Questions from Senator Tillis
for Michael S. Needler
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. **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?**

   Retail grocery is a challenging industry in which to enter and survive due to a number of factors. Opening a new grocery retail storefront requires significant upfront capital expenditures with an uncertain path towards profitability due to the low margin and cyclical nature of the business. On a good year, net profit margins for grocers sit between 1 to 2 percent on an industry-wide average, which means there is little room for error on operational decisions such as pricing and controlling overhead expenses. Success in grocery retailing depends on a firm's ability to attract a large enough customer base to generate sufficient sales volumes given the low margin nature of the business. Barriers to entry, particularly for independent grocers, include the availability and cost capital to finance necessary start-up costs and fixed operational expenditures until the operation's eventual profitability. Most importantly, new entrants face significant uncertainty over whether a new storefront will be able to attract a sufficient customer base who are influenced by product availability and retail pricing, particularly in an inflationary environment. Key to this challenge is the disadvantage that independent grocers face in accessing the wholesale marketplace relative to the large chain competition. Independent grocers and their wholesalers are often subject to disadvantageous terms and conditions by suppliers because they lack bargaining power in the marketplace. That means they tend to pay higher prices for fewer options of the exact same types of products sourced by their dominant chain competitors even if they are willing to purchase in similar volumes. The reason that independent grocers have no marketplace leverage is because there has been so much grocery retail consolidation that the largest chains have become indispensable buyers to most national consumer brands because they represent such a significant share of their sales. Walmart, for example, is measured as controlling up to one-third of all US grocery sales, so a decision to stop sourcing from a single supplier would often be a fatal one for the brand. A merger between the two largest supermarket chains, Kroger and Albertsons, would create another indispensable buyer in the marketplace who would enjoy a significant advantage over the competition, particularly those who lack the same bargaining power. That's why we're calling for enforcement or updates to laws like the Robinson-Patman Act that constrain buyer power so that everyone can compete equally in the marketplace for the benefit of every US consumer.

2. **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?**

We believe that a combined Kroger and Albertsons would enjoy a significant advantage in the marketplace and create a market power dynamic that would make it even harder for independents to survive than under current circumstances. Food and Water Watch estimates that Kroger is currently that second largest grocer capturing approximately 13.9 percent of the national market while Albertsons controls around 8.1 percent. A combination of the two would confer roughly one-quarter (22 percent) of the national market to the combined firm, giving it tremendous power over consumers and the producers and manufacturers who grow and sell the food Americans eat every day.

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

A merger between Kroger and Albertsons would rival Walmart in terms of the degree of leverage and buyer power that the combined firm would have over food manufacturers and suppliers. The waterbed effect theory demonstrates that when a large and powerful firm improves its ability to exercise bargaining power, the terms of its competitors deteriorate so as to ultimately increase average retail prices and reduce total consumer surplus. So while the firm may have the ability to more effectively compete with Walmart, all other participants in the marketplace will remain at a significant disadvantage.

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

There is no guarantee that a market in which two firms control the broadest share of the market results in favorable consumer outcomes. Lessons can be drawn from telecommunications and other sectors where two dominant firms fail to provide a competitive check on the other and become tacit allies. Our fear is that consumers would lose out in such a market as the largest players would face little incentive to pass on lower wholesale costs to consumers, instead using their position to improve profitability. That’s why “guardrails” and constraints on buyer power are so critical. Antitrust laws like Robinson-Patman need to be enforced and updated to reflect the current competitive conditions in the marketplace.

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

Enhanced bargaining leverage in the retail sector can result in anticompetitively low prices paid to agriculture producers, such as farmers and ranchers. Dominant retailers can and do aggressively drive down prices they pay to producers and manufacturers. The result is that dominant retailers capture a greater and greater share of each consumer dollar spent on food, while suppliers are forced to lower prices they pay to

farmers and market participants throughout the supply chain. All of this has a devastating impact on rural communities and the agriculture sector.

3. **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?**

   Shopper data collection and aggregation can often lead to enhanced consumer experiences in the checkout aisle and retailers and manufacturers get a greater ability to tailor offers and discounts to consumers. Loyalty programs, coupons, and shopper incentives have all lead to innovation in grocery retailing that directly improves consumer welfare. The merger will give the combined firm greater ability to market and advertise grocery products to a wider swath of consumers, which undoubtedly will give the firm a marketing edge over the competition. But that is not per se anti-competitive in our market. What concerns us is that this position in the market for consumer data can be leveraged to extract further concessions from suppliers in a way that exacerbates price discrimination against independent grocers. In recent years, independent grocers have experienced significant erosions in their access to promotional trade allowances due to high inflation and supply chain disruptions, but there has been little corresponding drop off with our large chain competition. We worry that this transaction will only further this trend without constraints on buyer power. Promotional trade spending between suppliers and dominant retailers must reflect the ultimate value the promotional activity represents to the consumer, not used as a backdoor way for independent grocers to face greater economic discrimination. Proper antitrust enforcement must take this market dynamic into account.