

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright
 Terrell McSweeney

In the Matter of

Cerberus Institutional Partners V, L.P.
a limited partnership;

AB Acquisition LLC,
a limited liability company;

and

Safeway Inc.,
a corporation.

Docket No. C-4504

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (“Commission”), having reason to believe that Respondents AB Acquisition LLC (“Albertson’s”), and Cerberus Institutional Partners V, L.P. (“Cerberus”), both subject to the jurisdiction of the Commission, agreed to acquire Respondent Safeway Inc. (“Safeway”), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENTS

1. Respondent Cerberus is a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at 875 Third Avenue, New York, New York.

2. Respondent Albertson’s is a company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at 250 Parkcenter Boulevard, Boise, Idaho.

3. Respondent Cerberus, through Albertson's, of which Cerberus is the majority owner, owns and operates a number of supermarkets chains throughout the United States, including supermarkets operating under the Albertsons, Lucky, and United banners.

4. Respondent Safeway is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at 5918 Stoneridge Mall Road, Pleasanton, California.

5. Respondent Safeway owns and operates a number of supermarket chains throughout the United States, including supermarkets operating under the Safeway, Vons, Pavilions, and Tom Thumb banners.

6. Albertson's and Safeway own and operate supermarkets in each of the geographic markets relevant to this Complaint and compete and promote their businesses in these areas.

II. JURISDICTION

7. Respondents, and each of their relevant operating subsidiaries and parent entities, are, and at all times relevant herein have been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the FTC Act, 15 U.S.C. § 44.

III. THE ACQUISITION

8. Pursuant to an Agreement and Plan of Merger dated as of March 6, 2014, as amended on April 7, 2014, and June 13, 2014, Albertson's proposes to purchase all of the issued and outstanding common stock of Safeway in a transaction valued at approximately \$9.2 billion ("the Acquisition").

IV. THE RELEVANT PRODUCT MARKET

9. The relevant line of commerce in which to analyze the Acquisition is the retail sale of food and other grocery products in supermarkets.

10. For purposes of this Complaint, the term "supermarket" means any full-line retail grocery store that enables customers to purchase substantially all of their weekly food and grocery shopping requirements in a single shopping visit with substantial offerings in each of the following product categories: bread and baked goods; dairy products; refrigerated food and beverage products; frozen food and beverage products; fresh and prepared meats and poultry; fresh fruits and vegetables; shelf-stable food and beverage products, including canned, jarred, bottled, boxed, and other types of packaged products; staple foodstuffs, which may include salt, sugar, flour, sauces, spices, coffee, tea, and other staples; other grocery products, including nonfood items such as soaps, detergents, paper goods, other household products, and health and beauty aids; pharmaceutical products and pharmacy services (where provided); and, to the extent permitted by law, wine, beer, and/or distilled spirits.

11. Supermarkets provide a distinct set of products and services and offer consumers convenient one-stop shopping for food and grocery products. Supermarkets typically carry more than 10,000 different items, typically referred to as stock-keeping units (SKUs), as well as a deep inventory of those items. In order to accommodate the large number of food and non-food products necessary for one-stop shopping, supermarkets are large stores that typically have at least 10,000 square feet of selling space.

12. Supermarkets compete primarily with other supermarkets that provide one-stop shopping opportunities for food and grocery products. Supermarkets base their food and grocery prices primarily on the prices of food and grocery products sold at other nearby competing supermarkets. Supermarkets do not regularly conduct price checks of food and grocery products sold at other types of stores and do not typically set or change their food or grocery prices in response to prices at other types of stores.

13. Although retail stores other than supermarkets may also sell food and grocery products, these types of stores—including convenience stores, specialty food stores, limited assortment stores, hard-discounters, and club stores—do not, individually or collectively, provide sufficient competition to effectively constrain prices at supermarkets. These retail stores do not offer a supermarket’s distinct set of products and services that provide consumers with the convenience of one-stop shopping for food and grocery products. The vast majority of consumers shopping for food and grocery products at supermarkets are not likely to start shopping at other types of stores, or significantly increase grocery purchases at other types of stores, in response to a small but significant price increase by supermarkets.

V. THE RELEVANT GEOGRAPHIC MARKETS

14. Customers shopping at supermarkets are motivated by convenience and, as a result, competition for supermarkets is local in nature. Generally, the overwhelming majority of consumers’ grocery shopping occurs at stores located very close to where they live.

15. Respondents currently operate supermarkets under the Safeway, Vons, Pavilions, Tom Thumb, Albertsons, and United banners within approximately two-tenths of a mile to ten miles of each other in each of the relevant geographic markets. The primary trade areas of Respondents’ banners in each of the relevant geographic markets overlap significantly.

16. The 130 geographic markets in which to assess the competitive effects of the Acquisition are localized areas in (1) Anthem, Arizona; (2) Carefree, Arizona; (3) Flagstaff, Arizona; (4) Lake Havasu, Arizona; (5) Prescott, Arizona; (6) Prescott Valley, Arizona; (7) Scottsdale, Arizona; (8) Tucson (Eastern), Arizona; (9) Tucson (Southwest), Arizona; (10) Alpine, California; (11) Arroyo Grande/Grover Beach, California; (12) Atascadero, California; (13) Bakersfield, California; (14) Burbank, California; (15) Calabasas, California; (16) Camarillo, California; (17) Carlsbad (North), California; (18) Carlsbad (South), California; (19) Carpinteria, California; (20) Cheviot Hills/Culver City, California; (21) Chino Hills, California; (22) Coronado Island, California; (23) Diamond Bar, California; (24) El Cajon, California; (25) Hermosa Beach, California; (26) Imperial Beach, California; (27) La Jolla, California; (28) La

Mesa, California; (29) Ladera Ranch, California; (30) Laguna Beach, California; (31) Laguna Niguel, California; (32) Lakewood, California; (33) Lemon Grove, California; (34) Lomita, California; (35) Lompoc, California; (36) Mira Mesa (North), California; (37) Mira Mesa (South), California; (38) Mission Viejo/Laguna Hills, California; (39) Mission Viejo (North), California; (40) Morro Bay, California; (41) National City, California; (42) Newbury Park, California; (43) Newport Beach, California; (44) Oxnard, California; (45) Palm Desert/Rancho Mirage, California; (46) Palmdale, California; (47) Paso Robles, California; (48) Poway, California; (49) Rancho Cucamonga/Upland, California; (50) Rancho Santa Margarita, California; (51) San Diego (Clairemont), California; (52) San Diego, (Hillcrest/University Heights), California; (53) San Diego (Tierrasanta), California; (54) San Luis Obispo, California; (55) San Marcos, California; (56) San Pedro, California; (57) Santa Barbara, California; (58) Santa Barbara/Goleta Heights, California; (59) Santa Clarita, California; (60) Santa Monica, California; (61) Santee, California; (62) Simi Valley, California; (63) Solana Beach, California; (64) Thousand Oaks, California; (65) Tujunga, California; (66) Tustin (Central), California; (67) Tustin/Irvine, California; (68) Ventura, California; (69) Westlake Village, California; (70) Yorba Linda, California; (71) Butte, Montana; (72) Deer Lodge, Montana; (73) Missoula, Montana; (74) Boulder City, Nevada; (75) Henderson (East), Nevada; (76) Henderson (Southwest), Nevada; (77) Summerlin, Nevada; (78) Ashland, Oregon; (79) Baker County, Oregon; (80) Bend, Oregon; (81) Eugene, Oregon; (82) Grants Pass, Oregon; (83) Happy Valley/Clackamas, Oregon; (84) Keizer, Oregon; (85) Klamath Falls, Oregon; (86) Lake Oswego, Oregon; (87) Milwaukie, Oregon; (88) Sherwood, Oregon; (89) Springfield, Oregon; (90) Tigard, Oregon; (91) West Linn, Oregon; (92) Colleyville, Texas; (93) Dallas (Far North), Texas; (94) Dallas (Farmers Branch/North Dallas), Texas; (95) Dallas (University Park/Highland Park), Texas; (96) Dallas (University Park/Northeast Dallas), Texas; (97) McKinney, Texas; (98) Plano, Texas; (99) Roanoke, Texas; (100) Rowlett, Texas; (101) Bremerton, Washington; (102) Burien, Washington; (103) Everett, Washington; (104) Federal Way, Washington; (105) Gig Harbor, Washington; (106) Lake Forest, Washington; (107) Lake Stevens, Washington; (108) Lakewood, Washington; (109) Liberty Lake, Washington; (110) Milton, Washington; (111) Monroe, Washington; (112) Oak Harbor, Washington; (113) Olympia (East), Washington; (114) Port Angeles, Washington; (115) Port Orchard, Washington; (116) Puyallup, Washington; (117) Renton (New Castle), Washington; (118) Renton (East Hill-Meridian), Washington; (119) Sammamish, Washington; (120) Shoreline, Washington; (121) Silverdale, Washington; (122) Snohomish, Washington; (123) Tacoma (Eastside), Washington; (124) Tacoma (Spanaway), Washington; (125) Walla Walla, Washington; (126) Wenatchee, Washington; (127) Woodinville, Washington; (128) Casper, Wyoming; (129) Laramie, Wyoming; and (130) Sheridan, Wyoming. A hypothetical monopolist controlling all supermarkets in these areas could profitably raise prices by a small but significant amount.

VI. MARKET CONCENTRATION

17. Under the 2010 Department of Justice and Federal Trade Commission Horizontal Merger Guidelines (“Merger Guidelines”) and relevant case law, the Acquisition is presumptively unlawful in the markets for the retail sale of food and other grocery products in supermarkets in all 130 geographic markets listed in Paragraph 16. Under the Merger Guidelines’ standard measure of market concentration, the Herfindahl-Hirschman Index (“HHI”), an acquisition is presumed to create or enhance market power or facilitate its exercise if

it increases the HHI by more than 200 points and results in a post-acquisition HHI that exceeds 2,500 points. The Acquisition would result in market concentration levels well in excess of these thresholds.

18. Post-acquisition HHI levels in the relevant geographic markets would range from 2,562 to 10,000, and the Acquisition would result in HHI increases ranging from 225 to 5,000. Exhibit A presents market concentration levels for each of the relevant geographic markets.

19. The Acquisition would reduce the number of meaningful competitors from two to one in 13 relevant geographic markets, three to two in 42 relevant geographic markets, and 4 to 3 (or greater) in 75 relevant geographic markets.

VII. ENTRY CONDITIONS

20. Entry into the relevant markets would not be timely, likely, or sufficient in magnitude to prevent or deter the likely anticompetitive effects of the Acquisition. Significant entry barriers include the time and costs associated with conducting necessary market research, selecting an appropriate location for a supermarket, obtaining necessary permits and approvals, constructing a new supermarket or converting an existing structure to a supermarket, and generating sufficient sales to have a meaningful impact on the market.

VIII. EFFECTS OF THE ACQUISITION

21. The Acquisition, if consummated, is likely to substantially lessen competition for the retail sale of food and other grocery products in supermarkets in the relevant geographic markets identified in Paragraph 16 in the following ways, among others:

- (a) by eliminating direct and substantial competition between Respondents Albertson's and Safeway;
- (b) by increasing the likelihood that Respondent Albertson's will unilaterally exercise market power; and
- (c) by increasing the likelihood of, or facilitating, coordinated interaction between the remaining participants in each of the relevant markets.

22. The ultimate effect of the Acquisition would be to increase the likelihood that the prices of food, groceries, or services will increase, and that the quality and selection of food, groceries, or services will decrease, in the relevant geographic markets.

IX. VIOLATIONS CHARGED

23. The agreement described in Paragraph 8 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and the acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-seventh day of January, 2015, issues its complaint against said Respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL:

EXHIBIT A

Area Number (See Para. 16 of Complaint)	City	State	Merger Result	HHI (pre)	HHI (post)	Delta
1	Anthem	AZ	4 to 3	2768	3423	655
2	Carefree	AZ	5 to 4	2298	2976	678
3	Flagstaff	AZ	5 to 4	2744	3365	621
4	Lake Havasu	AZ	4 to 3	2609	3401	792
5	Prescott	AZ	4 to 3	2675	3405	730
6	Prescott Valley	AZ	4 to 3	2828	3340	512
7	Scottsdale	AZ	3 to 2	3797	5001	1204
8	Tucson (Eastern)	AZ	4 to 3	3341	4130	789
9	Tucson (Southwest)	AZ	5 to 4	2018	2909	891
10	Alpine	CA	3 to 2	3857	5002	1145
11	Arroyo Grande/ Grover Beach	CA	3 to 2	3690	6864	3174
12	Atascadero	CA	3 to 2	3456	6242	2786
13	Bakersfield	CA	6 to 5	1923	2562	639
14	Burbank	CA	3 to 2	4199	5011	812
15	Calabasas	CA	3 to 2	3400	5415	2015
16	Camarillo	CA	5 to 4	2950	4215	1265
17	Carlsbad (North)	CA	4 to 3	2977	3888	911
18	Carlsbad (South)	CA	5 to 4	2209	3210	1001
19	Carpinteria	CA	2 to 1	5012	10,000	4988
20	Cheviot Hills/ Culver City	CA	4 to 3	2394	3914	1520
21	Chino Hills	CA	4 to 3	3596	4047	451
22	Coronado Island	CA	2 to 1	5025	10,000	4975
23	Diamond Bar	CA	3 to 2	4466	5231	765
24	El Cajon	CA	4 to 3	2983	3597	614
25	Hermosa Beach	CA	5 to 4	2752	4371	1619
26	Imperial Beach	CA	2 to 1	5869	10,000	4131

27	La Jolla	CA	3 to 2	5505	7083	1578
28	La Mesa	CA	3 to 2	3382	5997	2615
29	Ladera Ranch	CA	2 to 1	5081	10,000	4919
30	Laguna Beach	CA	3 to 2	3335	5799	2464
31	Laguna Niguel	CA	4 to 3	3190	3883	693
32	Lakewood	CA	6 to 5	2073	2581	508
33	Lemon Grove	CA	3 to 2	3581	6059	2478
34	Lomita	CA	3 to 2	3695	5040	1345
35	Lompoc	CA	4 to 3	2566	3713	1147
36	Mira Mesa (North)	CA	5 to 4	2412	3808	1396
37	Mira Mesa (South)	CA	2 to 1	6904	10,000	3096
38	Mission Viejo/ Laguna Hills	CA	4 to 3	3157	3784	627
39	Mission Viejo (North)	CA	3 to 2	3933	5012	1079
40	Morro Bay	CA	5 to 4	2965	4056	1091
41	National City	CA	3 to 2	3748	5013	1265
42	Newbury Park	CA	3 to 2	3629	5833	2204
43	Newport Beach	CA	5 to 4	3160	3811	651
44	Oxnard	CA	4 to 3	2939	3375	436
45	Palm Desert/ Rancho Mirage	CA	6 to 5	2196	3094	898
46	Palmdale	CA	4 to 3	3056	4039	983
47	Paso Robles	CA	4 to 3	2851	5427	2576
48	Poway	CA	4 to 3	2540	3526	986
49	Rancho Cucamonga/ Upland	CA	4 to 3	3266	4118	852
50	Rancho Santa Margarita	CA	4 to 3	2628	4300	1672
51	San Diego (Clairemont)	CA	3 to 2	4066	6374	2308
52	San Diego (Hillcrest/ University Heights)	CA	3 to 2	4436	6571	2135
53	San Diego, CA (Tierrasanta)	CA	2 to 1	5586	10,000	4414
54	San Luis Obispo	CA	4 to 3	2896	5306	2410
55	San Marcos	CA	3 to 2	5991	6282	291

56	San Pedro	CA	3 to 2	3518	6442	2924
57	Santa Barbara	CA	4 to 3	2741	3462	721
58	Santa Barbara/ Goleta	CA	3 to 2	3909	7469	3560
59	Santa Clarita	CA	4 to 3	2646	3732	1086
60	Santa Monica	CA	4 to 3	3293	4879	1586
61	Santee	CA	3 to 2	3477	6133	2656
62	Simi Valley	CA	5 to 4	3633	7101	3468
63	Solana Beach	CA	3 to 2	3830	6188	2358
64	Thousand Oaks	CA	3 to 2	4057	6047	1990
65	Tujunga	CA	3 to 2	3688	3969	281
66	Tustin (central)	CA	4 to 3	3474	4348	874
67	Tustin/Irvine	CA	4 to 3	3939	4485	546
68	Ventura	CA	4 to 3	2732	3550	818
69	Westlake Village	CA	5 to 4	1955	3563	1608
70	Yorba Linda	CA	4 to 3	2803	4588	1785
71	Butte	MT	3 to 2	4701	5189	488
72	Deer Lodge	MT	2 to 1	5000	10,000	5000
73	Missoula	MT	4 to 3	3107	4063	956
74	Boulder City	NV	2 to 1	5051	10,000	4949
75	Henderson (East)	NV	4 to 3	2705	3356	651
76	Henderson (Southwest)	NV	3 to 2	3653	5042	1389
77	Summerlin	NV	4 to 3	3107	4367	1260
78	Ashland	OR	2 to 1	5013	10,000	4987
79	Baker County	OR	2 to 1	5102	10,000	4898
80	Bend	OR	6 to 5	2632	3824	1192
81	Eugene	OR	5 to 4	2392	3414	1022
82	Grants Pass	OR	4 to 3	2769	3537	768
83	Happy Valley/ Clackamas	OR	2 to 1	5006	10,000	4994
84	Keizer	OR	5 to 4	2852	3367	515

85	Klamath Falls	OR	5 to 4	2511	2917	406
86	Lake Oswego	OR	4 to 3	3176	5604	2428
87	Milwaukie	OR	3 to 2	5729	6082	353
88	Sherwood	OR	3 to 2	3989	5028	1039
89	Springfield	OR	3 to 2	4400	5197	797
90	Tigard	OR	5 to 4	2261	2984	723
91	West Linn	OR	3 to 2	3611	6268	2657
92	Colleyville	TX	5 to 4	2686	3465	779
93	Dallas (Far North)	TX	5 to 4	2413	2891	478
94	Dallas (Farmers Branch/ North Dallas)	TX	4 to 3	3746	5175	1429
95	Dallas (University Park/ Highland Park)	TX	4 to 3	2755	4261	1506
96	Dallas (University Park/ Northeast Dallas)	TX	5 to 4	2345	3065	720
97	McKinney	TX	5 to 4	2692	3613	921
98	Plano	TX	4 to 3	3105	3541	436
99	Roanoke	TX	3 to 2	4680	5351	671
100	Rowlett	TX	3 to 2	3386	5450	2064
101	Bremerton	WA	4 to 3	2721	3399	678
102	Burien	WA	5 to 4	1979	4489	2510
103	Everett	WA	5 to 4	2301	2586	285
104	Federal Way	WA	5 to 4	2312	2709	397
105	Gig Harbor	WA	3 to 2	3396	5235	1839
106	Lake Forest Park	WA	5 to 4	3889	4352	463
107	Lake Stevens	WA	5 to 4	2646	3455	809
108	Lakewood	WA	5 to 4	2333	3170	837
109	Liberty Lake	WA	3 to 2	3483	5090	1607
110	Milton	WA	3 to 2	3960	5010	1050
111	Monroe	WA	4 to 3	2911	3352	441
112	Oak Harbor	WA	3 to 2	4296	6446	2150
113	Olympia (East)	WA	6 to 5	2205	2566	361

114	Port Angeles	WA	3 to 2	3773	5588	1815
115	Port Orchard	WA	4 to 3	2747	3362	615
116	Puyallup	WA	3 to 2	4160	5072	912
117	Renton (East Hill-Meridian)	WA	4 to 3	3304	3719	415
118	Renton (New Castle)	WA	4 to 3	4417	5274	857
119	Sammamish	WA	2 to 1	5761	10,000	4239
120	Shoreline	WA	4 to 3	3792	4017	225
121	Silverdale	WA	4 to 3	2845	3516	671
122	Snohomish	WA	2 to 1	5595	10,000	4405
123	Tacoma (Eastside)	WA	4 to 3	3260	3727	467
124	Tacoma (Spanaway)	WA	5 to 4	2707	3360	653
125	Walla Walla	WA	5 to 4	2624	3417	793
126	Wenatchee	WA	3 to 2	3744	5047	1303
127	Woodinville	WA	3 to 2	3568	5192	1624
128	Casper	WY	4 to 3	3816	4353	537
129	Laramie	WY	3 to 2	3793	5000	1207
130	Sheridan	WY	3 to 2	4802	5421	619