



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

**“Examining the Competitive Impact of the Proposed Kroger-Albertsons Transaction”**

November 29, 2022 – 3:00 PM

**OVERVIEW**

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On Tuesday, November 29, the Senate Judiciary Subcommittee on Competition Policy, Antitrust, and Consumer Rights held a hearing titled, “Examining the Competitive Impact of the Proposed Kroger-Albertsons Transaction.” During the hearing Senators and the witnesses discussed: merger benefits and consequences; market share and competition; divestiture; Federal Trade Commission (FTC) resources and antitrust enforcement; partnership with labor and union representatives; and environmental, social, and governance (ESG) standards.

**WITNESS PANEL**

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- **Rodney McMullen** – Chairman, Chief Executive Officer The Kroger Co. Cincinnati, OH
- **Vivek Sankaran** – President, Chief Executive Officer Albertsons Companies, Inc. Boise, ID
- **Sumit Sharma** – Senior Researcher, Technology Competition Consumer Reports Washington, D.C.
- **Andrew Sweeting** – Professor, Chair Of The Department Of Economics University of Maryland College Park, MD
- **Michael Needler, Jr.** – Chief Executive Officer Fresh Encounter, Inc. Findlay, OH

**QUESTION AND ANSWER SUMMARY**

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**Merger Benefits and Consequences**

Full Committee Chair Dick Durbin (D-IL) inquired why Mr. Sharma does not see any redeeming features in the merger. Mr. Sharma asserted even if the companies sell a few stores, it will reduce competition in the market, leading to price increases. He referenced a 2012 Federal Trade Commission (FTC) [study](#), which found if the market is already concentrated and companies merge, prices will go up. He added lack of competition in the market does not benefit the consumer and the elimination of some stores would mean fewer opportunities to shop.

Chair Durbin then asked how the merger will impact rural communities if consumers have access to fewer stores. Mr. McMullen expressed that every community is important to the company and argued combining the companies will provide benefits from a technology standpoint in terms of point of sell equipment and allow the companies to leverage a “seamless shopping experience for the consumer.” He added the company is looking at testing smaller stores in rural and inner-city markets to provide different service options for consumers.

Chair Amy Klobuchar (D-MN) asked about the timeline for implementing the price cuts if the merger is approved and inquired who will analyze whether the company meets the price cut commitment. Mr. McMullen stated the price cuts will happen on day one. He added the company expects the \$500 million dollar commitment to price cuts will take place over a four-year period.

Chair Klobuchar then questioned if Kroger would feel less pressure to reduce prices with reduced competition. Mr. McMullen emphasized the commitment of ensuring customers receive the best value for products. He also stated the company will continue to invest in service and pricing.

Ranking Member Mike Lee (R-UT) questioned if the net effect of the merger could result in higher prices for customers of more rural stores relative to prices paid in more heavily populated areas. Mr. Needler answered in the affirmative and emphasized the need for guardrails to ensure companies can compete with the cost. He added that scale will always take place through operating leverage, know-how, technology, culture, and capital, but emphasized it is critical to ensure parity of the raw cost of goods.

Sen. Josh Hawley (R-MO) questioned how many stores the company expects to close and how many layoffs. Mr. McMullen stated the company will close zero stores and will not layoff any frontline workers.

Sen. Hawley referenced Kroger's stock buyback of over one billion dollars and asked why the company did not pass this money along in the form of higher wages to employees. Mr. McMullen noted Kroger has invested \$1.2 billion dollars in associate wages over the last four years and spent over one billion in improving pension benefits.

Sen. Marsha Blackburn (R-TN) questioned how the merger could negatively or positively affect local grocers. Mr. Needler reiterated the need to ensure guardrails are in place so that smaller grocers have a level playing field in terms of competition.

Sen. Blackburn then asked how Kroger holds customer data related to shopping patterns. Mr. McMullen explained the company holds the customers data internally and reassured that no household data is shared outside the company.

### **Market Share and Competition**

Chair Klobuchar asked if Kroger considers market share on a market-by-market basis or nationwide. Mr. McMullen explained Kroger looks at market share from both areas as a means of creating efficiency. Mr. Sweeting argued the fundamental building block of any competitive analysis will be local market structure and shares. Mr. Sharma argued it is critical to look at who is imposing price constraints. He added main markets should be a focus of competition. Lastly, Mr. Needler added that smaller grocers look at market share on a market-by-market basis. He explained that when you break down market share, the price breakdown comes through a local basis, but Consumer Packaged Goods (CPG) are concerned about market shares on a national basis.

Chair Klobuchar asked if larger suppliers like PepsiCo. provide better prices to the largest buyers. Mr. Sankaran explained that manufacturers always support retailers that grow their businesses and increase efficiency. Mr. Needler added there is increased buyer power and argued there needs to be a level playing field and transparency to create more diversity in the food supply chain.

Chair Klobuchar questioned why data about what stores customers visit might not best predict how they react to price increases. Mr. Sweeting explained there are many reasons why people visit different stores and asserted that conducting surveys of customer responses could produce more accurate information on customer decision making.

Sen. Richard Blumenthal (D-CT) asked how buying power would affect smaller competitors in the market. Mr. Needler stated the smaller buyers compete on service and quality, but the number one variable that a customer decides on is price. He asserted if the largest companies exert this buying power, then the consumer will choose with their "pocketbook" and not shop at smaller stores.

Ranking Member Lee asked if Kroger would pass on savings after it eliminates competition in the merger. Mr. McMullen noted the company has lowered pricing by over 3 percent since 2003 and on an annual basis that works out to five billion dollars per year. He highlighted the merger with Harris Tetter lowered the gross profit rate to more than \$100 million dollars per year.

Ranking Member Lee questioned why Kroger and Albertsons need to merge, when Albertsons just gave \$4 billion dollars to shareholders. Mr. Sankaran explained the Albertsons company is in “excellent financial condition” and noted the company has bought hundreds of stores by investing over \$11.5 billion dollars into stores and one billion in communities to increase wages and become more competitive. He explained the return of four billion in cash to shareholders is not a result of the merger.

### **Divestiture**

Chair Klobuchar then asked if Albertsons plans to raise one billion for wages and benefits for store employees at the stores that are spun off related to the transaction. Mr. Sankaran committed to continue to pay competitive wages for the company’s part of the Albertson subsidiary, SpinCo.

Chair Klobuchar then inquired how many stores will be divested of the projected 100 to 300. Mr. McMullen stated professional advisors looked at the market to determine the number and the company will continue to work with the FTC to ultimately determine how many stores are divested.

### **Federal Trade Commission Resources and Antitrust Enforcement**

Chair Klobuchar asked how greater resources at the Federal Trade Commission (FTC) and other regulatory agencies could provide more enforcement and oversight related to the consolidation of some of the largest companies. Mr. Sweeting explained one important value of funding for agencies is the ability to go to court without sacrificing other priorities. He added funding could be used to conduct surveys during investigations which could lead to better assessments in understanding company consolidation. Mr. Needler emphasized the importance of looking at past behavior when determining how to approach future oversight and enforcement.

### **Partnerships with Union and Labor Representatives**

Sen. Alex Padilla (D-CA) asked how the company is communicating the merger with labor representatives. Mr. McMullen noted the companies discussed the merger with union leadership.

Sen. Blumenthal inquired how the company plans to commit to secure jobs and work with local unions after the merger. Mr. McMullen highlighted active conversations with the unions and expressed the importance of partnership to promote customer and employee satisfaction. He also noted most competitors are non-union. Sen. Blumenthal then asked if Kroger will commit to neutrality if non-union employees choose to unionize. Mr. McMullen expressed all associates have that choice.

### **Environmental, Social, and Governance Standards**

Sen. Hawley inquired what workforce inclusion means relative to the company’s ESG standards. Mr. McMullen explained the overall impact of energy commitments to the overall company and the importance of having diversity, equity, and inclusion as part of the promotion and reward structure at the company. Sen. Hawley then questioned why complementary ESG strategies are needed in the merger. Mr. McMullen highlighted Kroger’s Zero Hunger, Zero Waste commitment to work in markets to reduce hunger. He asserted by merging with Albertsons, the company will be able to have a positive impact and expand efforts in these communities.

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Please click [here](#) for the archived hearing.