

# Congress of the United States

Washington, DC 20515

October 25, 2022

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

Dear Chair Khan:

We are writing regarding our concerns with Kroger Company's (Kroger) proposed \$24.6 billion acquisition of Albertsons Companies, Inc. (Albertsons), a merger that could exacerbate existing antitrust, labor, and price-gouging issues in the grocery sector and further raise prices for vulnerable Americans.<sup>1</sup> Given the parties' records of raising food prices for consumers and cutting benefits to workers to pad their own profits, and the unusual circumstances of a \$4 billion dividend payment that will be paid out by Albertsons in early November, the Federal Trade Commission (FTC) should oppose this proposed merger.

Kroger's proposed acquisition of Albertsons – which owns and operates numerous subsidiaries such as Shaw's and Star Market in Massachusetts<sup>2</sup> – presents a number of antitrust and labor concerns, which the FTC should closely examine when determining whether to oppose the deal. Throughout the pandemic and its economic aftermath, Kroger and Albertsons reported record profits and richly rewarded their shareholders and executives with bonuses and stock buybacks, even as both companies took steps to prevent workers from receiving hazard pay and boasted about their abilities to raise consumers' prices.<sup>3</sup>

Kroger's and Albertsons' histories of aggressive profiteering during the pandemic present a dangerous roadmap for how a larger and more powerful company would act if this acquisition were allowed to proceed. The new Kroger could increase its monopoly power and further disenfranchise its own workers and consumers. The FTC, when evaluating the potential market and consumer effects of the Kroger-Albertsons acquisition, should closely consider both companies' history of monopoly, labor, and consumer abuses, and whether this acquisition would exacerbate these abuses for American families.

## **Potential Impacts on Workers**

<sup>1</sup> Wall Street Journal, "Kroger to Buy Albertsons in \$24.6 Billion Deal That Would Create New Grocery Giant," Jaewon Kang, October 14, 2022, [https://www.wsj.com/articles/kroger-to-merge-with-albertsons-in-a-24-6-billion-deal-11665745735?mod=hp\\_lead\\_pos4](https://www.wsj.com/articles/kroger-to-merge-with-albertsons-in-a-24-6-billion-deal-11665745735?mod=hp_lead_pos4).

<sup>2</sup> CBS Boston, "Supermarket mega-merger: Kroger buying owner of Shaw's and Star Market," October 14, 2022, <https://www.cbsnews.com/boston/news/kroger-albertsons-shaws-star-market-merger-grocery-deal/>.

<sup>3</sup> Detroit Free Press, "Kroger, other retailers see 'eye-popping profits' as workers reap little benefit," Sue Selasky, December 4, 2020, <https://www.freep.com/story/news/local/michigan/2020/12/04/kroger-walmart-amazon-profits-covid-19-pandemic/6458910002/>; CNN, "Grocery stores are excited to charge you higher prices," Nathaniel Meyersohn, June 18, 2021, <https://www.cnn.com/2021/06/18/business/grocery-store-inflation-kroger-albertsons/index.html>.

Kroger and Albertsons have both faced allegations of unfair labor practices and unsustainable conditions for their employees, concerns that could be compounded by this merger. A 2021 survey by the Economic Roundtable of more than 10,000 Kroger workers found that 75 percent of Kroger workers reported being food insecure, and more than 60 percent did not earn “enough money to pay for basic expenses every month.”<sup>4</sup> Thousands of Albertsons and Kroger workers have gone on strike for better conditions in Colorado,<sup>5</sup> California,<sup>6</sup> and Oregon in just the past year.<sup>7</sup> This “race to the bottom” for employees in the grocery industry was spotlighted during the COVID-19 pandemic when more than 50,000 grocery workers across the industry were infected with or exposed to the disease by February 2022.<sup>8</sup> A Brookings Institute study analyzing worker compensation found that major retail companies, including both Kroger and Albertsons, “offered only modest or negligible extra compensation to workers while earning windfall profits.”<sup>9</sup> Kroger has a uniquely bad record of engaging in potential “retaliation” rather than supporting its workers.<sup>10</sup> When the cities of Los Angeles and Seattle enacted hazard pay increases in 2020 and 2021, Kroger shuttered stores in those cities to avoid complying with the salary increases for its employees.<sup>11</sup>

The decrease in benefits for employees – who saw their “hero pay” from the pandemic end after just three months – coincided with skyrocketing executive bonuses and billions of dollars in buybacks for shareholders.<sup>12</sup> At Kroger, Chief Executive Officer (CEO) Rodney McMullen received \$20.6 million in compensation in 2020,<sup>13</sup> while workers earned as little as \$9 an hour or

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<sup>4</sup> Economic Roundtable, “Hungry at the Table,” Daniel Flaming, Peter Dreier, Patrick Burns, and Aaron Danielson, January 11, 2022, <https://economicrt.org/publication/hungry-at-the-table/>; New York Times, “Business Booms at Kroger-Owned Grocery Stores, but Workers Are Left Behind,” Sapna Maheshwari and Michael Corkery, February 12, 2022, <https://www.nytimes.com/2022/02/12/business/kroger-grocery-stores-workers-pay.html>.

<sup>5</sup> NBC News, “Kroger workers’ strike in Colorado ends after 10 days, tentative deal reached,” Maura Barrett, January 21, 2022, <https://www.nbcnews.com/business/kroger-workers-strike-colorado-ends-10-days-tentative-deal-reached-rcna13053>.

<sup>6</sup> NPR News, “California grocery workers vote to authorize strike,” Associated Press, March 28, 2022, <https://www.npr.org/2022/03/28/1089110574/california-grocery-workers-vote-to-authorize-strike>.

<sup>7</sup> Business Insider, “Kroger-owned grocery chains are desperately trying to replace striking workers as employees walk off the job at the height of the holiday shopping season,” Bethany Biron, December 17, 2021, <https://www.businessinsider.com/kroger-scrambles-to-replace-striking-workers-during-holiday-season-2021-12>.

<sup>8</sup> New York Times, “Business Booms at Kroger-Owned Grocery Stores, but Workers Are Left Behind,” Sapna Maheshwari and Michael Corkery, February 12, 2022, <https://www.nytimes.com/2022/02/12/business/kroger-grocery-stores-workers-pay.html>.

<sup>9</sup> Brookings Institute, “Windfall profits and deadly risks: How the biggest retail companies are compensating essential workers during the COVID-19 pandemic,” Molly Kinder, Laura Stateler, and Julia Du, November 2020, <https://www.brookings.edu/essay/windfall-profits-and-deadly-risks/>.

<sup>10</sup> Washington Post, “Kroger to close more stores instead of giving workers hazard pay,” Eli Rosenberg, February 17, 2021, <https://www.washingtonpost.com/business/2021/02/17/kroger-qfc-closing-hazard-pay/>.

<sup>11</sup> The Guardian, “‘They don’t care’: US supermarket chain shutter stores after hazard pay rules,” Michael Sainato, March 26, 2021, <https://www.theguardian.com/us-news/2021/mar/26/krogers-us-supermarket-chain-stores-closed-layoffs>; Washington Post, “Kroger to close more stores instead of giving workers hazard pay,” Eli Rosenberg, February 17, 2021, <https://www.washingtonpost.com/business/2021/02/17/kroger-qfc-closing-hazard-pay/>.

<sup>12</sup> Washington Post, “Kroger is closing stores rather than giving workers an extra \$4 in pandemic ‘hero pay’” Paulina Firozi, February 3, 2021, <https://www.washingtonpost.com/business/2021/02/03/ralphs-kroger-pandemic-pay-mandate/>.

<sup>13</sup> Securities and Exchange Commission, Schedule 14A Proxy Statement, The Kroger Co., May 13, 2021, [https://www.sec.gov/Archives/edgar/data/56873/000114036121017149/nc10022090x1\\_def14a.htm](https://www.sec.gov/Archives/edgar/data/56873/000114036121017149/nc10022090x1_def14a.htm).

less and median worker pay dropped by over \$2,000 in that same period.<sup>14</sup> In 2021, Mr. McMullen receive a modest pay cut – but still made nearly \$20 million.<sup>15</sup> Albertsons CEO Vivak Sankaran’s bonus went from \$2.6 million in 2019 to \$4.3 million in 2020,<sup>16</sup> and in 2021 Mr. Sankaran received \$8.6 million in total compensation.<sup>17</sup> In October 2020, Albertsons initiated a \$300 million stock buyback program.<sup>18</sup> In June 2021, Kroger, which blamed store closures in cities that required \$4 hazard pay increase on base pay on its “razor-thin profit margins,”<sup>19</sup> announced a \$1 billion share buyback program.<sup>20</sup> And in September 2022, the company announced *another* \$1 billion buyback plan.<sup>21</sup>

While the companies promise to “pass along to customers as much as \$500 million in savings resulting from the merger.”<sup>22</sup> It is questionable whether such savings would result from the merger, and if they do, a significant portion will likely be derived from firing thousands of employees at Kroger and Albertsons.<sup>23</sup>

The FTC should, when evaluating the impact of a potential merger, examine Kroger’s and Albertsons’ records of raking in profits and providing massive payouts for executives and big shareholders while putting their frontline employees at risk for little pay and low benefits. Kroger’s and Albertsons’s high combined market shares in certain geographic markets would give the new company significant leverage to continue these harmful trend for workers.<sup>24</sup>

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<sup>14</sup> Brookings Institute, “The COVID-19 hazard continues, but the hazard pay does not: Why America’s essential workers need a raise,” Molly Kinder, Laura Stater, and Julia Du, October 29, 2020, <https://www.brookings.edu/research/the-covid-19-hazard-continues-but-the-hazard-pay-does-not-why-americas-frontline-workers-need-a-raise/>; Cincinnati Enquirer, “Kroger CEO pay tops \$20M, worker pay drops during COVID-19 pandemic,” Alexander Coolidge, May 17, 2021, <https://www.cincinnati.com/story/money/2021/05/17/how-does-kroger-pay-workers-compared-its-ceo/5125727001/>.

<sup>15</sup> Cincinnati Enquirer, “Kroger CEO Rodney McMullen saw pay cut in 2021, while worker pay rose,” Alexander Coolidge, April 27, 2022, <https://www.cincinnati.com/story/money/2022/04/27/disclosure-kroger-ceo-rodney-mcmullen-paid-18-m-2021/9551959002/>.

<sup>16</sup> Securities and Exchange Commission, Schedule 14A Proxy Statement, Albertsons Companies, Inc., June 24, 2021, [https://www.sec.gov/Archives/edgar/data/1646972/000114036121022208/nc10025568x2\\_def14a.htm#EC](https://www.sec.gov/Archives/edgar/data/1646972/000114036121022208/nc10025568x2_def14a.htm#EC).

<sup>17</sup> Securities and Exchange Commission, Albertsons Companies, Inc., Schedule 14A, June 21, 2022, [https://www.sec.gov/Archives/edgar/data/1646972/000114036122023648/ny20003207x1\\_def14a.htm](https://www.sec.gov/Archives/edgar/data/1646972/000114036122023648/ny20003207x1_def14a.htm).

<sup>18</sup> Nasdaq, “Albertsons Starts a Dividend and Buyback Program for Shareholders,” Mark Hake, October 28, 2020, <https://www.nasdaq.com/articles/albertsons-starts-a-dividend-and-buyback-program-for-shareholders-2020-10-28>.

<sup>19</sup> Washington Post, “Kroger to close more stores instead of giving workers hazard pay,” Eli Rosenberg, February 17, 2021, <https://www.washingtonpost.com/business/2021/02/17/kroger-qfc-closing-hazard-pay/>.

<sup>20</sup> MarketWatch, “Kroger raises full year guidance, announces \$1 billion share buyback program,” Tonya Garcia, June 17, 2021, <https://www.marketwatch.com/story/kroger-raises-full-year-guidance-announces-1-billion-share-buyback-program-2021-06-17>.

<sup>21</sup> Seeking Alpha, “Kroger shares carry higher on earnings beat, raised forecast, new buybacks,” Clark Schultz, September 9, 2022, <https://seekingalpha.com/news/3881624-kroger-shares-carry-higher-on-earnings-beat-raised-forecast-new-buybacks>.

<sup>22</sup> New York Times, “Kroger and Albertsons Plan \$25 Billion Supermarket Merger That May Face Hurdles,” Lauren Hirsh, Julie Creswell and Jordyn Holman, October 14, 2022, <https://www.nytimes.com/2022/10/14/business/kroger-albertsons-merger.html>.

<sup>23</sup> Washington Post, “Corporate mergers hurt workers — and drag down the job market,” Sarah Miller, October 21, 2021, <https://www.washingtonpost.com/outlook/2021/10/21/corporate-mergers-layoffs-antitrust/>.

<sup>24</sup> Wall Street Journal, “Kroger-Albertsons Antitrust Review Likely to Focus on Local Store Overlap,” Jaewon Kang, October 21, 2022, <https://www.wsj.com/articles/kroger-albertsons-antitrust-review-likely-to-focus-on-local-store-overlap-11666344601>.

## **Kroger and Albertsons History of Profiteering**

In December 2021, I wrote to several major grocery chains, including both Kroger and Albertsons, to investigate whether these corporations were leveraging their market power in an increasingly consolidated market to jack up prices and increase their own profits at the expense of American families.<sup>25</sup>

Early in the pandemic, both companies faced allegations of price-gouging. A lawsuit filed in Texas alleged that 19 grocery stores, including Kroger and Albertsons, participated in price-gouging in the first months of the pandemic, nearly tripling the price of eggs during the state of disaster in March 2020.<sup>26</sup> Similarly, a class-action lawsuit of Safeway customers alleged that their parent grocery chain Albertsons was responsible for inflating prices in California in violation of a state law preventing increases greater than 10 percent during a state of emergency.<sup>27</sup> During this time, both companies were reporting record “eye-popping” profits.<sup>28</sup>

In 2021, Kroger and Albertsons continued raising prices, citing rising costs and inflation,<sup>29</sup> even as they reassured investors that their businesses stood to benefit. In June 2021, on a call with investors, Kroger CEO Rodney McMullen admitted that “our business operates the best” with some inflation, allowing the company to pass cost increases on to consumers.<sup>30</sup> Kroger Chief Financial Officer Gary Millerchip boasted in October 2021 that the company was “very comfortable with our ability to pass on the increases that we’ve seen at this point [...] and we would expect that to continue to be the case.”<sup>31</sup> Former Secretary of Labor Robert Reich similarly argued that corporations, including grocery chains, were “using the excuse of inflation to raise prices and make fatter profits.”<sup>32</sup>

An unusual and unexplained provision of Kroger’s and Albertsons’ proposed merger would also provide a massive windfall for Albertson’s private equity shareholders, even as consumers could

<sup>25</sup> Letters from Senator Elizabeth Warren to Randall Jones, CEO, Publix Super Markets, Vivek Sankaran, CEO, Albertsons Companies, Inc., Rodney McMullen, CEO, The Kroger Co., December 14, 2021, <https://www.warren.senate.gov/imo/media/doc/2021.12.14%20Letter%20to%20grocery%20stores%20re%20rising%20grocery%20prices.pdf>.

<sup>26</sup> Austin American-Statesman, “H-E-B, Costco, Walmart, Albertsons among grocery stores accused of price-gouging eggs in federal suit,” Heather Osbourne, May 6, 2020, <https://www.statesman.com/story/news/coronavirus/2020/05/06/h-e-b-costco-walmart-albertsons-among-grocery-stores-accused-of-price-gouging-eggs-in-federal-suit/1237229007/>.

<sup>27</sup> The Counter, “Wiped out: Safeway sued for price gouging toilet paper and other supplies,” Jessica McKenzie, June 11, 2020, <https://thecounter.org/covid-19-albertsons-safeway-sued-price-gouging-toilet-paper/>.

<sup>28</sup> Detroit Free Press, “Kroger, other retailers see ‘eye-popping profits’ as workers reap little benefit,” Sue Selasky, December 4, 2020, <https://www.freep.com/story/news/local/michigan/2020/12/04/kroger-walmart-amazon-profits-covid-19-pandemic/6458910002/>.

<sup>29</sup> Washington Post, “Here’s why your food prices keep going up,” Laura Reiley and Alyssa Fowers, September 15, 2021, <https://www.washingtonpost.com/business/2021/09/15/food-inflation-faq/>.

<sup>30</sup> CNN, “Grocery stores are excited to charge you higher prices,” Nathaniel Meyersohn, June 18, 2021, <https://www.cnn.com/2021/06/18/business/grocery-store-inflation-kroger-albertsons/index.html>.

<sup>31</sup> Business Insider, “America’s biggest companies can’t stop bragging to investors about how they’re charging you more,” Dominick Reuter, November 2, 2021, <https://www.businessinsider.com/big-companies-keep-bragging-to-investors-about-price-hikes-2021-11>.

<sup>32</sup> Business Insider, “Corporations are using inflation as an excuse to raise prices and make fatter profits – and it’s making the problem worse,” Dominick Reuter and Andy Kiersz, November 16, 2021, <https://www.businessinsider.com/corporations-using-inflation-as-excuse-to-reap-fatter-profits-reich-2021-11>.

lose out on price and choice. Cerberus Capital Management, which together with a consortium of real-estate investors holds an approximate 70% stake in Albertsons,<sup>33</sup> would benefit from a special \$4 billion cash dividend paid out to Albertsons' shareholders before the deal is confirmed.<sup>34</sup> This dividend would take up a significant chunk of Albertsons' \$3.2 billion in liquid capital, which combined with \$4.7 billion in debt held by Albertsons, would further straining the business, either post-merger, or in the event that the merger doesn't go through - providing the companies with yet another reason to jack up prices on consumers and cut benefits for workers.<sup>35</sup> This special dividend could also be an artificial attempt for Kroger and Albertsons to use the "failing firm" defense and argue that the acquisition is necessary because Albertsons can no longer operate independently, even though this result will have been self-induced by the parties' major private equity payout.<sup>36</sup>

If the merger is approved, the \$4 billion payout will weaken both the merged entity and the new SpinCo company, saddling those companies with excess debt rather than allowing them to invest in workers, improving stores, or reducing prices for customers. Private equity firms will be the big winner from this transaction; one estimate found that Cerberus "could collect in the neighborhood of \$7.1 billion from the sale" if it were to go through, while Albertsons' executive team would receive a combined \$97 million – of which \$50 million would go to CEO Vivek Sankaran.<sup>37</sup>

This level of profiteering, as American families struggled with higher prices and higher levels of food insecurity,<sup>38</sup> is an alarming sign of how a Kroger-Albertsons behemoth could behave if this acquisition were to proceed and a clear sign that this merger presents anticompetitive concerns.

### **Antitrust Enforcement in the Grocery Industry**

In November 2021, as a result of these troublesome market dynamics, the FTC opened an inquiry into the grocery industry, ordering Kroger and several other dominant players to turn over information regarding supply chain disruptions and rising prices.<sup>39</sup> Grocers Association

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<sup>33</sup> Securities and Exchange Commission, Albertsons Companies, Inc., Schedule 14A, June 21, 2022, [https://www.sec.gov/Archives/edgar/data/1646972/000114036122023648/ny20003207x1\\_def14a.htm](https://www.sec.gov/Archives/edgar/data/1646972/000114036122023648/ny20003207x1_def14a.htm).

<sup>34</sup> Private Equity Wire, "Cerberus Capital set for big payday from Kroger's \$24.6bn deal for Albertsons," October 10, 2022, <https://www.privateequitywire.co.uk/2022/10/18/317961/cerberus-capital-set-big-payday-krogers-246bn-deal-albertsons>.

<sup>35</sup> BIG, "The Smash and Grab of Kroger-Albertsons," Matt Stoller, October 18, 2022, <https://mattstoller.substack.com/p/the-smash-and-grab-of-kroger-albertsons>; Kroger, "Kroger and Albertsons Companies Announce Definitive Merger Agreement," press release, October 14, 2022, <https://ir.kroger.com/CorporateProfile/press-releases/press-release/2022/Kroger-and-Albertsons-Companies-Announce-Definitive-Merger-Agreement/default.aspx>.

<sup>36</sup> Center for Economic and Policy Research, "Albertsons and Kroger Merger a Win for Private Equity and Loss for Workers," Eileen Appelbaum. October 19, 2022, <https://cepr.net/albertsons-and-kroger-merger-a-win-for-private-equity-and-loss-for-workers/>.

<sup>37</sup> Forbes, "Here Are Two Lesser-Known Winners In The Kroger-Albertsons Merger," Brandon Kochkodin, October 14, 2022, <https://www.forbes.com/sites/brandonkochkodin/2022/10/14/here-are-two-less-known-winners-in-the-kroger-albertsons-merger/?sh=6d7841213bc3>.

<sup>38</sup> Business Insider, "You know who's not hurting from inflation? Big business." Andy Kiersz, November 9, 2021, <https://www.businessinsider.com/corporate-profits-are-high-despite-inflation-and-shortages-2021-11>.

<sup>39</sup> CNN, "The FTC wants information from Amazon, Walmart and other giant stores about empty shelves and rising prices," Nathaniel Meyersohn, November 30, 2021, <https://www.cnn.com/2021/11/30/business/amazon-walmart->

Senior Vice President Chris Jones called out “destructive anticompetitive tactics that have been ignored by federal agencies for decades,” while FTC Chair Lina Khan said the study could “shed light on market conditions and business practices that may have worsened these disruptions and led to asymmetric effects.”<sup>40</sup>

Kroger and Albertsons, recognizing the obvious anticompetitive concerns of this possible acquisition, have already proposed to divest between 100 and 375 stores in geographic markets where the parties overlap.<sup>41</sup> However, even with this structural remedy, the joint company would still boast an enormous market share in certain markets and wield significantly more buyer power and more labor power than independent grocers, suppliers, and workers fighting for better conditions. The new firm would also likely result in layoffs of employees nationwide.<sup>42</sup>

And the proposed structural remedies have historically done little to mitigate antitrust concerns. In an August 2021 response to an inquiry about anticompetitive behavior in the defense industry,<sup>43</sup> Chair Khan acknowledged the shortcomings of structural remedies, saying “studies show that divestitures, too, may prove inadequate in the face of an unlawful merger.”<sup>44</sup>

Albertsons’ anticompetitive record also shows the shortcomings of structural remedies in the grocery industry. Following the company’s acquisition of Safeway Inc. in 2015, Albertsons sold 168 stores, a move the FTC declared necessary to avoid the company holding monopoly power in 130 local markets.<sup>45</sup> However, just months later, Haggen Holdings LLC, which bought most of the divested stores, filed for bankruptcy – allowing Albertsons to scoop up 33 of the stores it had previously sold, including 10 in locations that the FTC said would give the company monopoly or duopoly power.<sup>46</sup>

## **Conclusion**

Given the anticompetitive and antiworker records of Kroger and Albertsons, this merger represents a threat to the health of the market and consumers. We urge the FTC to oppose this merger under Section 7 of the Clayton Act, which prohibits any acquisition whose effect “may be substantially to lessen competition, or to tend to create a monopoly.”<sup>47</sup>

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[kroger-supply-chain-ftc/index.html](#).

<sup>40</sup> *Id.*

<sup>41</sup> Bloomberg, “Kroger’s Pursuit of Albertsons Hinged on Regulatory Strategy,” Michelle F Davis and Crystal Tse, October 14, 2022, <https://www.bloomberg.com/news/articles/2022-10-14/kroger-s-pursuit-of-albertsons-hinged-on-regulatory-strategy>.

<sup>42</sup> Forbes, “Why A Kroger/Albertsons Merger Is A Bad Idea,” Errol Schweizer, October 13, 2022, <https://www.forbes.com/sites/errolschweizer/2022/10/13/why-a-krogeralbertsons-merger-is-a-bad-idea/?sh=18a9084553af>.

<sup>43</sup> Letter from Senator Elizabeth Warren to Chair Lina Khan, July 16, 2021, [https://www.warren.senate.gov/imo/media/doc/FTC%20-%20DOD%20Letter%20re%20Behavioral%20Remedies%20-%207.16.21%20\(Warren\).pdf](https://www.warren.senate.gov/imo/media/doc/FTC%20-%20DOD%20Letter%20re%20Behavioral%20Remedies%20-%207.16.21%20(Warren).pdf).

<sup>44</sup> Letter from Chair Lina Khan to Senator Elizabeth Warren, August 6, 2021, [https://www.warren.senate.gov/imo/media/doc/chair\\_khan\\_response\\_on\\_behavioral\\_remedies.pdf](https://www.warren.senate.gov/imo/media/doc/chair_khan_response_on_behavioral_remedies.pdf).

<sup>45</sup> Wall Street Journal, “Albertsons to Buy Back 33 Stores It Sold as Part of Merger with Safeway,” Brent Kendall, November 24, 2015, [https://www.wsj.com/articles/albertsons-to-buy-back-33-stores-it-sold-as-part-of-merger-with-safeway-1448411193?mod=article\\_inline](https://www.wsj.com/articles/albertsons-to-buy-back-33-stores-it-sold-as-part-of-merger-with-safeway-1448411193?mod=article_inline).

<sup>46</sup> *Id.*

<sup>47</sup> 15 U.S.C. 18 (emphasis added).

In addition, the FTC should investigate whether the \$4 billion dividend announced in the definitive merger agreement, which Albertsons and Kroger announced on the same day, points to potential collusion between the companies on the financial management of the businesses.<sup>48</sup> The FTC should consider whether this collusion constitutes “gun-jumping,” a violation of Section 1 of the Sherman Act in which companies share proprietary information or collaborate on competitive decisions prior to the consummation of a merger.<sup>49</sup>

Kroger’s and Albertsons’ anticompetitive policies have harmed consumers, workers, small businesses, and the economy as a whole, and the FTC should use its authority under the Clayton Act and the Sherman Act to prevent the companies from merging, reducing competition, and making these problems even worse

Thank you for your attention to this matter.

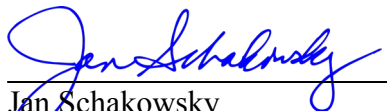
Sincerely,



Elizabeth Warren  
United States Senator



Bernard Sanders  
United States Senator



Jan Schakowsky  
Member of Congress

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<sup>48</sup> Kroger, “Kroger and Albertsons Companies Announce Definitive Merger Agreement,” press release, October 14, 2022, <https://ir.kroger.com/CorporateProfile/press-releases/press-release/2022/Kroger-and-Albertsons-Companies-Announce-Definitive-Merger-Agreement/default.aspx>; Albertsons Companies, Inc., “Albertsons Companies Announces Special Dividend in Connection with Signing of Merger Agreement,” press release, October 14, 2022, <https://www.businesswire.com/news/home/20221014005195/en/Albertsons-Companies-Announces-Special-Dividend-in-Connection-with-Signing-of-Merger-Agreement>.

<sup>49</sup> 15 U.S.C. § 1; Federal Trade Commission, “The Rhetoric of Gun-Jumping,” remarks, William Blumenthal, November 10, 2005, [https://www.ftc.gov/sites/default/files/documents/public\\_statements/rhetoric-gun-jumping/20051110gunjumping.pdf](https://www.ftc.gov/sites/default/files/documents/public_statements/rhetoric-gun-jumping/20051110gunjumping.pdf).

CC:

Jonathan Kanter, Assistant Attorney General – Antitrust Division, Department of Justice