Albertsons merger will continue

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King County judge rejects the companies' attempt to dismiss antitrust lawsuit

SEATTLE — Attorney General Bob Ferguson's antitrust lawsuit to block the proposed merger of Kroger and Albertsons can continue, a King County judge ruled today, rejecting the companies' request to dismiss the case.

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.

Today, King County Superior Court Judge Marshall Ferguson rejected a motion from Kroger and Albertsons to dismiss the lawsuit. The case is set to begin trial on September 16. The specifics of the decision will come in a written order in the coming days.

"Free enterprise is built on companies competing, and that competition benefits consumers," Ferguson said. "My legal team and I will continue working to protect Washington consumers and workers from increased prices and fewer choices."

Ferguson filed his antitrust lawsuit in January in King County Superior Court (<https://www.atg.wa.gov/news/news-releases/ag-ferguson-files-lawsuit-block-kroger-albertsons-merger>), seeking to block national supermarket chains Kroger and Albertsons from merging. Ferguson asserts the merger violates Washington antitrust law, eliminates Kroger's closest competitor and will cause consumers to pay more for less.

Executives: "We all know prices will not go down."

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 merger eliminates that competition.

The companies have proposed selling hundreds of stores to C&S Wholesale. C&S is primarily a wholesaler, operating only 23 supermarkets. Under the merger proposal, C&S would become the second-largest supermarket operator in the state nearly overnight. 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.

The companies announced revisions to their original divestiture plan with C&S on April 22. The Attorney General's Office is reviewing the revised plan.

Previous divestment failed

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

The 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.

Assistant Attorneys General Paula Pera, Miriam Stiefel, Helen Lubetkin, Valerie Balach, Ashley Locke, Jessica So, 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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