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# Retail Landscape Changes May Affect Kroger-Albertsons Deal

By **Edward Fox, Emily Cotton and Laura O'Laughlin** (February 15, 2023)

In October, two of the largest retail grocery chains in the U.S., Kroger Co. and Albertsons Cos. Inc., announced plans to merge.

This was the first major grocery merger announced in the post-pandemic era, and the announcement prompted the Federal Trade Commission to issue a second request as part of its regulatory review.[1]

Yet recent developments affecting grocery retail, in particular the COVID-19 pandemic, have changed the way that researchers, retail experts and regulators may need to assess the marketplace for groceries.

First, the expansion of delivery options suggests a reassessment of how geographic markets for grocery retail are defined.

Second, the increased prominence of supercenters and warehouse club stores potentially broadens the relevant competitive set beyond traditional grocery retailers.

Finally, emerging channels offer different mixes of nonperishable and perishable grocery products, potentially blurring the lines of competition and the outlets considered when grocery shopping.

As a result of these trends changing how people shop for, buy and take possession of grocery products — e.g., delivery or shipment to home — previous comparable transactions between grocery retailers may offer less guidance than what one might initially expect.

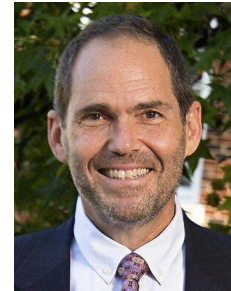
For instance, in the FTC's review of the Whole Foods Market Inc. and Wild Oats Markets Inc. merger in 2007, key questions in evaluating the potential for market power hinged on defining the relevant retail product market and determining whether natural and organic supermarkets like Whole Foods and Wild Oats competed directly with traditional grocery stores in classically defined geographic markets.[2]

In 2015, the FTC evaluated similar questions related to geographic markets for the merger of Albertsons with another traditional grocery retailer, Safeway Inc., and required the companies to sell 168 supermarkets in 130 local markets due to anti-competitive concerns.[3][4]

The potential question in the review of the Kroger and Albertsons transaction is whether the pandemic-fueled evolution of grocery retail has sufficiently altered competitive dynamics such that this newest merger should be examined differently than prior mergers of traditional supermarket chains.

In this article, we explore these changes to the retail grocery landscape and consider how they might play into the review of the Kroger and Albertsons transaction.

## Trading Areas



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In past brick-and-mortar grocery mergers, trading areas were defined as the region around a store from which it draws customers.

Defining trading areas is important in assessing competition in geographic markets for physical retailers and the effects of proposed store closures or divestitures. FTC guidance refers to the distance and time that customers are willing to travel as a crucial part of this analysis.[5]

Grocery delivery services have proliferated since the start of the pandemic.[6] While sophisticated logistics and distribution infrastructure for grocery delivery existed prior to 2020, it was the COVID-19 pandemic, with attendant fears about the risk of shopping in grocery stores, that accelerated this trend.

Between 2020 and 2022, total e-commerce sales of groceries grew nearly 60%.[7] While some retailers outsourced their delivery services to companies such as Instacart Inc. or Shipt Inc., the pandemic motivated others to invest in creating their own such services.

Aside from delivery, many retailers also invested in other innovative methods for consumers to take possession of groceries, including curbside pickup and buy online, pick up in store.[8]

It is not yet clear how this development will affect the assessment of geographic markets, but it may well result in the expansion of trading areas for grocery retailers' stores, depending on a store's delivery area.

More broadly, the fact that many grocery delivery services do not require consumers to travel at all suggests there may be a reassessment of how geographic markets are defined for grocery retail. In addition, grocery delivery services could be considered against the risk of food deserts, areas that lack convenient options for affordable and healthy food.

It is unclear to what extent any expansion of trading areas affects this risk.

### **Walmart and Warehouse Clubs**

Since well before the pandemic, Walmart Inc. has been the undisputed leader among U.S. grocery retailers after converting its "Division 1" discount stores into supercenters, large-footprint stores that include both a supermarket and a discount store under one roof.[9]

For more than two decades, Walmart's growth has been driven by supercenters and their grocery sales, which currently represent more than 50% of the retailer's total net sales in the US.[10]

There is therefore little doubt that supercenters, in particular Walmart supercenters, are key competitors to traditional grocery stores because they sell the same variety of perishable and nonperishable products, and similar assortments of branded and private-label products in each category.[11]

The COVID-19 pandemic further enhanced Walmart's position in grocery retail by altering consumers' shopping habits.

Through the pandemic, consumers were 20% more likely to make a trip to the grocery store only once a week increasingly sought one-stop shopping, which only accelerated Walmart's

market share growth.[12]

One estimate put Walmart's aggregate U.S. grocery market share in 2021 at just over 25% and the shares of Kroger and Albertsons at 8% and 5%, respectively.[13]

Yet COVID-19's impact on the growth of grocery shopping outside of traditional supermarket chains was not limited to Walmart. Warehouse clubs — including national retailers like Costco Wholesale Corp. and Sam's Club, as well as regional retailers like BJ's Wholesale Club Holdings Inc. — also grew in prominence through the pandemic.[14]

Warehouse clubs offer a similar variety of grocery categories as traditional retailers — including both nonperishable and perishable products — but with limited assortment of products that are mostly in bulk sizes that are not available in traditional grocery stores.[15]

With the pandemic, Costco experienced unprecedented growth, and BJ's market share grew significantly because of its unique focus on selling bulk groceries.[16]

Did COVID-19 make warehouse clubs closer substitutes for traditional grocery retailers across customer segments? If not a general phenomenon, did warehouse clubs become close substitutes for traditional grocery retailers to some customers, perhaps those with larger families? How would the marginal pricing decisions of traditional grocery retailers be affected?

The answers to these questions could factor into any current-day analysis of grocery competition and market concentration.

### **Perishable and Nonperishable Products**

Nonperishable products are storable consumer goods that are bought and used frequently, such as toiletries, household products and certain food and beverage items.

The widespread availability of nonperishable products from a variety of retailers — in particular, online retailers that ship to consumers' homes — raises the question of how those retailers affect grocery retail competition in geographic markets.

Although online retailers may not ship a full variety of perishable products, and so may not act as close substitutes for traditional grocery retailers, they may nevertheless affect local grocery competition.

Recall that consumers have been shopping more at warehouse club stores that offer limited assortments, including for nonperishable products. At the same time, sales of private brands at grocery retailers also increased during the COVID-19 pandemic.[17] This convergence raises questions.

Do consumers consider the private brands sold by Costco and Publix, for example, to be perfect substitutes? Are the within-store consumer product choice questions that have been raised in prior transactions still relevant for national brands? If so, is this true for all consumers, or are consumers who are loyal to national brands vulnerable to reduced competition?

On the perishables side of the business, the past couple of years have also been accompanied by a proliferation of direct-to-consumer perishable foods options such

as Thrive Market and Misfits Market Inc.

For example, Misfits Market, an online grocer specializing in the sale of discounted organic "ugly" produce that grocery stores would rather not sell, expanded nationwide and doubled the volume of its orders in some states since the start of the pandemic.[18]

In 2020 alone, Thrive Market, a subscription-based online grocer, experienced a 90% growth in sales.[19]

This rise further highlights the divergence between perishable and nonperishable products for consumers, and it remains unclear to what extent the composition of these products within stores affects competition.

### **Conclusion: A Shopper's Choice of Possible Outcomes**

Clearly, a myriad of issues accelerated by the COVID-19 pandemic are likely to affect the analysis of the Kroger-Albertsons merger.

Certainly, issues regarding the substitutability among competitors and how to define product and geographic markets in the new grocery retail environment are likely to be prominent.

But the Kroger-Albertsons merger represents the first major grocery retail transaction to tackle these issues head on in a landscape that has transformed significantly since the start of the pandemic. How these issues are evaluated and resolved could set the standard for future retail mergers in this space.

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[1] "Kroger and Albertsons Companies Announce Definitive Merger Agreement," Kroger, available at <https://ir.kroger.com/CorporateProfile/press-releases/press-release/2022/Kroger-and-Albertsons-Companies-Announce-Definitive-Merger-Agreement/default.aspx>; "Kroger Receives FTC Request for Additional Information on Albertsons Deal," Reuters, December 6, 2022, available at <https://www.reuters.com/business/kroger-receives-ftc-request-additional-information-albertsons-deal-2022-12-06/>.

[2] See Complaint for Temporary Restraining Order and Preliminary Injunction in Federal

Trade Commission v. Whole Foods Market, Inc. and Wild Oats Markets, Inc., Case no. 1:07-cv-01021, filed June 6, 2007, ¶¶ 2, 4.

[3] "FTC Requires Albertsons and Safeway to Sell 168 Stores as a Condition of Merger," Federal Trade Commission, January 27, 2015, available at <https://www.ftc.gov/news-events/news/press-releases/2015/01/ftc-requires-albertsons-safeway-sell-168-stores-condition-merger>.

[4] In contrast, the centerpiece of the FTC's initial review of the Amazon and Whole Foods merger in 2017 was less focused on local geographic competition, and the merger was approved without further review and without any divestitures. Kendall, Brent, and Heather Haddon, "FTC Approves Whole Foods-Amazon Merger," The Wall Street Journal, August 23, 2017, available at <https://www.wsj.com/articles/whole-foods-shareholders-approve-merger-with-amazon-1503498623>.

[5] "The FTC often examines local geographic markets when reviewing mergers in retail markets, such as supermarkets, pharmacies, or funeral homes, or in service markets, such as health care." "Markets," Federal Trade Commission, available at <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/mergers/markets>.

[6] See Kang, Jaewon, Preetika Rana, and Corrie Driebusch, "Instacart Won the Pandemic but Rivals Are Catching Up," The Wall Street Journal, April 6, 2022, available at <https://www.wsj.com/articles/instacart-faces-turbulence-after-pandemic-boom-in-grocery-delivery-11649189415>; Moss, Trefor, "A New Market Emerges for Online Delivery: 10-Minute Groceries," The Wall Street Journal, November 1, 2021, available at <https://www.wsj.com/articles/a-new-market-emerges-for-online-delivery-10-minute-groceries-11635764400>.

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[8] See Severson, Kim, "7 Ways the Pandemic Has Changed How We Shop for Food," The New York Times, September 8, 2020, available at <https://www.nytimes.com/2020/09/08/dining/grocery-shopping-coronavirus.html>; Masters, Kiri, "Instacart Just Gave Grocery Retailers The Keys To The Castle," Forbes, March 23, 2022, available at <https://www.forbes.com/sites/kirimasters/2022/03/23/instacart-just-gave-grocery-retailers-the-keys-to-the-castle/?sh=512344b9506f>; Goldschmidt, Bridget, "Shipt Expands Reach With Walgreens, 7-Eleven Partnerships," Progressive Grocer, February 24, 2022, available at <https://progressivegrocer.com/shipt-expands-reach-walgreens-7-eleven-partnerships#:~:text=The%20partnerships%20with%20Walgreens%20and,7%2DEleven%20with%20nearly%206%2C450>.

[9] "Walmart Annual Report 2001," Walmart, available at [https://www.annualreports.com/HostedData/AnnualReportArchive/w/NYSE\\_WMT\\_2001.pdf](https://www.annualreports.com/HostedData/AnnualReportArchive/w/NYSE_WMT_2001.pdf), p. 3; "Walmart 2005 Annual Report," Walmart, available at <https://archive.org/details/2005-annual-report-for-walmart-stores-inc/mode/2up>, p. 22.

[10] "Form 10-K," Walmart, for the fiscal year ended January 31, 2022, available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/0000104169/000010416922000012/wmt-20220131.htm>.

[11] Other retailers, including Target, Meijer, and Fred Meyer, also have supercenters. Walmart also sells a broad variety of CPG and perishable products in bulk in its Sam's Club warehouse stores. The degree to which these Warehouse Clubs compete with grocery stores is a more difficult determination. Watson, Eliane, "What's the Difference between a Walmart Shopper and a Super Target Shopper?," Food Navigator-USA, March 29, 2013, available at <https://www.foodnavigator-usa.com/Article/2013/04/01/What-do-we-really-know-about-Supercenter-shoppers>; "Form 10-K," Walmart, for the fiscal year ended January 31, 2022, available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/0000104169/000010416922000012/wmt-20220131.htm>, p. 10.

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