

Growing Legal Challenges Threaten Kroger-Albertsons Merger



Under intense federal antitrust scrutiny, Kroger's bid to acquire rival Albertsons, valued at \$25 billion, encounters mounting legal obstacles from multiple fronts as several states and consumer groups file lawsuits to halt the contentious merger.

Legal Hurdles Intensify

The lawsuit, filed by Washington in state court on Jan. 15, adds to the merger's uncertainty as the Federal Trade Commission deliberates its stance on the deal. Contrary to superficial impressions, legal experts caution that such challenges pose significant risks to the merger's success, including the potential to derail it entirely. According to Eleanor Fox, a trade regulation professor at New York University, state and consumer lawsuits permitted under U.S. antitrust law present formidable obstacles.

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Divisive Proposal

Kroger's proposal, one of the largest ever in retail, has stirred controversy since its inception. With nearly 5,000 combined stores spanning almost every U.S. state and employing over 700,000 workers, the deal's implications are vast, touching on competition and labor rights concerns. Consumer and union groups have voiced opposition, fearing adverse impacts on competition, pricing, and employment. While the FTC remains silent pending its decision, Kroger executives vowed to defend the merger vigorously.

State and Consumer Lawsuits

Legal challenges to the merger have emerged from various quarters. Washington Attorney General Bob Ferguson's lawsuit seeks to block the merger nationwide, alleging it would substantially reduce competition and likely increase consumer food prices. Ferguson's filing highlighted internal doubts among Albertsons' executives regarding the deal's legality and its purported consumer benefits. Moreover, Ferguson criticized the proposed divestiture deal with Piggly Wiggly operator C&S Wholesale Grocers as inadequate, casting further doubt on the merger's viability.

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In California, a consumer lawsuit filed in U.S. District Court faced initial dismissal due to insufficient evidence of potential harm from the merger. However, an updated lawsuit filed on Jan. 10 addresses these concerns, emphasizing the threat to competition in states where Kroger and Albertsons operate.

Early Legal Battles

Early attempts to impede the merger's progress through legal channels met with mixed success. Lawsuits by the District of Columbia and several states aimed to halt Albertsons' planned special dividend, arguing it would weaken the company and harm competition. Although initial delays were granted, subsequent appeals were dropped after Albertsons disbursed the dividends.

Ongoing Investigations

Apart from federal scrutiny, several states, including Arizona, California, and Colorado, are investigating the merger for potential antitrust violations. The District of Columbia refrained from disclosing details of its investigative activities. Utah opted out of intervening due to minimal overlap between Kroger and Albertsons stores. Montana's Attorney General expressed concerns similar to those raised in Washington's lawsuit, signaling the possibility of

future legal action

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