October 27, 2022

ATTORNEY GENERAL RAOUL URGES ALBERTSONS AND KROGER TO PAUSE SHAREHOLDER PAYOUT TO ENABLE THOROUGH REVIEW OF MERGER PROPOSAL

Raoul, Coalition Call on Albertsons to Halt Nearly $4 Billion Shareholder Payout

Chicago — Attorney General Kwame Raoul, as part of a bipartisan coalition of six attorneys general, is calling on grocery chain Albertsons to hold off on paying out nearly $4 billion to its shareholders until the coalition can complete its review of the proposed merger with Kroger.

“The proposed merger between Albertsons and Kroger could severely reduce competition, lead to increased food prices at a time families are struggling to keep up, and worsen food insecurity impacting low-income and minority communities in particular,” Raoul said. “It is imperative that neither company act to potentially affect a merger outcome while state attorneys general continue our review.”

Albertsons – which announced the proposed merger with Kroger on Oct. 14 – also announced a “special dividend” to be paid to shareholders Nov. 7 at $6.85 per share. The dividend would total nearly $4 billion, which is more than two years of profits for the company. Raoul and the coalition sent a letter to Albertsons and Kroger expressing concerns that the special dividend risks significantly limiting Albertsons’ ability to operate and properly compete with Kroger, which could seriously impact consumers, workers and the grocery industry at large before regulators even have a chance to review the deal.

Raoul and the coalition are concerned additional consolidation in the grocery industry could lead to even higher food prices at a time when many families across the country are struggling to put food on the table. They are also examining whether the special dividend or the merger could reduce good, high-paying jobs and hurt wages and benefits for workers. Meanwhile, the private equity investors who control the grocery chains will have gained profits nine times larger than their original investments in 2006 if the merger is approved.

Albertsons and Kroger have more than 710,000 employees in nearly 5,000 stores across 48 states and D.C., reinforcing that all corners of the country would feel the effects of the proposed merger. The merger would have particular impact in Illinois, since two of the Chicago area’s major grocery chains, Jewel-Osco and Mariano’s, are owned by Albertsons and Kroger.

Joining Raoul in sending the letter are the attorneys general of Arizona, California, the District of Columbia, Idaho and Washington.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

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W. Rodney McMullen
Chief Executive Officer
The Kroger Co.
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October 26, 2022

Dear Messrs. Sankaran and McMullen:

As the Chief Legal Officers of our States, the undersigned Attorneys General of the District of Columbia, Arizona, California, Idaho, Illinois, and Washington State write to request that Albertson Companies, Inc. ("Albertsons") delay payment of its recently announced "special dividend" of $6.85 per share until the undersigned States have completed their review of Albertsons' proposed merger with the grocery store chain The Kroger Co. and Kettle Merger Sub, Inc. (collectively, "Kroger"), and the merger has closed.

Grocery stores supply daily necessities to millions of people throughout the United States and employ hundreds of thousands of workers in communities across the country. That is why we are dedicated to ensuring that the proposed merger of Kroger and Albertsons (the "Parties"), announced on October 14, 2022,[1] does not result in higher prices for consumers, suppressed wages for workers, or other anticompetitive effects. In this period of historically above-average inflation, purchasers of groceries have been particularly hard hit: grocery prices rose 12.2% from last summer to this summer, which is the biggest jump in over 40 years.[2] The proposed merger's implications do not end with the consumer: the Parties' merger announcement noted that together, Kroger and Albertsons have more than 710,000 employees in 4,996 stores across 48 states and the District of Columbia.[3] Thus, if the proposed merger has anticompetitive effects, nearly every corner of this country will feel them.

Federal and state competition laws forbid parties from entering agreements that substantially lessen competition or unreasonably restrain trade. The Companies' merger announcement noted that "[a]s part of the transaction," Albertsons would pay its stockholders of record as of October 24 a "special cash dividend of up to $4 billion" on November 7.[4] The payment of this special dividend is included in Albertsons' merger agreement with Kroger, a competitor.[5] The sum

[1] Kroger and Albertsons Companies Announce Definitive Merger Agreement (Oct. 14, 2022), *available at* https://ir.kroger.com/CorporateProfile/press-releases/press-release/2022/Kroger-and-Albertsons-Companies-Announce-Definitive-Merger-Agreement/default.aspx ("Merger Announcement").
[2] Hamza Shaban, "Food prices are still rising. Here's how Americans are coping," *The Washington Post* (Aug. 10, 2022), *available at* https://www.washingtonpost.com/business/2022/08/10/food-prices-rising/.
[3] *See* Merger Announcement.
[4] *See* Merger Announcement.
[5] *See* Agreement and Plan of Merger by and Among Albertsons Companies, Inc., The Kroger Co. and Kettle Merger Sub, Inc., at 16 (Oct. 13, 2022), https://assets.website-

involved represents approximately one third of Albertsons' market capitalization of approximately $11.19 billion,[6] and is comparable to the total of cash and cash equivalents ($3.392 billion) and net receivables ($652 million) that Albertsons reported in its most recent 10-Q filing with the U.S. Securities and Exchange Commission.[7] An agreement with Kroger that deprives Albertsons of the cash it needs to operate competitively is economically no different than other pre-merger agreements or actions that have limited the output or other business operations of a merging party, leading the federal agencies to act.[8] Even if Albertsons plans to adhere to the legal requirement—and the merger agreement's commitment—that it continue to compete with Kroger during the pendency of the merger's review,[9] paying a dividend of this size will hamper its ability to meaningfully compete with Kroger.

Moreover, regulatory approval of the merger is far from assured. The States must undertake their review and assure themselves that competition in all relevant antitrust markets at issue is preserved. Should any regulatory challenge to the merger succeed, or should the parties abandon the transaction, Albertsons would have to continue to compete with other grocery stores, a goal that its decision to enrich its shareholders to the tune of $4 billion will have made significantly more difficult to accomplish, if not unattainable altogether.

Accordingly, the undersigned request that Albertsons cancel issuance of the special dividend and postpone payment of any such dividend until regulatory review of the merger is complete and the merger closes. Please advise by 5:00 pm on October 28, 2022, whether you will do so.

Sincerely,

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files.com/6313a39c3c13ed1541dc24e1/634951168ca2950849801654_Kroger-Albertsons-Companies-Merger-Agreement.pdf ("Merger Agreement").

[6] *See* Yahoo! Finance, Albertsons Companies, Inc. (ACI), *available at* https://finance.yahoo.com/quote/ACI/ (last visited Oct. 25, 2022).

[7] Albertsons Companies, Inc., Form 10-Q for the quarterly period ended September 10, 2022, at 3, https://www.albertsonscompanies.com/investors/financial-reports/sec-filings/sec-filings-details/default.aspx?FilingId=16140596.

[8] For instance, the Department of Justice sued several companies under Section 7A of the Clayton Act and Section 1 of the Sherman Act because they partly "prematurely transferred operational control" between them before obtaining clearance, the consequences of which persisted after the parties had abandoned their deal in the face of regulatory opposition. Compl., *United States v. Flakeboard Am. Ltd. et al.*, No. 3:14-cv-4949 (N.D. Cal. Nov. 7, 2014), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/11/07/flakeboard_complaint.pdf; *see also* Compl., *United States v. Smithfield Foods, Inc.*, No. 1:10-cv-00120 (D.D.C. Jan. 21, 2010) (alleging target company "stopped exercising independent business judgment" with respect to certain aspects of its operations), https://www.justice.gov/atr/case-document/file/511646/download.

[9] *See* Merger Agreement, Sec. 6.1.

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