

US FTC Sues to Block Kroger-Albertsons Merger: A Shift in Antitrust Enforcement Strategy



The US Federal Trade Commission (FTC) has taken a firm stance against the proposed tie-up between supermarket giants Kroger Co. and Albertsons Cos., marking a notable shift in antitrust enforcement strategy. The lawsuit underscores regulators' reluctance to rely on asset divestitures as a panacea for competition concerns.

The Shift Away from Pre-Complaint Settlements

Under the Biden administration, both the FTC and the Justice Department's Antitrust Division have signaled a preference for challenging mergers rather than accepting pre-complaint settlements through divestitures. This approach aims to address concerns about potential monopolistic behavior more effectively.

Antitrust experts highlight recent instances in the grocery industry where divestitures have failed to uphold competition. For instance, Albertsons' previous divestitures in 2015, aimed at facilitating its merger with Safeway Inc., resulted in the bankruptcy of the divested stores shortly after the deal.

Concerns Over Failed Divestitures

Experts caution against treating mergers like a gamble and emphasize that the risks of failed divestitures should not burden consumers. David Balto, a former trial attorney in the DOJ's Antitrust Division, advocates for robust enforcement measures to protect consumer interests.

The FTC, along with eight states and Washington, D.C., filed a lawsuit to block Kroger's \$24.6 billion acquisition of Albertsons. The complaint alleges that the merger would lead to adverse effects such as lower wages for workers and higher grocery prices, echoing concerns raised by Colorado and Washington states in their separate lawsuits.

Inadequacy of Proposed Divestitures

Kroger and Albertsons attempted to address the FTC's concerns by announcing plans to divest at least 413 stores to C&S Wholesale Grocers Inc., the owner of Piggly Wiggly chain. However, the FTC argues that C&S lacks the resources and capabilities to effectively replace the competition lost between Kroger and Albertsons.

The FTC contends that the proposed divestiture fails to mitigate anticompetitive concerns adequately. According to the complaint, C&S currently operates only a limited number of stores, making it incapable of replicating the competitive landscape between the merging giants.

Scrutiny Under FTC Chair Lina Khan

FTC Chair Lina Khan's tenure signals a more aggressive stance on merger reviews, with a focus on ensuring proposed offsets effectively address competition concerns. Recent failed divestitures, such as the Haggen Holdings LLC case following Albertsons' Safeway merger, serve as cautionary tales, prompting heightened scrutiny of merger proposals.

Litigating Antitrust Remedies

The FTC's lawsuit against the Kroger-Albertsons merger highlights a trend towards litigating antitrust remedies rather than accepting pre-complaint settlements. Companies now face increased scrutiny even when proposing divestitures with prospective buyers.

While companies historically enjoyed some advantage in court battles over merger remedies, the FTC's strengthened position in the Kroger lawsuit suggests a shifting landscape. Antitrust litigations increasingly shape the final outcome of merger proposals, emphasizing the importance of robust regulatory oversight.

Don't be a silent ninja! Let us know your thoughts in the comment section below.

<https://www.jdjournal.com/>