

October 20, 2023

**VIA EMAIL**

Jenny Grunditz  
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Health and Policy Analytics Division  
Oregon Health Authority  
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Re: Kroger/Albertsons - Supplemental Information Requests Issued to Kroger on September 12, 2023

Dear Jenny:

We write with responses to the supplemental information requests issued by the Oregon Health Authority (“OHA”) to Kroger on September 12, 2023.

**RFI #1: All divestiture proposals, presentations, analyses, or plans that have been developed between January 1, 2021, through the date of this information request. Include a list of all Oregon stores to be divested under each proposal.**

Kroger provided OHA with the list of Oregon stores included in its divestiture proposal on September 12, 2023. In response to RFI #1, Kroger is providing the divestiture presentations that Kroger and Albertsons made to the Federal Trade Commission (“FTC”) in December 2022, March 2023, and September 2023 (KR-OHA-000000001 to KR-OHA-000000093). Kroger is also providing as Exhibits 1-1 and 1-2 the divestiture presentation and business plan that C&S Wholesale Grocers, LLC (“C&S”) presented to the FTC in October 2023.

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**RFI #2: All data, documents, analyses, reports, or communications relating to the financial health and profitability of Kroger and Albertson stores in Oregon.**

Kroger is providing Exhibits 2-1 to 2-5 in response to RFI #2. Exhibit 2-1 provides store-level financial information for Kroger's Oregon stores for Kroger fiscal years<sup>1</sup> 2021 and 2022. Exhibit 2-2 provides store-level cash-on-hand information for Kroger's Oregon stores for Kroger fiscal years 2021 and 2022. Exhibit 2-3 provides store-level financial information for Kroger's retail pharmacies in Oregon for calendar year 2021 through July 18, 2023. Exhibit 2-4 provides division and store-level financial information for Kroger's QFC division for Kroger fiscal years 2021 and 2022. Exhibit 2-5 provides division- and store-level financial information for Kroger's Fred Meyer division for Kroger fiscal years 2021 and 2022.

On behalf of Albertsons, Kroger is providing ACI-ORHCMO-00000001 in response to RFI #2. ACI-ORHCMO-00000001 provides store-level financial information for Albertsons' Oregon stores for Albertsons fiscal years<sup>2</sup> 2021 and 2022.

**RFI #3: All documents, data, and communications regarding any Oregon-specific market analysis.**

In response to RFI #3, Kroger is providing Exhibits 3-1 and 3-2, which contain data that are potentially relevant to an Oregon-specific analysis. Exhibit 3-1 provides snapshots from December 2021 and December 2022 of the Oregon stores captured by the Nielsen TDLinx data to which Kroger has access. The "spharm" field indicates whether a given store has a pharmacy; however, this indicator is not always accurate and it does not capture every store in Oregon that has a pharmacy. The "swklyvol" field provides an estimate of the store's total weekly sales volume, include pharmacy sales. Exhibit 3-2 provides quarterly IQVIA data for December 2020 to May 2023 showing Kroger pharmacy's prescription volume and the prescription volume for other pharmacies, aggregated by pharmacy type (as defined by IQVIA), for each relevant ZIP3 area in Oregon.

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<sup>1</sup> Kroger's fiscal year runs approximately from the beginning of February to the end of the following January.

<sup>2</sup> Albertsons' fiscal year runs approximately from the end of February to the end of the following February. See Albertsons Companies, Inc. 10-K for FY 2022 at 4, <https://www.albertsonscompanies.com/investors/financial-reports/sec-filings/sec-filings-details/default.aspx?FilingId=16584437> ("Our last three fiscal years consisted of the 52 weeks ended February 25, 2023 ("fiscal 2022"), the 52 weeks ended February 26, 2022 ("fiscal 2021") and the 52 weeks ended February 27, 2021 ("fiscal 2020"). Our next three fiscal years consist of the 52 weeks ending February 24, 2024 ("fiscal 2023") and February 22, 2025 ("fiscal 2024"), and the 53 weeks ending February 28, 2026 ("fiscal 2025)").

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In further response to RFI #3, Kroger is providing maps that identify pharmacies near each Kroger store in Oregon with a pharmacy that is within 5 or 10 miles of an Albertsons store with a pharmacy (KR-OHA-000000094 to KR-OHA-000000145). The third-party pharmacies identified in these maps are based on Nielsen TDLinx data, which may not capture all pharmacy locations. In addition, the trade-channel and pharmacy indicators in the Nielsen TDLinx data, which were relied on to select third-party pharmacies, may not provide an accurate or informative description of the competitive dynamics of each location. Lastly, the dataset is likely incomplete because, among other reasons, there is a lag between the date of the data snapshot used for the maps and the date Nielsen TDLinx updates the dataset (e.g., we understand that some locations may not have been updated for as much as a full quarter).

On behalf of Albertsons, Kroger is providing maps that identify pharmacies near each Albertsons store in Oregon with a pharmacy that is within 5 or 10 miles of a Kroger store within a pharmacy, as well as an index of those maps (ACI-ORHCMO-000000002 to ACI-ORHCMO-000000003).

Finally, Kroger is also providing Bates-stamped custodial documents produced to the FTC by Kroger and Albertsons in response to its Second Request that are potentially relevant to an Oregon-specific analysis.

**RFI #4: All localized store-by-store competition analyses compiled for Kroger and Albertson stores in Oregon included in the divestiture plans, including analysis of likely competitive effects of the merger.**

Kroger is providing the white paper analyzing competition and the parties' proposed divestitures in Oregon ("Oregon White Paper"), submitted to the FTC on October 4, 2023, as well as the appendices and supporting materials for that white paper (KR-OHA-000000146 to KR-OHA-000000232, KR-FTC-2R-000000537, KR-FTC-2R-000006678 to KR-FTC-2R-000006838, and Bates-stamped custodial documents produced to the FTC by Kroger and Albertsons).

**RFI #5: Information on what criteria, metrics, analyses, etc. were used to identify the proposed store divestitures under the current divestiture plan.**

The store-level competitive assessment in the Oregon White Paper follows the mode of analysis traditionally used by the FTC. In each local area, we analyzed likely competitive interactions between the parties' stores and other grocery retailers, and the likely competitive effect of the merger considering the following factors:

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- Local conditions affecting how far consumers would be willing to travel to shop for groceries, such as population density (e.g., urban vs. suburban vs. rural), local highway, road, and street networks, natural geographic barriers (e.g., bodies of water, mountains), and available trade area information. We also considered that consumers may be willing to travel further to shop at mass retailers with full-line grocery offerings, such as Walmart Supercenter, Costco, Target PFresh, and Super Target stores.
- The number of local supermarket competitors (including the parties) and their proximity to each other, before and after the proposed merger. We also considered the competitive impact of other grocery retailers where they are present, including those that have a broad grocery offering but utilize alternative formats, such as Whole Foods Market, Trader Joe's, Sprouts, Aldi, Lidl, Costco, and Sam's Club. (The white paper does not expressly discuss the competition from national pharmacy chains including CVS, Walgreens, and Rite Aid or from regional, local, and independent pharmacies, all of which are identified in the maps showing the locations of Oregon pharmacies provided in response to RFI 3.)
- Competitor shares based on sales estimates as reported in the Nielsen TDLinx data.

Based on the above factors, Kroger identified the areas it believes the FTC may have competitive concerns and has offered divestitures that would maintain competition in those local areas.

Appendix A to the Oregon White Paper (KR-OHA-000000228) provides additional information on the criteria used to identify the store divestitures in the parties' current divestiture proposal.

**RFI #6: Information as to how the current divestiture plan will ensure that divested stores continue to provide the same pharmacy and prescription drug services in Oregon, including information as to how the quality of these services will be maintained.**

The divestiture plan and the proposed divestiture to C&S Wholesale Grocers, LLC ("C&S") will benefit consumers by creating a strong new player that can compete effectively to supply pharmacy and prescription drug services to customers in Oregon. C&S plans to invest the necessary resources to maintain the pharmacy and prescription drug services that currently exist in the divested stores, including by hiring experienced leaders to direct its pharmacy business.

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C&S's plans for operating the divested stores, including its comprehensive plan to successfully operate the pharmacies, are discussed further in its Business Plan, which also discusses the transition services that will be provided to C&S by Kroger and Albertsons. The Business Plan is being produced as Exhibit 1-2.

**RFI #7: Information as to how the current divestiture plan will ensure that there are no anti-competitive effects resulting from the transaction, both nationally and as it relates to the pharmacy/prescription drug market in Oregon.**

As described in the Oregon White Paper and its appendices and our response to RFI #5, the divestitures included in the divestiture plan address any potential anticompetitive effects.

The proposed divestitures to C&S will benefit consumers by creating a strong new player that can compete effectively to supply pharmacy and prescription drug services to customers in Oregon. C&S plans to invest the necessary resources to maintain the pharmacy and prescription drug services that currently exist in the divested stores, including by hiring experienced leaders to direct its pharmacy business.

C&S's plans for the operation of the divested stores, including its comprehensive plan to successfully operate the pharmacies, are discussed further in the Business Plan, which is being produced as Exhibit 1-2.

**RFI #8: Information as to how the planned divested stores and pharmacies in Oregon will be branded. Include information as to whether any divested stores will continue to use Albertsons or Safeway brands.**

C&S has selected new banner names for the divested stores based on the banners being made available by Kroger and Albertsons, existing brand awareness, and name recognition in the relevant geography.

C&S's rebranding efforts are discussed further in the Business Plan, which is being produced as Exhibit 1-2.

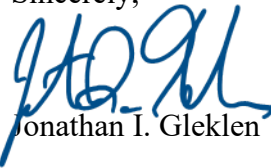
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This response does not contain confidential information. However, all of the exhibits and documents identified in this response contain confidential business and financial information that qualifies as trade secrets, and I am enclosing a confidentiality log per ORS 415.501 and ORS 192.345(2).

Sincerely,



Jonathan I. Gleklen

Enclosures