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December 15, 2023

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

Dear Chair Khan,

I write to request that the Federal Trade Commission (FTC) intervene to block the proposed Kroger and Albertsons merger, given evidence that it would have serious negative impacts on Oregonians, households, and consumers nationwide. Specifically, I am concerned that the proposed merger, if approved, will result in fewer pharmacy options for Oregonians, fewer economic opportunities for Oregon's small farmers, and harm to Oregon's workers and consumers.

The proposed merger could reduce the number of pharmacies serving Oregonians. Kroger currently operates 53 retail pharmacies in Oregon, and between 2020 and 2022, Kroger-owned pharmacies provided medications to 22% of Oregonians. Albertsons owns 106 retail pharmacies and provided medications to 25% of Oregonians between 2020 and 2022. Together, these two companies are the two largest prescription pharmacy providers in Oregon. Their merger would result in one company holding 30% of the retail prescription drug market in Oregon, more than double the next largest share of any competitor.

The Oregon Health Authority undertook a preliminary review of the impact of the proposed merger on health care and found that the proposed merger would result in harmful concentration of retail pharmacies in the state. Pharmacies serve a critical role in delivering health care and providing access to medications, especially for people who live in rural and underserved areas. While Kroger and Albertsons have both reiterated their intent to not close any pharmacies, the companies cannot control the future of pharmacies in divested stores. In the wake of the 2014 Albertsons-Safeway merger, dozens of pharmacies closed in Oregon after grocer Haggen filed for bankruptcy after receiving divested stores. Retail pharmacy closures reduce choices and access to health care for consumers, often requiring longer commutes as well as switching to mail-order in lieu of seeing licensed pharmacists who recommend cheaper generic medicine and can oversee medication interactions for customers.

Further, the proposed merger's concentration of the pharmacy market in Oregon could adversely impact servicemembers and veterans, and their families. Kroger left the TRICARE network in

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2022, and does not accept TRICARE at any of its retail pharmacies. While Albertsons does accept TRICARE, this merger creates uncertainty for military families regarding their future pharmaceutical care. If more pharmacies across the state leave the TRICARE network, military families will face major barriers to getting the medications they need. This is an unacceptable outcome.

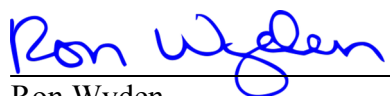
I am also concerned about how this merger might impact Oregonians' privacy. As part of a recent inquiry I conducted into major pharmacy chains' privacy practices, I learned that Kroger provides pharmacy records to law enforcement officials without a warrant or any internal review by a legal professional. This finding places Kroger behind the majority of its peer chain pharmacies in terms of its commitment to safeguarding patient privacy. Warrantless medical surveillance is highly vulnerable to being weaponized, especially against people seeking reproductive healthcare or gender-affirming care that is wrongly politicized, or even criminalized, in some states. I am gravely concerned that this merger could translate to weak patient privacy protections at the majority of Oregon pharmacies, with the greatest potential for harm borne by some of our most vulnerable constituents.

To make matters worse, I fear the merger could hurt the family farms and small organic growers that secure our state's food chain. I have spent much of the last year highlighting Oregon's statewide bounty, which reflects a long-standing commitment to supporting small farmers and growers. Oregon sees major economic benefits from the work of small farmers, including those who grow specialty crops and organic foods. Unfortunately, these small businesses and entrepreneurs saw the number of purchase orders from big corporate chains drop precipitously in the wake of the Haggen merger in 2015. Absent a binding agreement to maintain or increase purchasing from local producers, I fear these smaller players will face similar harms as a result of this proposed merger.

While Kroger and Albertsons claim that many of the negative impacts of this merger can be addressed through divestitures, I am not convinced. Less than a decade ago, Albertsons-Safeway proposed a similar divestiture only to buy back many of the divested stores two years later and watch the rest go out of business. I urge the FTC to use the Albertsons-Safeway outcome as a guide to the Commission as it considers possible outcomes of this proposed merger.

Oregonians should not have their jobs, access to medicine, or access to healthy, local food rest on the often empty promises of large corporations. I urge you to block this merger.

Sincerely,



Ron Wyden
United States Senator