



**Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions for Rodney McMullen
Chairman, CEO of the Kroger Co.
December 6, 2022**

1. Store closures caused by consolidation in the grocery industry have increased the problem of “food deserts”—areas with limited access to affordable and healthy food. People living in food deserts have a higher risk of diabetes, obesity, cardiovascular disease, and other conditions related to diet. According to the U.S. Department of Agriculture, 23.5 million Americans, in areas urban and rural, are now estimated to live in food deserts. Illinois is not immune from this problem. In Chicago alone, there are estimated to be more than 500,000 people living in food deserts, with the majority of the food deserts located on the South and West sides of the city. Kroger and Albertsons own the Mariano’s and Jewel-Osco grocery chains, respectively. Those are two of the Chicagoland area’s main grocery stores.

As a part of the proposed Kroger-Albertsons merger, stores would be divested in an effort to maintain competition in markets where the two companies currently have a presence. Notably, when a similar divestiture occurred when Albertsons merged with Safeway, the company that purchased divested stores turned around and declared bankruptcy less than one year after the deal closed.

- a. What steps do you plan to take to ensure this merger does not lead to store closures, creating more and larger food deserts in Chicago and other locations?

Kroger pursued this transaction to serve more customers and expand access to fresh, affordable food anytime, anywhere through a larger national footprint and delivery network. We will not close any stores, distribution centers or manufacturing facilities as a result of this merger. We will work with the antitrust regulators to develop a thoughtful divestiture plan and intend to position all divested stores for success going forward.

- b. How will you ensure that any divested stores remain competitive in the long term?

Working together with the antitrust regulators, we will ensure any divested stores are sold to qualified operators with appropriate management experience, a sound business plan, strong balance sheet and the financial stability to compete.

2. The concern about store closures is not limited to food deserts. Kroger and Albertsons stores employ thousands of people, including many in Illinois. I have spoken with representatives of local unions whose employees work in your stores and they have concerns about what this merger will mean for their members. When Albertsons was required to divest 168 stores as part of its merger with Safeway in 2014, many of them were sold to a company that filed for bankruptcy less than a year later. As a result, many of those stores closed and a significant number of grocery workers lost their jobs.

- a. Given the presence of both Kroger- and Albertsons-owned grocery stores in the Chicago area, what assurances can you provide that this merger, if approved, will not threaten the jobs of grocery workers?

Kroger will not close any stores or lay off any frontline associates as a result of this merger, including stores that may need to be divested to obtain regulatory approval. We are acutely aware of the need to secure strong buyers for any divested stores, and the companies will work with the antitrust regulators to position any divested stores for success going forward.

In fact, we expect this merger to enable us to better support our associates and secure the long-term future of union jobs. We have committed to investing \$1 billion to continue raising associate wages and



comprehensive benefits following the merger close. We also expect that by bringing together Kroger and Albertsons Cos., we will create new and exciting career opportunities for associates of both companies.

- b.** What assurances can you provide that this merger, if approved, will not lead to a reduction in pay and benefits for grocery workers as a result of the loss of competition between Kroger and Albertsons resulting from the merger?

Kroger has a long track record of investing to support our associates and has invested an incremental \$1.2 billion in associate wages and benefits since 2018. We expect to build on this track record following our merger with Albertsons Cos., and we have committed to invest \$1 billion to continue raising associate wages and comprehensive benefits after the merger closes.

- 3.** At a time of high inflation, with consumers struggling to put food on the table, keeping prices affordable is critical. As part of this proposed merger, the companies have committed to investing \$500 million to lower prices. However, this commitment does not discuss the merged company's commitment to invest any savings from the merger into lowering prices for consumers over the long term.

Please provide specific information about how the merged company plans to keep prices low at its stores over the long term, should this merger go through.

Our business model is built around lowering prices to attract more customers versus making a higher margin on fewer customers. That is why our priority is to invest in lowering prices and improving the customer experience so we can attract and retain more customers. Since 2003, customers have benefited from \$5 billion in lower pricing when they shop with us. These investments are visible in our retail gross margins, which have steadily declined over time. Our history of mergers shows we follow through on our commitments. Following our merger with Harris Teeter in 2014, we lowered prices by \$130 million per year. After our merger with Roundy's in 2017, we lowered prices by \$110 million per year. As part of the merger with Albertsons Cos., we committed to lowering prices consistent with our track record. We will begin these investments to lower prices on day one after the merger closes.

- 4.** The merger review process is intensive and requires a lot of work to be done by a lot of people and businesses.

- a.** How much does your company anticipate it will spend on legal services, investment bankers, and other advisers during the merger review process?

Fees are standard and customary for a transaction of this type. Advisory fees associated with the transaction will be reported in our SEC filings in accordance with applicable guidelines and regulations.

- b.** How much of this work do you anticipate will be conducted by minority-owned businesses and service providers?

Diversity and inclusion are among our longstanding values, both within our company and in our choice of suppliers as well. We are a founding member of the Billion Dollar Roundtable, an organization focused on recognizing corporations that spend at least \$1 billion with minority and women-owned businesses. Today, Kroger spends \$4 billion with diverse suppliers and our commitment is to grow that number to \$10 billion by 2030.



Questions for the Record from Senator Alex Padilla
Senate Judiciary Committee, Subcommittee on Competition Policy, Antitrust, and Consumer Rights
“Examining the Competitive Impact of the Proposed Kroger-Albertsons Transaction”
November 29, 2022

Questions for Mr. Rodney McMullen

1. In order to gain approval, Kroger and Albertsons have said they are willing to divest up to 375 stores – either as a new independent company or to third party buyers. It will be a massive undertaking to find willing and capable third parties to purchase those stores and operate them with the same level of service that consumers and workers are used to. Just 7 years ago, as a condition for approval to acquire Safeway, Albertsons divested 146 stores in a sale to Haggen. But within a year, Haggen filed for bankruptcy, leaving the consumers and workers who relied on those 146 stores far worse off than before Albertson’s acquisition of Safeway.
 - a. How did you reach the conclusion that up to 375 stores would need to be divested, and which stores in which states do you anticipate will need to be divested?

We want to clarify that in the merger agreement, we indicate that Kroger and Albertsons Cos. negotiated that we would divest up to 650 stores in order to gain regulatory approval for the merger. This figure is the maximum number of stores we would divest in connection with the merger and does not represent our expectation for divestitures. One mechanism that we have contemplated would be to create SpinCo comprising between 100 and 375 stores that would be spun off to Albertsons Cos. shareholders.

While no decision has been made, we note that there is a process through which the regulators have evaluated this type of transaction in the past, so we and Albertsons Cos. want to set realistic expectations about the number of stores that may be divested. Importantly, in any divestiture scenario, working together with the antitrust regulators, we would ensure that any divested stores are sold to qualified operators with appropriate management experience, a sound business plan, strong balance sheet and the financial stability to compete in the marketplace.

- b. Who in the market do you believe could buy and effectively operate the stores you anticipate that will need to be divested?

We cannot speculate on specific potential acquirers for divested stores. Kroger and the antitrust regulators will ensure that the divested stores are sold to qualified operators who have appropriate management experience, a sound business plan, strong balance sheet and the financial stability to compete in the marketplace. We are still early in the process, and we believe there are a number of qualified operators who could serve as strong owners for divested stores.

- c. If the argument is that your company currently cannot compete with other large grocery stores, how do you expect the even smaller retail stores you divest or spin out into a third party company to be able to compete?

This transaction is focused on enhancing competition. Independent grocery stores are critical to our industry’s success and vital to communities across the country. Independent grocers remain strong competitors, accounting for 33% of overall U.S. grocery sales in 2021, up from 25% nearly a decade ago, according to National Grocers Associations research. From 2012 to 2020, sales by independent grocers rose almost 94%. Considering the contemplated SpinCo in the context of other smaller grocery chains, at 375 stores, SpinCo would be larger than many established, successful grocery businesses including Ingles, Weis, Fresh Market, Wegmans, Schnucks and Meijer, and would have nearly as many stores as Sprouts, Grocery Outlet and HEB.



Whether we divest stores or pursue SpinCo, we are confident these assets would comprise a business that is a strong competitor that would continue to serve and support its customers and communities while maintaining its workforce. We are acutely aware of the need to secure strong buyers for any divested stores, and the companies will work with the antitrust regulators through this process to position any divested stores for success going forward.

- d. Do you commit that no currently owned Kroger or Albertsons stores will be closed if this merger goes through?

We will not close any stores, distribution centers or manufacturing facilities or lay off any frontline associates as a result of the merger.

2. A merger between Albertsons and Kroger will directly impact their combined workforce of more than 710,000 associates, including nearly 100,000 associates in California alone. The proposed merger announcement noted that the “combined company expects to invest \$1 billion to continue raising associate wages and comprehensive benefits after close.”

- a. What will the \$1 billion investment will look like in practice and over what timeline? Is this going towards salary? Health benefits? Pensions?

Kroger will invest the \$1 billion to continue raising associate wages and improving comprehensive, industry-leading benefits, including quality and affordable healthcare, pension and other retirement benefits, continuing education, wellbeing and financial literacy programs.

We have a track record of investing in our associates. Since 2018, Kroger invested an incremental \$1.2 billion in wages and comprehensive benefits and has also invested in training and development, given support to associates through unexpected hardships and provided a scholarship fund for the children of our associates. In addition, during the COVID-19 pandemic, we are proud to have committed a total of \$2.5 billion to safeguard associates and customers and reward our associates throughout the pandemic, including additional hourly pay and bonuses.

3. In its October 14th press release on the proposed merger, Kroger announced that Albertsons would issue a \$4 billion special dividend to its shareholders “as part of the transaction.” It’s an extraordinary amount of capital to let out the door right before such a significant transformation of the company. And its timing as part of a deal that you don’t anticipate being able to close until 2024 is puzzling.

- a. Was Kroger involved in the decision to issue the dividend?

No. The decision to issue a special dividend was made solely by Albertsons Cos. and is independent of the merger transaction. The dividend is not contingent on the transaction with Kroger and, as Albertsons has stated, will be paid regardless of whether the merger is completed.

- b. When did you or others in the company first learn about it?

We learned about the dividend during early transaction discussions.

4. The prospect of new management is troubling for workers, and many Albertsons employees just negotiated new contracts.

- a. What steps will you take to ensure that previously negotiated worker contracts and benefits at the new stores Kroger acquires and at divested stores will be respected?



We expect all union agreements and contracts will be honored following the transaction close, whether stores are operated by Kroger, a SpinCo or another divestiture buyer. We are committed to securing union jobs, and we will work with the antitrust regulators to ensure divested stores maintain their unionized workforce following the transaction close.

- b. Will you commit to making sure that workers at divested stores do not see their out-of-pocket healthcare costs increase or their retirement benefits decrease?

Working together with the antitrust regulators, we will ensure any divested stores are positioned for success and can continue to support their associates. As part of this process, we will seek qualified operators for divested stores with appropriate management experience, sound business plans and stable financials that will be able to continue to support associates and serve their communities.

As America's grocer, we have balanced significant wage investments for our associates while keeping food affordable for the communities we serve. We invest in the whole person with a benefits package that includes market competitive wages, healthcare, retirement savings, and on-demand access to mental health assistance, career advancement opportunities, industry-leading tuition assistance, scholarships, volunteer opportunities, grocery discounts, and other perks and rewards. It's worth noting the average tenure of a Kroger associate is 7+ years, and we employ every generation, with our youngest associate being 14 and maturest being 95.

- c. Will you commit to union neutrality at the stores you might acquire?

We will continue to support our associates' right to choose what they believe is best. Kroger and Albertsons have been actively engaging with key leaders of the UFCW from across the country to discuss the merger and reinforce our commitment to securing the long-term future of union jobs by establishing a more competitive alternative to large, non-union retailers. While unionization of the broader retail industry has declined, Kroger is proud to have grown our unionized workforce by more than 100,000 associates since 2012 and together Kroger and Albertsons will represent 40% of UFCW membership.

- d. Will you ensure that any new owner of divested stores commits to union neutrality?

Whether we divest stores, pursue a SpinCo or a combination of both, we will work with antitrust regulators to ensure that any store that is not part of the combined company is positioned to operate much as they do today. We expect that unionized workforces at any divested stores would remain unionized following the sale and that the stores would continue to serve their customers and communities.

- e. Will you commit that any spin-off company will retain union workers and the high level of unionization?

We expect that unionized workforces at any divested stores would remain unionized following the sale.

- 5. Additional consolidation in the grocery market risks creating more food deserts and limiting consumer access to nutritious meals. Albertsons reportedly closed more than 160 grocery stores nationwide after its merger with Safeway, which, according to some assessments created food deserts, or areas without access to a grocery store. I am deeply concerned that this deal will lead to the closure of divested stores that are perceived as redundant, or that simply cannot compete against the market power of a newly merged Kroger-Albertsons. Too often, such closures have a disproportionate impact both economically and on the health of communities that are already disadvantaged.

- a. Do you feel a responsibility to the communities that currently have Albertsons and Kroger stores to ensure they continue to have access to nutritious meals?



Our company exists to provide America with access to fresh, affordable and nutritious food. Kroger's Zero Hunger | Zero Waste plan aims to end hunger in the communities we call home and eliminate food waste across our business. Since announcing our Zero Hunger | Zero Waste commitments in 2017, Kroger has donated 2.3 billion meals to help end hunger, including donating \$1.65 billion in food and funds to support America's communities. We are proud of these results and are committed to provide even more support to those who need it most.

We believe this merger will allow us to improve food access by providing a broader national footprint and expanded, resilient supply chain and delivery network that provides customers with fresher food faster and at affordable prices.

- b. What safeguards will you build into this deal to guard against the creation of food deserts?

Kroger pursued this transaction to serve more customers and expand access to fresh, affordable food through a larger national footprint and delivery network. We will not close any stores as a result of this merger. Whether we divest stores, pursue a SpinCo or a combination of both, we have developed a thoughtful plan to ensure any store that is not part of the combined company, will operate just as it does today.

6. In your testimony you shared that since 2003, your customers have seen \$5 billion in lower pricing when they shop with Kroger. And that as part of your proposed merger, you have committed to invest \$500 million to lower prices even more. Nonetheless, given the nature of the retail grocery market, I'm worried that the benefits of this merger may flow predominantly towards your shareholders as opposed to your customers.
 - a. Will you guarantee that any efficiencies from the merger will be passed on to consumers rather than shareholders?

Our business model is built around lowering prices to attract more customers versus making a higher margin on fewer customers. That is why our priority is to invest in lowering prices and improving the customer experience so we can attract and retain more customers. Since 2003, customers have seen \$5 billion in lower pricing when they shop with us. These investments are visible in our retail gross margins, which have steadily declined over time.

As part of the merger with Albertsons Cos., we are committed to lowering prices consistent with our track record. As a nearly-150-year-old American business, we've learned that a balanced approach provides the strongest foundation for long-term success and resilience. As an example, in 2018, we chose to take a balanced approach to investing the savings we received from the federal tax reform to ensure it benefited customers, associates and shareholders alike. Customers benefited from approximately a third of the tax savings, another third of the savings was invested to improve the associate experience and shareholders benefited from the remaining third.

We will continue to invest in lowering prices for customers going forward.

- b. Would you agree to submit to post-merger monitoring to ensure consumers are reaping the rewards from the merger?

As a public company, Kroger reports its financials on a quarterly basis and outlines the Company's margin investment in pricing in publicly available filings.

Since 2003, customers have seen \$5 billion in lower pricing when they shop with us due to our investments to consistently lower prices. Our history of mergers also shows we follow through on our commitments. Following our merger with Harris Teeter in 2014, we lowered prices by \$130 million per



year. After our merger with Roundy's in 2017, we lowered prices by \$110 million per year. We will begin these investments on day one after the merger closes.

7. In your testimony, you claim that there are a number of benefits to the proposed merger between your two companies—including that there will be “enhance[d] competition” and that in the current marketplace “competition is fierce.” However, in Kroger’s 2021 factbook, Albertsons is listed as the #1 major competitor in a number of markets, including in many major communities in California, like Los Angeles, San Diego, the San Francisco Bay Area, and Sacramento.

- a. In 2022, is Albertsons still your number one competitor in those California communities?

The Factbook is based solely on publicly available market share information that does not include all competitors. While it is true that in a number of areas in California, Albertsons Cos. and Kroger have stores in closer vicinity to each other, there are areas such as Northern California where Kroger has a very limited or no presence and the transaction is completely complementary. In many areas where both companies are present, there is fierce competition from a multitude of competitors. Moreover, there are likely to be divestitures in areas where both companies have a significant presence which should resolve the competitive concerns.

Notably, the Factbook shows that in the larger metro areas, Albertsons was listed in the first/second spot in 14 out of 49 areas. Walmart was listed in those spots in 44 of 49. For other geographies, Albertsons was listed in the first/second spot in 18 out of 85 areas. Walmart was listed in those spots in 78 of 85.

- b. In 2022, who are your top two competitors in each of the largest California markets?

- Los Angeles-Long Beach-Anaheim - competitors include Albertsons Safeway, Trader Joes Co., Walmart, Target, Smart & Final, WinCo, Whole Foods, Aldi, Stater Brothers, among others*
- Riverside-San Bernardino-Ontario - competitors include Stater Bros Markets, Walmart Supercenter, Target, Aldi, Amazon Fresh, Smart & Final, among others.*
- San Diego-Carlsbad - competitors include Albertsons Safeway, Walmart Supercenter, Target, Smart & Final, Amazon Fresh, Trader Joe's, Aldi, Whole Foods, among others.*
- Oxnard-Thousand Oaks-Ventura - competitors include Albertsons Safeway, Trader Joes Co, Walmart, Target, Whole Foods, WinCo, Stater Brothers, Smart & Final, Amazon Fresh, Aldi, among others.*

- c. How can consumers expect to benefit from “enhance[d] competition” in these markets if you merge with your biggest competitor in various California communities?

The grocery space is more fragmented and competitive today than ever. We see increased competition with large, non-union companies expanding both their brick-and-mortar and online presences. For example, consider that since 2010, online retailers increased their share of all grocery sales by more than 14%. Today, Kroger ranks fourth by total revenue behind Walmart, Amazon and Costco. While the combined company will remain at number four, it will be better positioned as an enhanced competitor to these large, non-unionized retailers with whom we compete to provide affordable groceries to consumers.

8. In addition to offering groceries, the two companies are major players in the pharmacy space.

- a. What will happen to consumers who have their pharmacy through Albertsons?

Kroger will not close any stores as a result of the merger, and that includes pharmacies in the merged stores. Post-transaction, Kroger will operate the pharmacies that are part of the Albertsons' stores that it acquires. To the extent stores are divested or apart of SpinCo, the pharmacies would go with the divested store to its new owner and be operated by that new owner.



- b. Will you commit to ensuring that no pharmacy will close because of the merger?

Kroger will not close any stores or pharmacies as a result of the merger.

9. In your testimony, you emphasized that Kroger and Albertsons' merger should be viewed in light of increased competition with superstore providers like Amazon, Walmart, and Dollar General. In the previously rejected merger between Office Depot and Staples, those firms made similar arguments about market definition and competition that I want to revisit in analyzing this merger.
- a. Is your claim that Kroger and Albertsons face stiff competition from Walmart, Amazon, and dollar stores for full service grocery services based on *current* market conditions, or based on your projection of *future* market trends?

Both. Companies such as Walmart, Amazon, Costco and dollar stores have been increasing their share of consumer food dollar spend over the last several years, and we expect that trend to continue. For example, consider that since 2010, online retailers increased their share of all grocery sales by more than 14%.

Together, Walmart, Amazon and Costco have nearly three times the share of grocery sales of Kroger and Albertsons combined. This merger will enable the combined company to better compete with these three non-union retailers so we can serve our communities today and into the future. We note that today, Kroger is ranked fourth in total revenue among U.S. grocery retailers behind Walmart, Amazon and Costco, and a combined Kroger and Albertsons will remain at number four.

- b. In 2016, a federal court upheld the FTC's action prohibiting a merger between Office Depot and Staples in part on the basis that while Amazon and other general providers may eventually dominate competition in their market, this is not yet the case, and the market category of business to business office supply stores is still meaningful to market participants. "The evidence . . . does not support the conclusion that Amazon Business will be in a position to restore competition lost by the proposed merger within three years." Why shouldn't the same be said of full-service grocery businesses now?

The grocery industry's evolution is not a trend we are predicting – it is already underway. We see increased competition with large companies expanding both their brick-and-mortar and online presences. For example, consider that since 2010, online retailers increased their share of all grocery sales by more than 14%. With Albertsons Cos., we will be able to compete more effectively with retailers who – today – are the primary grocery provider for 61% of U.S. consumers: Walmart, Target, Ahold, Whole Foods and Aldi.

- c. In previous litigation around the Staples-Office Max proposed merger, the court stated that the evidence suggests that "office superstore prices are affected primarily by other office superstores and not by non-superstore competitors such as mass merchandisers." Have you performed any analysis on how pricing at Kroger and Albertson's stores is impacted by the introduction of full-service grocery competitors vs. broader mass market retail providers?

We are competing for customers with all companies that sell groceries, regardless of whether their business is broader than just groceries. The grocery space has never been more fragmented and complex, and the types of stores that customers rely on for groceries are more diverse than ever. In fact, 61% of U.S. consumers consider one of Walmart, Target, Ahold, Whole Foods or Aldi to be their primary grocery provider. That means we are competing with stores like these, as well as online retailers such as Amazon for pricing. Importantly, many of these competitors that sell a mix of groceries and general merchandise have higher margins than grocery-only businesses such as Kroger. Our merger with



Albertsons Cos. will provide us with the scale and flexibility to invest to continue to lower prices and keep pace with these competitors that have higher profit margins.



**Questions from Senator Tillis
for W. Rodney McMullen**

**Witness for the Senate Committee on the Judiciary Subcommittee on Competition Policy,
Antitrust, and Consumer Rights Hearing “Examining the Competitive Impact of the Proposed
Kroger–Albertsons Transaction”**

1. Kroger and Albertsons have committed to lowering prices and raising employee wages.
 - a. Historically, do lower prices and wage increases follow mergers like this one?

Kroger has a long track record of investing to lower prices following transactions. Following our merger with Harris Teeter in 2014, we lowered prices by \$130 million per year. After our merger with Roundy's in 2017, we lowered prices by \$110 million per year. Additionally, since 2018 we have invested an incremental \$1.2 billion in associate wages and comprehensive benefits, raising our associates' average hourly compensation by 25.9% since 2017.

- b. How, specifically, do you plan to capture these cost savings and pass them on to your customers?

We plan to achieve approximately \$1 billion of annual run-rate synergies net of divestitures within the first four years of combined operations largely through improved sourcing, optimization of manufacturing and distribution networks, and technology investment amplification opportunities. We committed to investing \$500 million of these cost savings to lower prices for customers, which we intend to begin on day one after the merger closes. Our history of mergers shows we follow through on our commitments. Following our merger with Harris Teeter in 2014, we lowered prices by \$130 million per year. After our merger with Roundy's in 2017, we lowered prices by \$110 million per year.

2. What impact, if any, would this acquisition have on existing Kroger and Albertsons staff, especially current store staff?

We expect that by bringing together Kroger and Albertsons Cos., we will create new and exciting career opportunities for associates of both companies. We will continue to improve the associate experience, creating a place where associates love to work. We will invest \$1 billion to continue raising associate wages and comprehensive industry-leading benefits post-merger.

Importantly, we will not close any stores or lay off any frontline associates as a result of this merger.

3. Kroger and Albertsons have also committed to a greater focus on ESG, or environmental, social, and governmental issues.
 - a. What social issues do the companies intend to focus on post-acquisition?

We are focused on advancing our Zero Hunger | Zero Waste impact plan, which is the centerpiece of our ESG strategy. Zero Hunger | Zero Waste aims to address a fundamental absurdity in the food system: 40% of food produced in the U.S. goes to waste while 1 in 8 Americans goes to bed hungry each night. In response, our goal is to end hunger in the places we operate and eliminate food waste across our business. Since we announced this commitment in 2017, Kroger has donated more than 2.3 billion meals to help end hunger, including donating more than \$1.65 billion in food and funds to support our communities. To put those figures in perspective: Kroger has donated 12 meals every second of every day for five years – right here in America's communities. We are proud of these results and are committed to provide even more support to those who need it most.



- b. What value does this increased focus on ESG create for customers and shareholders that the separate companies could not/did not create pre-merger?

The addition of Albertsons' sustainability program and resources will accelerate progress on our Zero Hunger | Zero Waste impact plan aimed at ending hunger and eliminating waste for our customers and the communities we serve. With Albertsons Cos., we will be able to advance important work underway including our goals to prevent and eliminate food waste and to create a more sustainable and efficient supply chain. This will help us continue to expand access to fresh, affordable food for customers. In turn, we will be able to attract and retain more customers which will help us deliver shareholder value.

4. What impact, if any, would the combined Kroger and Albertsons have on (a) barriers to entry in the grocery market and (b) on existing, smaller competitors in the grocery market?

We do not expect this merger to have any impact on the strong independent grocery stores that are critical to the industry and vital to communities across the country. According to National Grocers Associations research in 2021, independent grocers accounted for 33% of overall U.S. grocery sales, up from 25% nearly a decade ago. Sales by independent grocers rose almost 94% from 2012 to 2020. These stores will remain formidable competitors.

5. Smaller grocery stores have claimed that Walmart, the largest grocery store chain in the country, uses its size to obtain better discounts on products than its smaller competitors.
 - a. If the acquisition is completed, will a combined Kroger and Albertsons have sufficient market power to demand better discounts?

At Kroger, we drive cost savings through efficiencies and innovation, not just by obtaining lower costs of goods. Through the merger with Albertsons Cos., we will be able to find new ways to work together with suppliers to reduce waste and inefficiencies and create a more sustainable and efficient supply chain. By optimizing our supply chain, we will be able to deliver fresher food faster, move products from the farm to our stores more efficiently and ensure products stay fresher longer, both in store and in our customers' homes. This will allow us to unlock billions of dollars to invest to benefit customers, associates and communities in a way that neither company can do alone.

- b. If the combined companies can get better discounts, how will that affect their competition with Walmart?

The additional scale and cost savings that we can generate through the merger with Albertsons Cos. will allow us to continue to invest to lower prices and improve the customer experience to better compete with Walmart. Walmart and other retailers that mix groceries and general merchandise have higher margins than grocery-only businesses such as Kroger. The merger with Albertsons Cos. will provide us with enhanced flexibility to continue to lower prices and better compete and keep pace with competitors that have higher profit margins.

- c. Would the combined companies become a more direct competitor or a tacit ally with Walmart through avoiding competition with each other?

The merger with Albertsons Cos. will allow us to better compete with non-union retailers such as Walmart, Amazon and Costco. We recognize that customers have more choices than ever today, and we are competing for customer dollars every time they decide to shop for groceries. The merger with Albertsons Cos. will provide us with the scale and flexibility to continue to invest in lowering prices and improving the customer experience to compete in today's environment more effectively, resulting in more benefits for our customers and communities.



- d. How would the buying power of the combined companies impact the food supply chain, specifically farmers and food distributors?

Our suppliers, including farmers and food distributors, are critical to our ability to win and keep customers. With a broader network and even more customers to serve, we believe the merger will benefit our suppliers as it will allow for a more efficient distribution chain, provide opportunities to grow sales together and reduce waste. With Albertsons, we will optimize our supply chain to deliver fresher food faster, move products from the farm to our stores more efficiently and ensure products stay fresher longer, both in store and in our customers' homes. Our expanded delivery network will allow us to bring more products directly to our customers' doorsteps, which in turn, will expand our suppliers' reach.

6. One of the stated goals of the merger is to improve data collection on shoppers. Following the acquisition, the combined companies could amass data on shoppers nationwide, making them more attractive to advertisers. What effect does that have on competition in the grocery market, particularly on regional stores?

We do not expect this merger to have any impact on the strong independent grocery stores that are critical to the industry and vital to communities across the country. According to National Grocers Associations research in 2021, independent grocers accounted for 33% of overall U.S. grocery sales, up from 25% nearly a decade ago. These stores will remain formidable competitors in terms of both grocery sales and advertising dollars.



**Senate Judiciary Subcommittee on Competition Policy, Antitrust, and Consumer Rights Hearing
“Examining the Competitive Impact of the Proposed Kroger-Albertsons Transaction”
Questions for the Record
for Rodney McMullen
Chairman & CEO, Kroger**

QUESTIONS FROM SENATOR BLACKBURN

1. In the Kroger press release on the proposed Kroger-Albertsons merger, one of the benefits of the merger that you identified is a “greater focus on ESG” initiatives. In essence, these initiatives are a way for corporations to promote woke, leftist policies. Such policies can include ways to combat climate change and so-called “social justice” measures.

a. Will these ESG initiatives lower prices for consumers?

Our ESG initiatives are grounded in our commitment to providing fresh, affordable food for everyone by keeping prices low and minimizing waste. Our Zero Hunger | Zero Waste plan, which is at the center of our ESG strategy, is focused on improving the sustainability of our supply chain and eliminating food waste, which allows us to drive efficiencies that we can pass along to customers. Through Zero Hunger | Zero Waste we are also helping to eliminate hunger by providing meals to those who are underserved in our communities. Since we announced this commitment in 2017, Kroger has donated 2.3 billion meals to help end hunger and directed a total of \$1.65 billion in food and funds to support our communities.

b. If not, why are you devoting time and resources to a leftist political agenda rather than focusing on lowering prices for your customers.

We are focused on lowering prices for our customers - in fact, it is the foundation of our business model. We are always looking to find creative ways to combat inflation and keep food affordable, and continue to deliver quality, value, convenience and choice. That is why our priority is to invest in lowering prices and improving the customer experience so we can attract and retain more customers. Since 2003, customers have seen \$5 billion in lower pricing when they shop with us do to our investments to consistently lower prices. Our history of mergers shows we follow through on our commitments. Following our merger with Harris Teeter in 2014, we lowered prices by \$130 million per year. After our merger with Roundy's in 2017, we lowered prices by \$110 million per year. We will begin these investments on day one after the merger closes.

c. Given this stated goal of expanding ESG initiatives, what new ESG policies would a combined Kroger and Albertsons plan to promote?

Since we announced our Zero Hunger | Zero Waste commitment in 2017, Kroger has donated 2.3 billion meals to help end hunger, including a total of \$1.65 billion in food and funds. We have donated 12 meals every second of every day for five years to support America's communities. Albertsons Cos. program, Recipe for Change, will complement the important work we are doing and as a combined company, Kroger will be well positioned to achieve our mission of creating a world with zero hunger and zero waste.

2. As we discussed, both Kroger and Albertsons utilize retail media networks, which are services that monetize the data collected from customers. A stated goal of this merger is to expand and improve this data collection in a combined Kroger-Albertsons retail media network.

a. What new types of data does Kroger anticipate collecting post-merger? Will these be collected in the aggregate, or are there ever instances where individualized data is collected (e.g., to offer coupons on specific products)?



Our combined customer insights enable us to deliver more personalized promotion strategies, saving customers time and money. Security of information and responsible marketing practices are central to our approach today and will be central to the approach of the combined company.

- b.** Does this expansion and improvement of customer data collection include adequate protections for customer privacy and data security? If so, please describe these protections that Kroger plans to implement.

Kroger only shares data with partners who meet our standards for data security and integrity and that support our focus on giving customers more value through personalization. We have robust cybersecurity practices and policies to prevent the loss or misuse of data. All associates with access to personal information are assigned cybersecurity training on management best practices. As part of our integration planning process, we will develop a thoughtful roadmap to bring together Kroger's and Albertsons' cybersecurity and information technology programs to ensure the combined company continues to maintain the highest standard of data protection. We will also continue to evaluate and enhance cybersecurity training and policies to strengthen data protection in the future.

- c.** You mentioned making a \$500 million commitment to reduced pricing for consumers post-merger. In what ways will the lower pricing be contingent on consumers participating in expanded data collections, either through programs they opt into or out of, or through technological upgrades in stores (e.g., the use of sensors or analytics in grocery stores)?

Our commitment to lower prices is not contingent on participation for any of our customer programs. We are focused on lowering prices for our customers - in fact, it is the foundation of our business model. We are always looking to find creative ways to combat inflation and keep food affordable, and continue to deliver quality, value, convenience and choice. That is why our priority is to invest in lowering prices and improving the customer experience so we can attract and retain more customers. Since 2003, customers have seen \$5 billion in lower pricing when they shop with us do to our investments to consistently lower prices. Our history of mergers shows we follow through on our commitments. Following our merger with Harris Teeter in 2014, we lowered prices by \$130 million per year. After our merger with Roundy's in 2017, we lowered prices by \$110 million per year. We will begin these investments on day one after the merger closes.



Senator Cory Booker
Senate Judiciary Subcommittee on Competition Policy, Antitrust, and Consumer Rights
Hearing on “Examining the Competitive Impact of the Proposed Kroger-Albertsons
Transaction”
Tuesday, November 29

QUESTIONS FOR THE RECORD

To Mr. Rodney McMullen and Mr. Vivek Sankaran:

Large public and private enterprises have a crucial role to play in fostering opportunities for a diverse workforce, executive leadership, and for diverse-owned businesses, through utilizing and hiring their services. Recent evidence suggests that focusing supplier diversity efforts solely on low-margin industries significantly limits the potential positive impact and wealth creation – just as important as having diversity in warehousing and shipping, corporations must also strive to utilize diverse firms for financing, legal, and other professional services. The proposed merger and acquisition presents not only an important moment for your companies as you evaluate your business practices and values, but also is an important moment for the legal firms, investment banks, consultants, and other services you will employ to execute this effort.

1. What are the professional services and financial fees associated with the transaction?

Fees are standard and customary for a transaction of this type. Advisory fees associated with the transaction will be reported in our SEC filings in accordance with applicable guidelines and regulations.

2. What percentage of those fees went to Black and Brown owned businesses?

Diversity and inclusion are longstanding values, not just within our company, but also in our choice of suppliers as well. We are a founding member of the Billion Dollar Roundtable, an organization focused on recognizing corporations that spend at least \$1 billion with minority and women-owned businesses. Today, Kroger spends \$4 billion with diverse suppliers and our commitment is to grow that number to \$10 billion by 2030.

3. Earlier today, I sent a letter to you asking for more information on the progress you’ve made towards your DEI commitments, information about your efforts to improve supplier diversity, and on the professional services you are employing through the merger process. I look forward to your responses to these questions, the letter, and would like to stay engaged with your teams as you move forward in this process.

Diversity and inclusion are longstanding values. We intentionally recruit, develop and advance diverse talent at every level of the business, including leadership, because we believe we can best meet the needs of our customers when our workforce reflects the communities we serve. In fact, nearly 40% of our workforce is diverse by race or ethnicity and more than 50% of our total workforce are women.

Kroger is deeply committed to supporting and growing diverse suppliers. We are a founding member of the Billion Dollar Roundtable, an organization focused on recognizing corporations that spend at least \$1 billion with minority and women-owned businesses. Today, Kroger spends \$4 billion with diverse suppliers and our commitment is to grow that number to \$10 billion by 2030.