



**SUMIT SHARMA
RESPONSES TO QUESTIONS FOR THE RECORD**

**SENATE COMMITTEE ON THE JUDICIARY COMMITTEE
SUBCOMMITTEE ON COMPETITION POLICY,
ANTITRUST, AND CONSUMER RIGHTS
ON**

**EXAMINING THE COMPETITIVE
IMPACT OF THE PROPOSED
KROGER-ALBERTSON TRANSACTION**

DECEMBER 20, 2022

Questions from Senator Tillis

Q1. 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?

The FTC found in 2015 when considering the Albertson Safeway merger that:¹

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.

There is no reason to expect that such entry barriers will be lower after the proposed merger between Kroger and Albertson. So as discussed in my testimony while the transaction will result in significant lessening of competition, there is no reason to expect that if the proposed transaction is completed, entry will replace the competition lost due to the merger.

The FTC should also investigate the competitive effects on existing smaller competitors both locally and nationally in the short term (1-2 years) and the medium term (3-6 years) given the overall trend of increasing concentration in the sector.

For example, as I note in my testimony, consumers in rural areas and high-density urban areas have poor access to supermarkets and grocery stores and are often served by independent grocers which are smaller competitors. This, in my view, means there is a clearly identifiable group of consumers that might be worse-off because of the proposed merger. So, in addition to considering the effects of the

¹ §20, FTC Albertson Safeway 2015 Complaint, <https://www.ftc.gov/system/files/documents/cases/150127cereberuscmt.pdf>

merger on the average consumer, the FTC must also evaluate and appropriately consider how this group of consumers will be impacted by the proposed merger.

Q2. 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.

2a. If the acquisition is completed, will a combined Kroger and Albertsons have sufficient market power to demand better discounts?

Kroger currently has about 2700 stores. The combined Kroger Albertson will have close to 5000 stores. And the Kroger Albertson's combined Our Brands portfolio will nearly double in size and become one of the largest CPGs in the U.S.² This massive increase in size will, in my view, give the combined Kroger Albertson more purchasing power compared to Kroger and some of this might translate into the ability to further squeeze supplier margins.

And as the National Grocers Association has stated, these effects go beyond prices and that an increase in purchasing power allows powerful retailers to “*dictate terms and conditions to suppliers, including more favorable pricing and price terms, more favorable packaging, and access to exclusive products. Some even pressure suppliers not to sell certain products to independents.*”³

2b. If the combined companies can get better discounts, how will that affect their competition with Walmart?

The only efficiencies or cost savings that are relevant in the context of a merger or acquisition are ones that can be shown to give the merged corporation clear ability and incentive to improve competition in the marketplace. So what is important is not just whether the combined companies can get better discounts but whether these will be passed on to consumers and how this will impact competition in the short and medium term.

In this context it is unclear if competition from Walmart will be sufficient to incentivize the combined companies to pass on these savings, if any, to consumers.

² Slide 16, Kroger-Albertsons Companies Merger Investor Presentation, 14 October, 2022

³ Testimony of Mr. David Smith, President And CEO, Associated Wholesalers Grocers, Kansas City, KS at the Judiciary Committee's hearing on Beefing up Competition: Examining America's Food Supply Chain

This is because as I explain in my testimony, the right framework to consider this proposal to merge the 1st and 2nd biggest supermarkets in a sector is the supermarket. As the FTC found in 2015 when it considered the Albertson Safeway merger:⁴

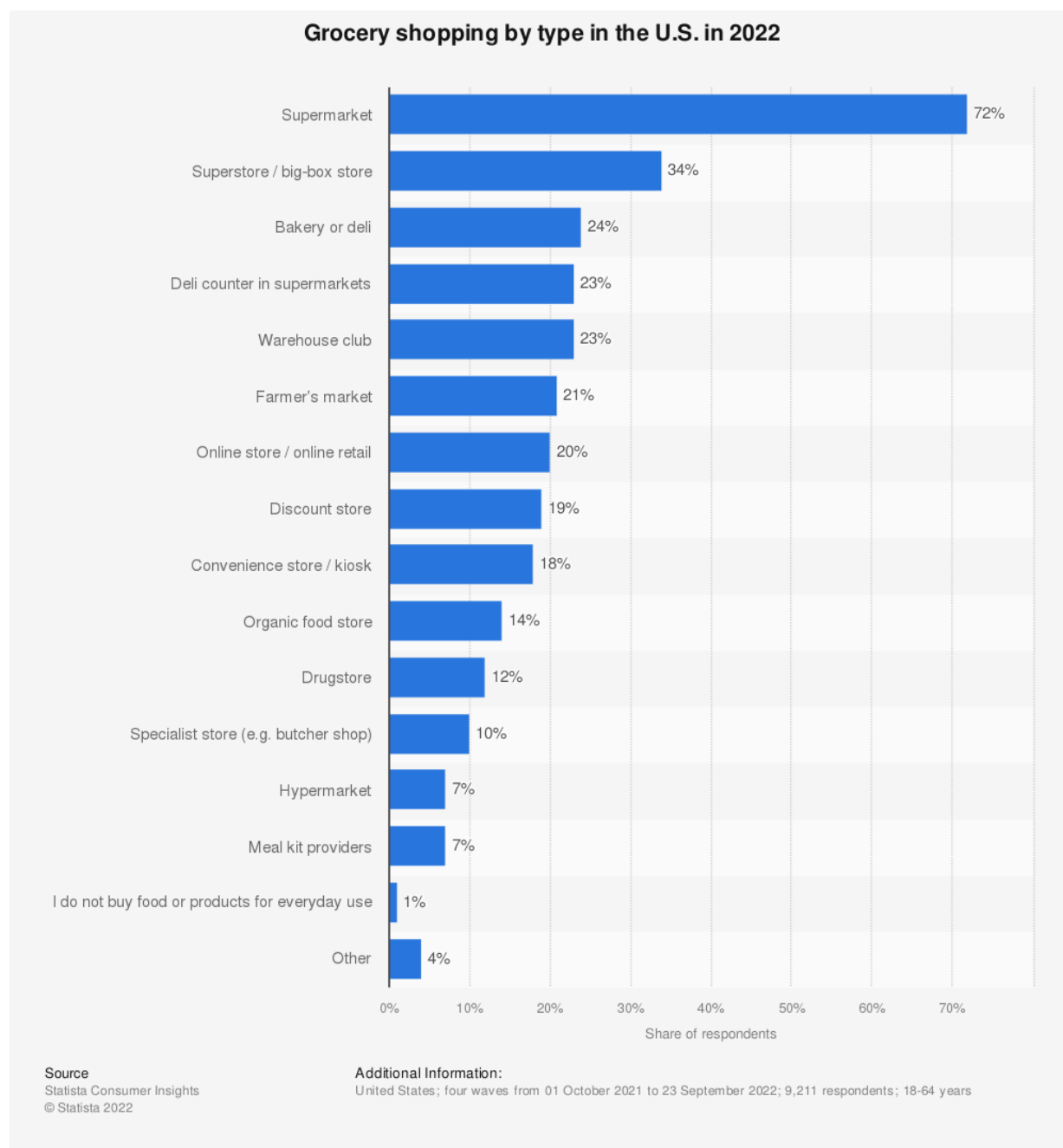
“The relevant line of commerce in which to analyze the Acquisition is the retail sale of food and other grocery products in supermarkets.

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....”

And even in 2022, when consumers are asked "Where do you regularly buy food and products for everyday use?" the majority (72%) respond with the ‘Supermarket’ like Kroger not a ‘Superstore or big-box store’ like Walmart (see Figure 1 below)

⁴ §9,10 FTC Albertson Safeway 2015 Complaint, <https://www.ftc.gov/system/files/documents/cases/150127cereberuscmt.pdf>

Figure 1



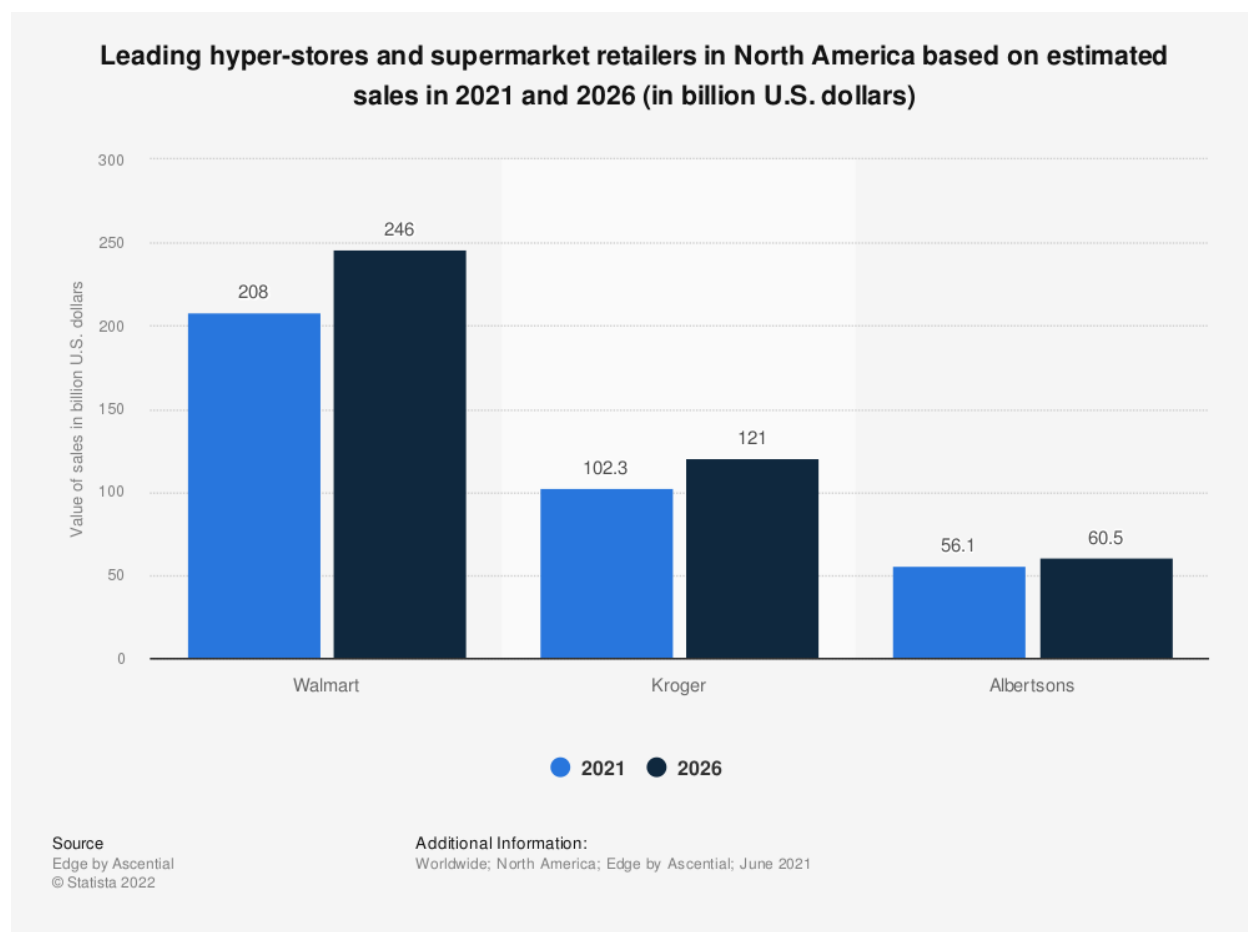
So, when one considers where the competitive constraints which motivate these businesses to be responsive to consumers’ interests come from, it is mainly other supermarkets. And importantly as I explain my testimony, Kroger and Albertson compete head-to-head and impose this competitive discipline on each other. A merger between Kroger and Albertson will remove this competitive discipline and there is no reason to expect that Walmart will step into this competitive void.

2c. Would the combined companies become a more direct competitor or a tacit ally with Walmart through avoiding competition with each other?

As explained above and evidenced in my testimony, it is unclear to what extent Walmart imposes a meaningful competitive constraint on Kroger. But to the extent that there is rivalry today, the nature of this rivalry will change after the proposed transaction.

For example, the combined Kroger Albertson will be more like Walmart. Both companies will have the around the same number of stores spread across the US (around 5000)⁵ and have comparable revenues (see Figure 2 below).

Figure 2



⁵ See <https://corporate.walmart.com/about/united-states> and Slide 16, Kroger-Albertsons Companies Merger Investor Presentation, 14 October, 2022

This increased symmetry means that if Walmart and the combined Kroger Albertson align their behavior then they can be more profitable. The merger will make such a strategy more profitable as there will be more stores and regions where Walmart and the combined Kroger Albertson can accommodate each other.

In my view, this increased potential for coordinated actions should be investigated by the FTC. This coordination may be in the retail market (for example on pricing and discounts) or on the purchasing side (for example supplier terms and conditions).

2d. How would the buying power of the combined companies impact the food supply chain, specifically farmers and food distributors?

The proposed transaction will increase the Parties' monopsony power i.e. market power on the buyer side and make it easier for Parties to impose favorable terms and conditions for themselves to the detriment of independent and smaller regional chains. The result will likely be fewer choices for consumers.

An interesting policy approach to these issues is found in the UK. Since 2010 the largest grocery retailers in the UK have been required to comply with the Groceries (Supply Chain Practices) Market Investigation Order 2009 and the Groceries Supply Code of Practice. These are designed to benefit consumers by controlling practices that transfer excessive risks and unexpected costs to suppliers, and have an impact on suppliers' quality, innovation, and willingness to invest.⁶

And enforcing this code of conduct via a Groceries Code Adjudicator has been successful in reducing various harmful practices.⁷

⁶ UK Groceries Supply Code of Practice: <https://www.gov.uk/government/publications/groceries-supply-code-of-practice>, UK Groceries (Supply Chain Practices) Market Investigation Order: <https://www.gov.uk/government/publications/groceries-supply-chain-practices-market-investigation-order>

⁷ Code provisions and related GCA action: <https://www.gov.uk/government/publications/code-provisions-and-related-gca-action/code-provisions-and-related-gca-action>

Q3. 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?

It is unclear if the merger will improve the ability of the combined Kroger Albertson to better target promotions, advertising etc.

First, as I mention in my testimony Kroger already claims it can personalize experiences and loyalty programs without the proposed transaction. The difference seems to be that a combined Kroger Albertson will be able to analyze data from approx. 85 million households post-merger rather than 60 million households pre-merger. No evidence is presented to suggest that the ability to analyze data on an additional 25 million households would materially improve capabilities to personalize experiences.⁸

Second, it is Facebook and Google that dominate the digital and personally targeted advertising ecosystem, and this remains unchanged with or without the merger.⁹

⁸ See Slide 16, Kroger-Albertsons Companies Merger Investor Presentation, 14 October, 2022 and Page 21, Kroger 2021 Fact-Book, https://s1.q4cdn.com/137099145/files/doc_downloads/irw/fact_books/2022/2021-PDF-Fact-Book.pdf

⁹ See for example Investigation of Competition in Digital Markets, Majority Staff Report and Recommendations, Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the Judiciary, published on 06 October 2020.