

**Senator Dick Durbin**  
**Chair, Senate Judiciary Committee**  
**Written Questions for Vivek Sankaran**  
**President, CEO of Albertsons Companies, Inc.**  
**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. Kroger and Albertsons have announced that a new entity, SpinCo, which you would lead, would operate a number of these stores.

- 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?**

**Answer:** Kroger is in a better position to answer questions related to the new company. As Mr. McMullen stated at the hearing, the plan for the merged Kroger-Albertsons company does not include plans to close *any* stores at all as a result of the merger.

- b. **How will you ensure that SpinCo and any divested stores remain competitive in the long term with the newly-merged Kroger and Albertsons and other large competitors, including Walmart, Costco, and Amazon?**

**Answer:** If SpinCo is pursued, it will be owned by Albertsons’ current shareholders, which includes shareholders who helped grow Albertsons from 192 stores into the strong company that we are today. During the hearing, Mr. McMullen received a question about SpinCo and expanded on how we both think about SpinCo—that this new company will be successful connecting with its local community by competing on service, quality, assortment, shopping experience, and price, like other successful regional grocery stores such as Weis Markets and Ingles.

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?**

**Answer:** This merger will secure union jobs, and Kroger has committed that no frontline jobs will be lost as a result of the merger. Albertsons will continue to emphasize to our employees and their union representatives that both companies have created, not cut, union jobs, and that the combination will make us much stronger when compared to our competitors, especially those that are non-union.

- 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?**

**Answer:** Once the merger is finalized, the combined organization will be better able to compete in today's marketplace—which will ultimately be beneficial for employees.

- c. **What assurances can you provide that any employees of the new SpinCo would not see a reduction in their pay and benefits?**

**Answer:** If SpinCo is pursued, it would be owned by the current shareholders of Albertsons, which includes shareholders who led Albertsons to become the successful company it is today. As I stated during the hearing, I expect that the new SpinCo would continue to pay competitive wages to its employees. Albertsons has a history as a company of raising wages over the last several years, since the merger with Safeway.

3. Part of the justification of the proposed merger is that the merged Kroger-Albertsons will be able to better compete in the market through increased efficiencies and savings, allowing them to pass some of those on to consumers and employees. SpinCo, as a company made up of the divested stores, would be far smaller than the merged Kroger-Albertsons.

**Please provide specific information about how SpinCo, given its smaller size, would operate and its ability to keep prices low at its stores.**

**Answer:** Many independent, smaller regional grocers compete fiercely in their regional and local footprints throughout the country. We expect SpinCo would do the same.

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?**

**Answer:** Because the merger review process is in its early stages, we are unable to estimate how much Albertsons will spend on these services during the merger review process.

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

**Answer:** Each team hired by Albertsons for the merger deal strives to include diverse professionals. Additionally, Albertsons' diverse in-house legal team plays a significant role in merger-related activities. Albertsons puts a high priority on hiring diverse teams because diverse teams are better able to serve the company's needs. Having business and service providers that reflect America is a top priority for us, and we have increased our efforts to ensure that professional services firms that we hire share that commitment.

**Questions from Senator Tillis  
for Vivek Sankaran**

**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?

**Answer:** Post-merger, Kroger has committed to invest \$500 million to lower prices and to invest \$1 billion to continue raising associate wages and comprehensive benefits.

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

**Answer:** Kroger is in a better position to address the specific details. But in general, the merged company will benefit consumers by driving down prices and by bringing more Americans fresher food, faster. The combined Kroger and Albertsons company will improve efficiencies in the supply chain and reduce costs for our suppliers and in the combined business, which is an important inflation fighter.

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

**Answer:** Kroger and Albertsons have a strong tradition of employing a largely unionized workforce, and we look forward to continuing to work with local unions across the country. The combined company will have one of the largest private-sector unionized workforces in the country, and I believe this merger will secure those union jobs. Kroger has committed to invest \$1 billion to continue raising associate wages and comprehensive benefits after the merger and has also committed that no frontline jobs would be lost as a result of the 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?

**Answer:** Regarding social issues and ESG, Albertsons has focused its efforts on the expressed needs of our communities by providing vaccinations for COVID-19, contributing over \$200 million in food and financial support to charitable organizations last year, making our operations more energy efficient to lower costs for our consumers, recycling and reducing food waste, and training our leaders to lead with inclusion so that all our workers and our consumers feel

welcome at our stores. We know that Kroger has similar community-focused priorities and expect that the combined Kroger-Albertsons company will continue to prioritize these goals.

- 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?

**Answer:** We understand that the combined Kroger-Albertsons company will be better positioned to support the communities they serve and pursue a more sustainable future.

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?

**Answer:** (a) The merger does not create or exacerbate barriers to entry into grocery sales. As was discussed by several witnesses in the hearing, grocery competition has grown even more dynamic in recent years, and that fierce competition will continue after the Kroger-Albertsons merger. (b) Many competitors are successful and will continue to compete fiercely, regardless of the number of stores in their company. Some of Albertsons' strongest competitors in regions throughout the country are smaller companies who compete on service, quality, assortment, shopping experience, and price. The merger will not negatively impact the dynamism and competitiveness of these 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?

**Answer:** The merger will create better efficiencies and confidence for suppliers—from the farmers who grow the food to the trucks that drive it to stores. Supplier costs will decrease, benefitting suppliers, retailers, and ultimately the customer through lower prices. Thus, the combined Kroger-Albertsons company is committed to working with suppliers to deliver more options to customers at lower price.

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

**Answer:** The combined company will be better positioned to compete with Walmart primarily due to supply chain efficiencies. To the extent the combined company can relieve pressure on suppliers from Walmart, the combined company

will improve the competitive environment for companies across the country that compete in the market for grocery sales and in the grocery supply chain.

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

**Answer:** Retailers, whether national or regional, compete fiercely on service, quality, assortment, shopping experience, and price. To succeed, the combined company will need to remain competitive against a wide range of grocers. The grocery industry is fragmented, and consumers regularly shop multiple retailers, meaning the combined company will have to compete with all grocery stores, not just Walmart, Costco, and Amazon.

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

**Answer:** The merger will create more efficient supply networks and give farmers, transporters, and manufacturers more of a base business and more confidence to invest to serve us and other smaller retailers.

- 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?

**Answer:** Retailers, whether national or regional, compete fiercely on service, quality, assortment, shopping experience, and price. Customer loyalty programs allow for retailers to better-serve loyal customers with products they want at affordable prices and improve customers' overall shopping experience.

**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 (Booker)**

**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?

**Answer:** Because execution of the transaction is ongoing, we do not have final totals on the professional services and financial fees associated with the transaction.

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

**Answer:** As stated above, we do not yet have numbers for the total spend on professional services firms in relation to the ongoing transaction. Each team hired by Albertsons for the merger deal strives to include diverse professionals. Additionally, Albertsons’ diverse in-house legal team plays a significant role in merger-related activities. Albertsons puts a high priority on hiring diverse teams because diverse teams are better able to serve the company’s needs. Having business and service providers that reflect America is a top priority for us, and we have increased our efforts to ensure that professional services firms that we hire share that commitment.

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.

**Answer:** We will respond to your other letter under separate cover and will stay engaged with your staff as the merger process progresses.

**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. Vivek Sankaran

1. In order to gain approval, Albertsons says it is prepared 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 another owner. But within a year, that business 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?**

**Answer:** The final number of stores divested will be a product of ongoing discussions with antitrust regulators.

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

**Answer:** There are numerous regional and national competitors who have been successful in the market and would be credible buyers equipped to operate stores that may be divested as a part of the Kroger-Albertsons transaction. I will not speculate as to specific companies who may be equipped to purchase some or all of the stores that are ultimately divested, but we know that those types of credible buyers are out there because we compete against them every day.

**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?**

**Answer:** That is not our argument. Retail competitors of all sizes are successful and will continue to compete fiercely. Many of Albertsons’ strongest competitors are smaller. They compete successfully on service, quality, assortment, shopping experience, and price. Those types of companies may be well-equipped to purchase divested stores, and if SpinCo is ultimately used, it would be financed and structured such that it could compete successfully.



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

**Answer:** As Mr. McMullen, who would be the CEO of the new company, stated at the hearing, the merged company does not intend to close *any* stores at all as a result of the merger.

2. In 2015 Albertsons merged with Safeway and divested stores to Haggen. Haggen subsequently went bankrupt. Many experts argue that the divestiture was a failed remedy because Albertsons ended up with the very stores the company was supposed to divest in order to preserve competition in the retail grocery market. In writing about Albertsons' acquisition of Safeway in 2015, before she became the chair of the Federal Trade Commission, Lina Khan noted that Albertsons' divestiture of stores to a smaller chain—Haggen—was an insufficient remedy to maintain competition.

**a. Do you think the 2015 Albertsons divestiture of stores should be viewed as a successful remedy to addressing the competition concerns with the acquisition of Safeway? Please explain your answer.**

**Answer:** It was unfortunate that Haggen was unable to maintain the divested stores after the FTC and Albertsons agreed on the divestiture remedy. The acquisition of Safeway by Albertsons in 2015 was a success for the customers, employees, and communities that rely on the Safeway stores Albertsons acquired. After that merger, Albertsons and Safeway employees had better job security and better contracts and benefits. Many of Safeway's stores were struggling and may have closed absent the merger, but after the merger Albertsons turned them around—the merger thus saved stores from closing and jobs from being lost.

**b. If the FTC believes divestiture is an adequate remedy in the Kroger-Albertsons merger, how will Albertsons ensure that a third party buyer or third party company is competitively viable?**

**Answer:** We will work productively with the FTC and other antitrust regulators to make sure any divestiture buyer is well-positioned for success.

3. In its October 14<sup>th</sup> 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?**

**Answer:** No. The decision whether to pay a dividend and the amount was a decision Albertsons made as a result of a strategic review that began in 2021 that included as a key goal the return of capital to shareholders. The decision to make

the payment to Albertsons' shareholders was up to the Albertsons' board of directors, and Albertsons would have returned capital to its shareholders regardless of the merger.

**b. When did Albertsons share information about the dividend with Kroger personnel?**

**Answer:** Albertsons shared information about the dividend with Kroger personnel from the beginning of the merger negotiation process.

**c. In your testimony, you stated that your “decision to return capital to our shareholders and the merger with Kroger are not connected.” However, in your Oct. 14th release you stated “[t]he Special Dividend has been declared in connection with the Company entering into an Agreement and Plan of Merger.” Please explain how the decision is not connected.**

**Answer:** The decision to return capital to shareholders through a dividend payment was not contingent upon the merger with Kroger, and Albertsons was determined to return capital to its shareholders regardless of whether it merges. In fact, Albertsons will pay the dividend whether or not the planned merger with Kroger closes. The two transactions are connected only in that Albertsons' decision to issue a dividend impacted the purchase price Kroger paid in the merger agreement, and Kroger had the right to walk away if Albertsons issued a dividend that exceeded \$4 billion. The reference to the dividend in the press release was necessary to help shareholders understand the impact the dividend would have on the price Kroger would pay for Albertsons' shares.

**d. Why issue the dividend, and such a massive one, now in the midst of announcing such a consequential merger?**

**Answer:** Albertsons is in excellent financial condition and can easily afford to pay the special dividend without having a negative impact on its ability to compete during the merger review process. Albertsons made the decision to issue the dividend as a part of a strategic review that began in 2021 and which has the explicit goal of returning cash to shareholders. Albertsons' ability to invest in stores, employees, and communities hinges on attracting investors. Issuance of the dividend will therefore allow Albertsons to continue attracting investors, enabling investments in employee pay and benefits, lower pricing, and the communities in which we operate. For context, Albertsons has invested over \$11 billion in the business over the past ten years, and Albertsons must continue to attract investors in order to make those types of investments possible.