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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

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|-----------------------------|---|---------------------------|
| FEDERAL TRADE COMMISSION, |) | |
| et al., |) | |
| |) | |
| Plaintiffs, |) | Case No. 3:24-cv-00347-AN |
| |) | |
| v. |) | |
| |) | |
| THE KROGER COMPANY and |) | September 9, 2024 |
| ALBERTSONS COMPANIES, INC., |) | |
| |) | |
| Defendants. |) | Portland, Oregon |
| |) | |

PRELIMINARY INJUNCTION HEARING

DAY 10

BEFORE THE HONORABLE ADRIENNE NELSON

UNITED STATES DISTRICT COURT JUDGE

APPEARANCES

1
2 FOR PLAINTIFF FEDERAL
3 TRADE COMMISSION:

Ms. Susan Musser
Mr. Charles Dickinson
Mr. Daniel John Matheson
Mr. Jacob Hamburger
Ms. Emily Blackburn
Federal Trade Commission
400 7th Street S.W.
Washington, DC 20024

7 Ms. Laura Hall
Ms. Elizabeth Arens
8 Ms. Lily Hough
Mr. Harris Rothman
9 Mr. Alexander J. Bryson
Ms. Katherine Drummonds
10 Mr. Paul Frangie
Ms. Jeanine Balbach
11 Ms. Trisha Grant
Ms. Guia Dixon
12 Federal Trade Commission
600 Pennsylvania Avenue, N.W.
13 Washington, DC 20580

14 FOR PLAINTIFF STATE
15 OF ARIZONA:

Mr. Saivignesh Venkat
Mr. Connor Nolan
Office of the Arizona Attorney General
400 W. Congress Street, Suite S-215
16 Tucson, AZ 85701

18 FOR PLAINTIFF STATE
19 OF CALIFORNIA:

Ms. Nicole Gordon
Office of the California Attorney
General
20 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102

21 FOR PLAINTIFF STATE
22 OF ILLINOIS:

Mr. Paul Harper
Office of the Illinois Attorney
General
23 115 S. LaSalle Street
24 Chicago, IL 60603

25

1 FOR PLAINTIFF STATE

2 OF OREGON:

Mr. Christopher J. Kayser
Larkins Vacura Kayser LLP
121 S.W. Morrison Street, Suite 700
Portland, OR 97204

4

5

Mr. Tim D. Nord
Oregon Department of Justice
Civil Enforcement
1162 Court Street NE
Salem, OR 97301

6

7

8

Ms. Cheryl Hiemstra
Oregon Department of Justice
Civil Enforcement Division
1162 Court Street N.E.
Salem, OR 97301

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 FOR DEFENDANT KROGER
2 COMPANY:

3 Mr. B. John Casey
4 Stoel Rives LLP
5 760 S.W. Ninth Avenue, Suite 3000
6 Portland, OR 97205

7 Mr. Bambo Obaro
8 Weil, Gotshal & Manges LLP
9 201 Redwood Shores Parkway
10 Redwood Shores, CA 94065

11 Ms. Luna Ngan Barrington
12 Weil, Gotshal & Manges LLP
13 767 Fifth Avenue
14 New York, NY 10153

15 Mr. Matthew M. Wolf
16 Ms. Sonia Kuester Pfaffenroth
17 Mr. Christian Schultz
18 Mr. Joshua Davis
19 Mr. Michael Kientzle
20 Arnold & Porter Kaye Scholer LLP
21 601 Massachusetts Avenue, N.W.
22 Washington, DC 20001

23 Mr. John Holler
24 Arnold & Porter Kaye Scholer LLP
25 250 West 55th Street
New York, NY 10019

Mr. Mark Andrew Perry
Mr. Luke Sullivan
Mr. Sebastian Laguna
Mr. Win Hahn
Ms. Colleen Connors
Weil, Gotshal & Manges LLP
2001 M Street NW, Suite 600
Washington, DC 20036

Rebecca J. Sivitz
Weil, Gotshal & Manges LLP
100 Federal Street, 34th Fl.
Boston, MA 02110

Ms. Christine Wheatley
Kroger General Counsel
The Kroger Company
1014 Vine Street
Cincinnati, OH 45202

Antonio Matthews
In-house counsel with Kroger

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- 25

1 FOR DEFENDANT
2 ALBERTSONS COMPANIES,
3 INC.:

Mr. David H. Angeli
Angeli Law Group LLC
121 S.W. Morrison Street, Suite 400
Portland, OR 97204

4
5 Ms. Enu Mainigi
6 Mr. Jonathan Bradley Pitt
7 Mr. Adam Joshua Podoll
8 Ms. Beth A. Stewart
9 Mr. Michael Cowie
10 Mr. Tyler Infinger
11 Ms. Adwoa Seymour
12 Mr. Thomas Moriarty
13 Mr. Thomas Ryan
14 Williams & Connolly
15 680 Maine Avenue S.W.
16 Washington, DC 20024

17 Mr. James Andrew Fishkin
18 Dechert, LLP
19 1900 K Street NW
20 Washington, DC 20006

21 Jon-Peter Kelly
22 Senior Vice President - Head of
23 Litigation at Albertsons Companies

24 Dan Richardson, C&S Wholesale Grocers
25 Sullivan & Cromwell LLP
1700 New York Avenue NW
Washington, D.C. 20006

26 COURT REPORTER:

Jill L. Jessup, RMR, RDR, CRR, CRC
United States District Courthouse
1000 S.W. Third Avenue, Room 301
Portland, OR 97204
jill_jessup@ord.uscourts.gov

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INDEX

Yael Cossett

Direct Examination by Mr. Perry

2223

TRANSCRIPT OF PROCEEDINGS

(September 9, 2024)

(In open court:)

DEPUTY COURTROOM CLERK: All rise.

THE COURT: Good morning. We are in day 10 -- please be seated -- of the FTC with -- the plaintiff, versus the Albertsons Kroger and Kroger Company. I'm not going to put the case number in. We all know the case number.

But if there are any counsel that hasn't stated their appearance for the record, we'll have them do so; otherwise, we'll continue with our examination of witnesses.

MR. PERRY: Your Honor, Mark Perry for Kroger.

Two new counsel for Kroger. Mr. Win Hahn and Ms. Colleen Connors, who will come up for the next witness.

THE COURT: Fair enough.

MR. PERRY: Thank you.

MS. MUSSER: For plaintiffs, I believe we have one new face.

MR. NOLAN: Connor Nolan with the Arizona Attorney General.

THE COURT: Okay. Welcome. Are there any preliminary matters that we need to address?

MS. MUSSER: Just one update for the Court. We have -- as we had mentioned, we are planning a brief rebuttal case.

1 THE COURT: Yes.

2 MS. MUSSER: And due to witness scheduling issues
3 and in consultation with defendants, we will be taking one
4 witness tomorrow at 4:30 remotely in their -- during their
5 case --

6 THE COURT: I see.

7 MS. MUSSER: -- in order to accommodate that
8 particular witness's schedule.

9 This will be a remote witness, and we're working with
10 Mr. Harper to facilitate that so it goes smoothly.

11 MR. PERRY: And we've agreed with that. So we'll
12 be as accommodating as we can be to third parties, Your
13 Honor.

14 THE COURT: All right.

15 MR. PERRY: With that, are you ready for us?

16 THE COURT: Yes.

17 MR. PERRY: Defendants would call Mr. Yael Cossett
18 as their next witness.

19 THE COURT: Okay.

20 MR. PERRY: May my colleague approach with
21 binders?

22 THE COURT: Yes.

23 MR. PERRY: Thank you.

24 ///

25 ///

Cossett - D

1 Yael Cossett,
2 called as a witness in behalf of the Defendants, being first
3 duly sworn, is examined and testified as follows:

4

5 THE WITNESS: I do.

6 DEPUTY COURTROOM CLERK: Thank you. Have a seat,
7 please. Please state and spell your name for the record.

8 THE WITNESS: Yael Cossett, Y-a-e-l.
9 C-o-s-s-e-t-t.

10 MR. PERRY: Thank you, Your Honor.

11

12 DIRECT EXAMINATION

13 BY MR. PERRY:

14 Q. Good morning, Mr. Cossett.

15 A. Good morning.

16 Q. We heard your name already. What do you do?

17 A. I am the Senior Vice President and Chief Information
18 Officer for the Kroger Company.

19 Q. And where did you grow up, Mr. Cossett?

20 A. I grew up in France in a family half French, half
21 Italian, and have moved -- I moved to the U.S. in 1998 and
22 became a U.S. citizen in 2018.

23 Q. 2018.

24 And where do you live now?

25 A. I live in Cincinnati with my wife and son, where our

Cossett - D

1 headquarter office is located.

2 Q. That's the Kroger headquarters; right?

3 A. That's correct, yes.

4 Q. And how long have you worked with the Kroger Company,
5 Mr. Cossett?

6 A. I've joined the Kroger company in 2009 and have worked
7 at Kroger in various capacities and in various entities
8 since then.

9 Q. And when did you become an officer of the Kroger
10 Company?

11 A. I became an officer of the company in January 2017.

12 Q. And today do you have an officer title?

13 A. I do, yes.

14 Q. Which is what?

15 A. Chief information officer.

16 Q. And who do you report to at Kroger, Mr. Cossett?

17 A. I report along with six other officers, one of six
18 officers, to Rodney McMullen, our CEO.

19 Q. Thank you, Mr. Cossett.

20 At a high level, can you explain to the Court what your
21 current responsibilities are at Kroger?

22 A. Yes. I have three areas -- three key areas of
23 responsibility. The first one is around technology data and
24 digital capabilities that underpin a lot of what we do in
25 our company; also what we refer to as alternative business

Cossett - D

1 portfolio; and third area of focus for my responsibilities
2 is around what we call the transformation office, which
3 incorporates also what we -- the work we do around the
4 merger and the divestiture.

5 Q. And we'll get into each of those in a -- in a bit,
6 Mr. Cossett. But before we do, could you briefly summarize
7 what you did before Kroger that might have some bearing on
8 what we're talking about?

9 A. Sure. Yeah. I started my career in the software
10 industry in a company that focused on data and data
11 analytics, called Business Intelligence Industry, and worked
12 with a lot of different companies across different sectors,
13 in retail, of course, but also in telecommunication, in
14 banking and in insurance, helping businesses. We're
15 talking, you know, 20-plus years ago, helping businesses
16 understand how they can leverage their data to do things in
17 a more-effective and better way.

18 Q. Is there a unifying theme of -- as you see it, looking
19 back on your career, Mr. Cossett, of what you have been
20 responsible for?

21 A. Yes. When I look back at my career, it's revolved
22 around technology and how technology creates data and then
23 data -- and how data helps businesses change or transform
24 themselves.

25 So, in a way, the intersection of the three --

Cossett - D

1 technology, data, and business model evolution -- has been
2 basically the theme throughout my career.

3 Q. And did you ask us to make a slide summarizing your
4 principal responsibilities at Kroger?

5 A. I did, yes.

6 MR. PERRY: And, Mr. Rennick, if we could show
7 DDX20-1.

8 BY MR. PERRY: (Continuing):

9 Q. Is this that slide, Mr. Cossett?

10 A. Yes, it is.

11 Q. And are you responsible or have you been responsible
12 for all of the areas across the bottom of this
13 demonstrative?

14 A. Yes. Over my time with Kroger in various capacities,
15 I've had accountability for all these areas.

16 Q. And we're going to touch on each of them briefly, but
17 before we do, are these distinct areas, or are they related
18 somehow?

19 A. I would look at each of these as enabler or contributor
20 of transformation. As the company, the industry continues
21 to transform and change. Each of these have had a role in
22 that transformation, not just for Kroger, but for the
23 industry as well.

24 Q. Thank you, Mr. Cossett.

25 The first box on your slide is systems and software.

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1 Can you tell us a little bit about what systems and
2 software or applications your organization is responsible
3 for?

4 A. Yeah. I would think about system and software as the
5 technology portfolio. Think about it almost like the
6 infrastructure, the backbone of the company. From hardware
7 to software and also the data infrastructure that allows us
8 to run the business on a day to day.

9 Q. And on the hardware side, how many devices -- do you
10 have any sense? -- are in the Kroger network?

11 A. I couldn't tell you the exact number. We have
12 thousands of servers. A dozen of them in every store. We
13 have over 150,000 connected devices in our ecosystem,
14 anything that can underpin what we do in an office or store
15 or distribution facility, all of these have a significant
16 amount of hardware that we establish, we maintain, we
17 replace when they break, or modernize when they become
18 obsolete.

19 Q. And all of those computing devices run software
20 applications as well?

21 A. Yes. That's correct.

22 And, similarly, we have thousands of application or
23 business processes that our team builds or enables and
24 maintains. The scale is quite large. We probably have over
25 1,000 new releases of application or new versions that are

Cossett - D

1 issued every single week.

2 But, again, it touches every aspect of our business.

3 Q. You mentioned a team. You have a team that manages the
4 technology backbone of the Kroger Company?

5 A. Yes. I have the privilege of leading a team of over
6 6,000 individuals who really manage -- build or manage the
7 capabilities across our hardware or software. Our data
8 capabilities, some of them are associates and work for us
9 full time, and many of them also work for partners that are
10 contracting to perform certain activities or projects.

11 Q. And are those partners sometimes referred to as
12 consultants or contractors?

13 A. Yes. Exactly. Third parties that can be either
14 working on the statement of work for a given project or
15 augment our teams for a specific initiative.

16 Q. During your time in technology at Kroger, have you
17 overseen the implementation of any -- or the integration of
18 any systems from other companies?

19 A. Yes. That is common practice, and I would say without,
20 you know, trying to be too precise, probably about half of
21 the capabilities that we have on the software application
22 side, roughly, are provided or built by third-party
23 companies.

24 If you think about some of the big names, like Oracle
25 or Microsoft or IBM, these are some of the partners we would

Cossett - D

1 rely on for what we would call commercial software
2 implementation, and they build it, and they either implement
3 it or we can implement it.

4 Q. Are you familiar, Mr. Cossett, with the term "build
5 versus buy" in this context?

6 A. Yes.

7 In technology, we talk about build versus buy, which is
8 a strategic choice that companies will make when they embark
9 on a modernization or an implementation, which boils down to
10 deciding what you want to build and own and maintain over
11 time. This is license or buy from a third party who is an
12 expert and has the scale potentially to constantly innovate
13 on that capability.

14 Q. From your perspective as chief technology officer of
15 Kroger, are there any current trends in large-scale
16 computing that you're keeping an eye on?

17 A. There are many.

18 Some of the probably more common or more popular in the
19 recent past would be around the digitization, which has been
20 a massive undertaking for our company over the last 15 --
21 10, 15 years or so, which is really about moving and
22 shifting from an analog world, mostly paper and tracking
23 things and business processes with paper, and digitizing
24 that process so that it creates data and enables us to be
25 more effective at managing these processes.

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1 So the digitization of the enterprise would be probably
2 number one.

3 We've also seen significant innovation in the
4 infrastructure space, which has allowed companies, like
5 Kroger and many others -- I would say most companies that
6 are of a certain scale today -- to take advantage of what's
7 called "cloud computing," which provides scaling and
8 flexibility in how you run your technology portfolio.

9 And then the third one, which may be a little bit more
10 of a -- even more popular than the other two, is the recent
11 past. Everything that's been innovated around artificial
12 intelligence and specifically generative AI, which has been
13 a big theme in our industry in the recent year, year and a
14 half.

15 Q. And do those three things -- digitization, cloud
16 computing, and generative AI -- have particular import for
17 the management and use of large data sets?

18 A. Yes. Each of these are an enabler. If you think about
19 digitization, that means you are not just able to create
20 data. Once you transform a paper-based process to a digital
21 process, it creates the data that's breadcrumbs, but also it
22 is capable of consuming that data, all the devices that are
23 in the room are not just visualizing, they are also creating
24 and consuming data; so that would be on the digitization.

25 If you think about cloud, it's allowing us to scale and

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1 flex up and down; otherwise, it would be cost-prohibitive to
2 use data and technology in many things we do.

3 And generate AI, artificial intelligence more broadly,
4 is a critical component of innovation in science to really
5 transform that data and true intelligence, which then can be
6 turned into insight and other capabilities that fuel many
7 businesses today.

8 Q. And we're going to come back to that. At the -- at the
9 outset of this discussion, you introduced the concept of
10 transformation.

11 Do you recall that?

12 A. Yes.

13 Q. Is Kroger's technology transformation complete on your
14 watch, Mr. Cossett?

15 A. No. And probably will not be.

16 I think it would be naive or presumptuous to think that
17 one can complete transformation around technology in any
18 industry today.

19 My role, really, is to enable our teams to navigate the
20 transformation landscape and to help the company evolve, but
21 transformation is a forever journey, as technology is
22 constantly reinventing itself.

23 Q. Thank you, Mr. Cossett.

24 The second box on your responsibilities chart is data
25 and personalization.

Cossett - D

1 Can you explain to the Court what that represents?

2 A. Yes. Related to the previous point around digitization
3 and technology, we have had the opportunity, as we think
4 about the future of our company and the future of retail, to
5 really think about how we take better advantage of the data
6 that is created through the business to create better
7 experience for our customers and a better, more well-run,
8 more efficient business.

9 Q. Can I -- I'm sorry to interrupt.

10 A. No. Please, please.

11 Q. You mentioned two things there. First, you said "data
12 that is created through the business." What does that mean?

13 A. The data we use in our company comes from processes
14 that are active during the normal course of business.

15 So if you think about personalization, and in this
16 particular example, it's the data that we, as shoppers,
17 create through the normal course of shopping or interacting
18 with retailers. That data that gets created, that gets then
19 analyzed, and through science and models and then turn into
20 personalization capabilities.

21 Q. And the other thing you mentioned at the initial stage
22 was the customer experience. What's the relationship
23 between data and customer experience?

24 A. If we look back at the last 20 years or so, with
25 launches of systems and capabilities around loyalty, in

Cossett - D

1 particular, the industry has been a lot more agile and
2 effective at understanding what really matters to the
3 customer.

4 That data that gets created through a loyalty platform
5 through transactions helps us understand what matters to you
6 as a customer. We then turn that insight, that knowledge,
7 into personalization, and that gives us the opportunity to
8 bring back a more personal, more relevant touch to the
9 experience that customers have with us, whether it's
10 in-store or online.

11 Q. And does Kroger use that -- insights, as you call
12 them -- to make recommendations, for example, to consumers?

13 A. Yes. We have about, you know, a little less than
14 60 million families who shop our stores every year, and
15 these customers receive over 2 trillion -- with a T --
16 personal recommendation, meaning touch points throughout
17 their engagement, their experience with Kroger, that reflect
18 our understanding of what matters to them, and that can go
19 all the way to a digital offer that would bring a discount
20 or promotion that is applicable to a product that they shop
21 and care about.

22 That equates to billions and billions of dollars of
23 value that we're able to personalize and bring to our
24 consumers.

25 Q. You mentioned a minute ago remaining relevant to the

Cossett - D

1 consumer.

2 Do you remember that?

3 A. Yes.

4 Q. What does relevance mean, in your world, in this
5 context?

6 A. Yes. The transformation in retail, not just in our
7 company but in retail in general, is one where the consumer
8 is expecting a certain level of understanding from the
9 stores that they visit. Demonstrating that understanding,
10 then allows, you know, the customer to feel more connected
11 and feel that customer understands them and provide them
12 services or products or value that matters.

13 That's the point of relevance. It's really the
14 evolution of when it was -- you know, a one-on-one
15 interaction and bringing that one-on-one, that human touch,
16 that relevant knowledge of that consumer ad scale to all of
17 our customers.

18 Q. In pursuing that relevance, Mr. Cossett, does Kroger
19 also study its customers and their interests and
20 preferences?

21 A. Yes. Absolutely.

22 The knowledge and the relevance of that knowledge only
23 works if you look at a customer and customer behavior and
24 trends over time. It's not a single point of contact or
25 touch point that would provide you that knowledge.

Cossett - D

1 So to truly understand what matters to a customer, you
2 have to look at them over time.

3 Q. I'd like to introduce a document, Mr. Cossett, which is
4 DX2731. This is a December 2021 board of directors
5 presentation.

6 Did you attend this board meeting?

7 A. Yes, I did.

8 Q. And did you review the materials provided to the board
9 before this board meeting?

10 A. I do, yes.

11 Q. And do you and the other officers and employees of
12 Kroger make every effort to ensure that the materials
13 presented to Kroger's board of directors are accurate, in
14 light of the information available at the time?

15 A. Absolutely.

16 Q. And is that true of the document in front of us?

17 A. Yes.

18 MR. PERRY: Your Honor, defendants move the
19 admission of DX2731.

20 MR. MATHESON: No objection, Your Honor.

21 THE COURT: It will be received.

22 MR. PERRY: Thank you.

23 If we could turn to page 41, which is slide 34,
24 Mr. Rennick.

25 ///

Cossett - D

1 BY MR. PERRY: (Continuing):

2 Q. This slide, Mr. Cossett, is entitled Customer Equity
3 Performance, Q2 '21 versus Q4 '20.

4 Do you see that?

5 A. Yes, I do.

6 Q. And is this one of the slides that you or your team had
7 a responsibility for preparing?

8 A. That's correct, yes.

9 Q. And can you just tell the Court quickly what's
10 happening here?

11 A. As a matter of practice, we track our performance in
12 what we refer to as customer equity, which is how customers
13 see us and rate us against all the shoppers, all the stores,
14 all the retailers that they shop. So this shows two things:
15 One is progress over time, which would be the score change,
16 and in this case, from Q2 '20 -- Q4 '20 to Q2 '21, and the
17 relative performance of Kroger against the other retailers.

18 Q. And if I could point you to the first bullet up in that
19 orange box, it says, "Customer equity is how customers rate
20 grocery retail experiences when comparing Kroger versus our
21 competition"; is that right?

22 A. Yes.

23 Q. And then there's a list of stores or providers down
24 below; right? Is that who Kroger views as the competition
25 for purposes of this study?

Cossett - D

1 A. That's correct, yes.

2 Q. And is this a nationwide study, by the way?

3 A. Yes.

4 Q. So on this chart are H-E-B, Publix, Safeway, Costco,
5 Whole Foods, Walmart, Target and Amazon.

6 Why are those companies being compared to Kroger in the
7 ordinary course of business by the customer equity
8 analytics?

9 A. Each of these retailers also engage with our customers.
10 Customers shop multiple stores and, as such, we have to
11 continue to make sure that the experience we're providing is
12 relevant, is of quality that will allow us to continue to
13 grow and engage with the customers.

14 All of these retailers, in their own way, have assets
15 or capabilities or services that are compelling to our
16 customers, which is why they shop them, and that's important
17 for us to be aware of their performance.

18 Q. From your perspective, Mr. Cossett, as chief technology
19 officer of the Kroger Company, do any of these competitors
20 particularly stand out in respect to what you do every day?

21 A. Yes. I would say, if you look at companies like
22 Costco, like Walmart and Amazon, who have a number of assets
23 and capabilities that are differentiated, I would say they
24 are probably the dominant players, in aggregate, across --
25 across geographies.

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1 Q. Now, you've discussed a little bit about the use of the
2 data generated from the stores to remain relevant with
3 customers and offer personalization. In your view as chief
4 technology officer of Kroger, does that help Kroger compete
5 against players such as Amazon, Costco, and Walmart?

6 A. Yes. It's a crucial asset, yes.

7 Q. It's a crucial asset for Kroger?

8 A. It's a crucial asset for Kroger, for us to better
9 understand our customers, to run a more effective business,
10 and also for the monetization of data that also helps us
11 fuel some of the investment we make in our business.

12 Q. It's a great transition, Mr. Cossett.

13 The next box on your slide is Alternative Profits and
14 Monetization. So why don't we go there next.

15 What are alternative profits? Let's start with that.

16 A. We have established a portfolio of businesses we refer
17 to as "alternative profit businesses" that allow us to
18 monetize some of the existing assets from our core business,
19 generate net operating profit that we can then reinvest in
20 our business. So that's the portfolio that would be under
21 the alternative profit.

22 Q. And by "portfolio," do you mean there are several
23 tranches or columns of business lines within that
24 alternative profits?

25 A. Yes. We have a personal finance business. We have an

Cossett - D

1 insight monetization business, a media monetization
2 business, and a number of other partnerships or ventures
3 that would be of smaller size.

4 Q. Let me show you another document, Mr. Cossett. This is
5 DX2971. It's a 2019 Investor Conference presentation, and
6 let me just start -- because we're going to look at several
7 of these -- what are -- what is an investor conference at
8 Kroger?

9 A. As a publicly traded company, we meet with our investor
10 community analyst in the industry who follow the company and
11 other peers. We meet with them -- we try to meet with them
12 annually. There are some exceptions to that. Where we
13 provide them an update on our strategy, where we are, what
14 we've accomplished, related to what we shared with them in
15 the past, and then declare some of the key focus areas of
16 the years ahead.

17 Q. And do you typically review and participate in the
18 preparation of the materials for the investor presentation?

19 A. Yes, I do.

20 Q. And do you and Kroger's other officers and employees
21 make every effort to be accurate in the presentations to
22 investors based on the information known to the company at
23 the time?

24 A. Absolutely.

25 Q. And did you personally participate in the

Cossett - D

1 presentation -- the preparation of this 2019 Investor
2 Conference deck that we're looking at here?

3 A. Yes, I did.

4 MR. PERRY: Your Honor, we move the admission of
5 DX2971.

6 MR. MATHESON: No objection.

7 THE COURT: It will be received.

8 MR. PERRY: Mr. Rennick, if we could turn to
9 page 115 of this document, please.

10 BY MR. PERRY: (Continuing):

11 Q. What are we looking at here, Mr. Cossett?

12 A. This is a representation of the key businesses that I
13 was referring to. So Kroger profit, personal finance --
14 pardon me -- which offer a number of services. It's a
15 portfolio of services that we give our customers in the
16 finance space. They're all enabled by third parties, like a
17 bank or gift card companies.

18 The second pillar, which is the second largest after
19 Kroger personal finance, is that we're -- is the business we
20 call Kroger Precision Marketing, which is also referred to
21 as "retail media network" in the industry, and that's where
22 we provide the opportunity to CPGs to purchase targeted
23 advertising, to activate the knowledge of that customer
24 interest, if you will, in their product.

25 Q. And can I pause you there? I think we've heard the

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1 term "CPGs," but just so we remember, what is a CPG?

2 A. A CPG is Consumer Packaged Goods company. I would
3 think of them as all the brands that consumers would know.
4 They're suppliers of product for retailers.

5 Q. So a food supplier could contract with Kroger to use
6 this retail media service to reach customers; is that right?

7 A. Absolutely. Yes. We have the understanding of the
8 customer through the data. We provide them that -- that
9 knowledge at the aggregate level, a segment, if you will, of
10 sort, and give them the opportunity to engage that customer
11 in a relevant way.

12 Q. And there may be a little confusion on this point. I
13 just want to make clear -- is Kroger selling its customer
14 data to the CPGs?

15 A. No, we don't. I should -- I should clarify. It's not
16 the data itself. It's really the aggregation. It's the
17 knowledge of a group of consumers for which a given product
18 or a given promotion may be relevant.

19 Q. Thank you, Mr. Cossett.

20 The third column there is Insights, and you've used
21 that word before. Does "insights" have a particular meaning
22 in the world that you live in and work in?

23 A. Yes. Insight and general data, as the fuel for that
24 insight, is really -- I would think about it, like, as our
25 understanding. Whether it's understanding of a customer,

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1 which we then can turn into a personalization, or
2 understanding of a business operation, which we can then
3 turn into an opportunity to optimize that insight.

4 In this particular category here for alternative profit
5 portfolio of business, the monetization of insight touches
6 really on the customer. We help CPGs better -- Consumer
7 Packaged Goods better understand their customers so that
8 they can further develop and refine their go-to-market
9 strategy, and we also give them some insight on how they are
10 faring from an operational perspective. It could be related
11 to inventory. It could be related to distribution in a
12 specific geography. Really, to help them optimize and
13 improve their operation and relationship with our business.

14 Q. Mr. Cossett, before we leave this slide, at the bottom
15 it indicates that Kroger has 10 petabytes of customer data.

16 Do you see that?

17 A. Yes, I do.

18 Q. For those of us who have no idea what a petabyte is,
19 can you give a real-world or a physical-world analogy to 10
20 petabytes of data?

21 A. A phone -- phone -- I don't have my view -- the phones
22 you would have, would have 128, at least, maybe 256
23 gigabytes. That's less than a tenth of a percent of the
24 petabyte; or 10 petabytes, if we were to print it on paper,
25 would be over 5 trillion pages of documentation.

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1 Q. Thank you, Mr. Cossett.

2 We have been talking about the alternative profits
3 business at Kroger. Are you familiar with the term
4 "flywheel" in this connection?

5 A. Yes, I am.

6 Q. What is the flywheel at Kroger?

7 A. This was an evolution of our business model from about
8 10 years ago now, really looking at a critic two point. A
9 flywheel, at its most basic level, is really more than two
10 points on a wheel that build on each other and create
11 momentum, build up that momentum by interacting with each
12 other.

13 In the context of our business model, it really is
14 about what are the -- what is the energy or the growth that
15 gets generated through our core business and how we can
16 invest that growth and drive growth into our alternative
17 profit business, the business -- the pillars we just
18 described.

19 So the core business drives traffic, drives loyalty
20 with customers, which generates data. That data fuels the
21 alternative profit portfolio. That portfolio then generates
22 profits that can be reinjected and invested in our business,
23 that -- hence, creating that momentum.

24 Q. Mr. Cossett, I'd like to show you one more document.
25 This is DX2970. It's a 2018 Investor Conference

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1 presentation. Is this similar to the 2019 Investor
2 Conference presentation we looked at a minute ago?

3 A. Yes, that's correct.

4 Q. And you reviewed and approved the content of this?

5 MR. PERRY: Your Honor, we'd move the admission of
6 DX2970.

7 MR. MATHESON: No objection, Your Honor.

8 THE COURT: It will be received.

9 MR. PERRY: Mr. Rennick, if we could turn to page
10 16 of this document.

11 BY MR. PERRY: (Continuing):

12 Q. What are we looking at here, Mr. Cossett?

13 A. If we -- if we look at the top of the page, it doesn't
14 really look like a wheel, but it shows the dynamic, the
15 momentum that I was referring to, where you have two
16 businesses or two points on the wheel that are feeding on
17 each other.

18 On the left, the core business, where we drive and
19 aspire to have a better experience for our customers,
20 whether it's online or in our stores. That then generates
21 traffic. Again, digital traffic or physical traffic, and
22 ultimately data that fuels our alternative profit, which
23 then, in turn, funds the investment back into our business
24 to improve the experience, and the wheel keeps on turning.

25 Q. And under -- the store business is on the left; is that

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1 right? The black box?

2 A. That's correct, yes.

3 Q. And under that box, the third bullet, Mr. Cossett,
4 says, "Investments into the business: Service, price, and
5 associates."

6 Do you know what that means?

7 A. Yes. The bullets underneath each of the two boxes, the
8 two blue and -- bluish boxes, refer to what that specific
9 outcome would be.

10 So in the particular case, the orange square that you
11 have highlighted, the funds generated through the
12 alternative profit, so the net operating profit, it's --
13 it's implying here in that -- that the target was to get
14 about \$400 million of operating profit by 2020. This
15 profit, then, is funding what's happening on the left,
16 which, in this particular orange square, it's funding a
17 reinvestment in prices and service experience.

18 So, again, technology, for example, for a website, or
19 it could be a store design, and then wages for our
20 associates.

21 Q. So the Court has heard testimony earlier in this trial,
22 Mr. Cossett, about price investments.

23 Is the flywheel one of the sources of funds to make
24 price investments at Kroger?

25 A. Absolutely, yes.

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1 Q. And the Court has also heard testimony earlier in this
2 trial, sir, about wage investments. Is the flywheel one of
3 the sources of funds for Kroger to make wage investments?

4 A. Absolutely. The alternative profit model and the pivot
5 and the retail model, business model, was created to fund
6 our business which starts with better prices for our
7 customers, better investment for our associates and
8 expenses.

9 Q. Mr. Cossett, in the most recent public information, how
10 much profit does the alternative profits business at Kroger
11 generate?

12 Do you know?

13 A. The latest disclosure would probably have remained
14 vague and imply over a billion dollars of net operating
15 profit, probably from a couple of years ago.

16 Q. If I can show you one more document on that. DX2973.
17 This is a March 2022 business update.

18 Is this another set of materials that would have been
19 provided to investors?

20 A. Yes, that's correct.

21 Q. And did you also participate in the preparation of
22 these materials?

23 A. Yes, I did.

24 MR. PERRY: I move the admission of DX2973,
25 Your Honor.

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1 MR. MATHESON: No objection.

2 THE COURT: It will be received.

3 MR. PERRY: Mr. Rennick, if you could turn to
4 page 60, and let's keep this on the private screen. I
5 apologize.

6 This one you just said the number. Never mind.

7 The next one is the private screen, Your Honor. I
8 apologize. I'm trying to keep track.

9 BY MR. PERRY: (Continuing):

10 Q. And does this show that in 2022 Kroger was reporting to
11 investors that it had reached that milestone amount that you
12 mentioned a moment ago as of 2021?

13 A. Yeah. It was a very important milestone. Obviously,
14 not just -- because of the scale of the number but
15 reiterating and reinforcing the validity of our strategy
16 with our investors, demonstrating that we were continuing to
17 grow that source of investment.

18 Q. And does the alternative profits business at Kroger
19 continue to grow, Mr. Cossett?

20 A. It does, yes.

21 Q. Do you face some headwinds or disadvantages?

22 A. The headwinds or disadvantages will probably revolve
23 around data, ultimately, and the nature of that data,
24 particularly; and if you look at an example in the media
25 space, it's really the coverage of that data. You know, how

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1 many customers and where are all the customers. The
2 coverage -- the national coverage of that data is very
3 important when you monetize media for advertisers, CPGs,
4 Consumer Packaged Goods, and also capabilities -- ability to
5 fund technology innovation to continue to improve the
6 quality of the experience for the clients of the alternative
7 profit businesses.

8 Q. Does Kroger have that national coverage that you just
9 mentioned today?

10 A. We do not.

11 Q. And we'll come back to that in a minute, Mr. Cossett.

12 MR. PERRY: If we could go back, Mr. Rennick, to
13 demonstrative DDX20.

14 BY MR. PERRY: (Continuing):

15 Q. The fourth box on here, Mr. Cossett, is digital and
16 ecommerce. Before we start into it, what is ecommerce?

17 A. Ecommerce would refer to any transaction that is
18 started online digitally in a mobile app or in a -- on a
19 website, depending on the device or the interface consumers
20 use and can be fulfilled either for pickup, for you to pick
21 it up at a separate location, or delivery delivered directly
22 to your home or shipped to your home, depending on the
23 items.

24 Q. How did you get involved in the ecommerce platform at
25 Kroger and when?

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1 A. When I joined the digital team and led the digital and
2 ecommerce team, starting in 2017.

3 And how is probably more of a function of my previous
4 engagement around data and technology, which both are
5 critical pillars to digital capabilities and growing an
6 ecommerce business, which at the time -- it's still, to an
7 extent, today -- is a significant -- was a significant and
8 is a significant transformation in the grocery retail
9 business.

10 Q. Did anything happen, Mr. Cossett, in 2017 that
11 accelerated Kroger's digital and ecommerce strategy?

12 A. Yes. And, specifically, in June 2017, Amazon acquired
13 Whole Foods. It was late June 2017, which sent a shock wave
14 in the industry, including to Kroger, and prompted us to
15 make significant adjustment to our strategy and accelerate
16 our investment and our focus in that transformation.

17 Q. You mentioned that the acquisition of Whole Foods by
18 Amazon in June of 2017 sent a shock wave through the
19 industry.

20 Why was that, Mr. Cossett?

21 A. At the time, Amazon was a pure ecommerce player, a
22 company that would only provide the opportunity to engage or
23 transact digitally to its customers.

24 And two important signals: One was their declaration
25 that they were entering and serious about entering food,

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1 grocery food, which was not a space that had been a priority
2 or where they had demonstrated their commitment.

3 They did so because, obviously, food, grocery, we buy
4 these items on a weekly basis several times a week. They
5 wanted to capture that frequency, that engagement with --

6 MR. MATHESON: Your Honor, I would like to object
7 on foundation and move to strike all that testimony. He
8 appears to be testifying about why Amazon is doing certain
9 things.

10 While he's very highly qualified discuss perhaps
11 ecommerce capabilities that Kroger may have, he's not --
12 there's been no foundation he's responsible for strategy or
13 has any understanding of why Amazon did anything. So I'd
14 object to foundation, Your Honor.

15 MR. PERRY: Your Honor, I asked him what effect
16 the seismic shift on the industry, including Mr. Cossett's
17 role, but I'm happy to lay the foundation that Mr. Matheson
18 just raised as to both.

19 THE COURT: I'm going to sustain his objection.
20 I'm going to strike his comments -- remarks thus far, and
21 I'll allow you to -- well, his testimony, not comments --
22 and allow you to lay the foundation.

23 MR. PERRY: Thank you very much.

24 BY MR. PERRY: (Continuing):

25 Q. Mr. Cossett, do I understand that in January of 2017

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1 you took over as the head of Kroger's ecommerce division or
2 department?

3 A. That's correct.

4 Q. In that capacity, were you responsible for all
5 ecommerce strategy at the Kroger Company?

6 A. Yes, I was.

7 Q. In that capacity, did you have the obligation as an
8 officer of the Kroger Company to keep an eye on trends in
9 the marketplace and what other companies were doing?

10 A. Absolutely.

11 Q. What companies did you particularly watch in ecommerce
12 in the first half of 2017. Do you recall?

13 A. Amazon.

14 Q. And why Amazon?

15 A. Because of the decision they made to enter the
16 brick-and-mortar space with the acquisition -- acquisition
17 of Whole Foods. That disrupted the entire industry.

18 Q. And when you say that Amazon and Whole Foods --
19 Amazon's acquisition of Whole Foods disrupted the entire
20 industry, I'd like you to focus on the Kroger perspective.
21 You're sitting in the seat as head of ecommerce at Kroger.
22 What disruption did you, personally, in your official
23 capacity, perceive from that acquisition?

24 A. We had a strategy and a plan that had a timeline
25 attached to it to continue to innovate and drive

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1 transformation and for the Kroger business to be relevant to
2 our customers who were declaring interest in transacting
3 online.

4 When Amazon entered the space, they prompted us to
5 dramatically accelerate those investments in the
6 prioritization.

7 Q. Do you recall -- seven years, I realize. Did the
8 market react to the Amazon acquisition of Whole Foods?

9 A. Yes, I do, at seven years. There are few events that
10 mark one's career, and that would be one I remember vividly
11 that day, the time at which the announcement was made
12 public; and, yes, the market reacted very positively to
13 Amazon's acquisition for Amazon. It rewarded them with a
14 significant increase in market capitalization because
15 investors -- the analyst community recognized the
16 opportunity this was creating for Amazon.

17 Q. And were you a Kroger shareholder in June of 2017,
18 Mr. Cossett?

19 A. I was, yes.

20 Q. And how did the market react to the Amazon acquisition
21 of Whole Foods with respect to Kroger's share price?

22 A. It did not reward us. It punished Kroger, along with
23 the other players in the industry, because it -- the same
24 way it signaled a positive impact to the Amazon business, it
25 signaled a negative impact on our company and the threat of

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1 undermining the -- the capabilities and the platform we had
2 built over decades with our customers.

3 Q. What lessons did you draw, if any, Mr. Cossett, from
4 the Amazon acquisition of Whole Foods and then implement at
5 Kroger in the realm of digital and ecommerce?

6 A. We dramatically accelerated our investment. We
7 launched new services that were on our roadmap. Some of the
8 European retailers had made investment in these areas. We
9 decided to make a shift in our investment as a company, and
10 we prioritized things that would have taken longer to build.

11 Q. Let me ask you what I probably should have asked you
12 first, Mr. Cossett. Kroger has several thousand
13 supermarkets; right?

14 A. That's correct, yes.

15 Q. Why does Kroger need an ecommerce operation at all?

16 A. Because our customers need it. To remain relevant to
17 our customers, we have to engage with them in ways that meet
18 their needs. They have different expectations, depending on
19 the purpose of their trip, the time of their day. And when
20 Amazon or when a company brings that capability as an option
21 to customers and customers adopt it, you have to react if
22 you want to remain relevant and engage with them on that
23 platform.

24 Q. Now, I believe your testimony, Mr. Cossett, was that
25 following the acquisition of Whole Foods by Amazon, which

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1 marked a seismic shift in the grocery retail industry,
2 Kroger, quote, accelerated its ecommerce efforts.

3 Did I have that right?

4 A. Yes. Dramatically.

5 Q. And I'd like to show a slide.

6 MR. PERRY: And, Your Honor, this one is --
7 contains confidential Kroger information, so we'd ask that
8 it be shown only on the private screens.

9 This is DX2730. This is from a 2021 investor
10 presentation.

11 BY MR. PERRY: (Continuing):

12 Q. Is this similar to the -- actually, this is the
13 preparation for a -- documents for a 2021 investor
14 presentation.

15 Did you also prepare these documents, Mr. Cossett?

16 A. Yes. Yes, sir.

17 Q. And are these similar to the other investor materials
18 we've looked at?

19 A. That's correct.

20 MR. PERRY: Your Honor, we'd move the admission of
21 DX2730.

22 MR. MATHESON: No objection, Your Honor.

23 THE COURT: It will be received.

24 BY MR. PERRY: (Continuing):

25 Q. Mr. Rennick, if we could turn to slide 18, which is

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1 page 28; and, again, this is confidential, but you have it
2 on your screen.

3 What does the chart -- without saying the numbers in
4 the upper right quadrant, Mr. Cossett -- reflect?

5 A. It shows the dramatic acceleration of our growth and
6 our ability to respond to that change and engage with
7 customers through new channels that we had not necessarily
8 developed up until about, you know, '16, '17.

9 Q. And it is it right that the figure that appears on the
10 top right there Kroger reached that amount of ecommerce by
11 2020?

12 A. That's correct.

13 Q. And the slide says on the left, "2020. A Year of
14 Massive Acceleration Enabled by Our Seamless Ecosystem."

15 What does that refer to: "Seamless Ecosystem"?

16 A. In 2017 we determined that, in order for us to continue
17 to remain relevant, it was critical to accelerate and invest
18 in our digital capabilities, but we wanted to do it in a
19 different way, and we wanted to make it, quote/unquote,
20 "seamless" for customers to engage with us, whether they
21 chose, at a specific point in time in their day or week,
22 chose to shop in a store or shop online with us.

23 Q. To implement this massive acceleration of ecommerce,
24 Mr. Cossett, did Kroger partner with any third parties as
25 you described earlier?

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1 A. Yes, we did. It was not just a choice. It was a
2 necessity, considering the pace of transformation in the
3 industry.

4 Q. When you think of any particular partnerships that
5 was -- any particular partnership that was instrumental to
6 Kroger's accelerated growth in ecommerce?

7 A. Probably the largest in 2017 and 2018, at the time, was
8 Instacart.

9 Q. And what is Instacart?

10 A. Instacart is a company, a now publicly traded company,
11 that provides a platform to retailers to help them offer
12 delivery as a service, where -- delivery is where customers
13 place an order online, mobile or web, and get the -- their
14 order delivered to their house.

15 Q. And why did Kroger partner with Instacart for ecommerce
16 rather than develop that capability in-house?

17 A. The decision I made, we made, at the time, was time and
18 money was not on our side, and by partnering with Instacart
19 and establishing launching a delivery service that we were
20 able to launch in a matter of months, you know, we saved
21 ourself a lot of time to build our own capabilities and also
22 a lot of money, which we invested in other capabilities.

23 Q. Mr. Cossett, if someone were to come into this court
24 and suggest that partnering with Instacart is not an
25 efficient or practical solution for first party -- a

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1 first-party solution for ecommerce, would you have a
2 reaction to that suggestion?

3 A. I would disagree. Instacart -- I mean, we're talking
4 about 2000 -- a few years ago, but Instacart remains a
5 critical partner in our business today. They carry or
6 enable a very large portion. We do not share that publicly,
7 but a very large portion of our business today is fueled by
8 Instacart, enabled by Instacart, and there are many
9 companies today who rely, either exclusively or partly, on
10 Instacart to run their ecommerce business.

11 Q. Can you identify a couple of those companies for the
12 Court?

13 A. Kroger, Albertsons, Costco all use Instacart in some
14 capacity.

15 There are others, like Publix, who rely entirely on
16 Instacart for their -- the whole digital ecosystem that they
17 put forward for their ecommerce experience.

18 MR. MATHESON: Objection. Foundation, Your Honor.

19 THE COURT: I'm going to overrule.

20 And the Court is going to take a five-minute break.
21 We'll be in recess.

22 MR. PERRY: Thank you, Your Honor.

23 (Recess taken.)

24 DEPUTY COURTROOM CLERK: All rise.

25 THE COURT: Please be seated. You may continue

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1 your examination.

2 MR. PERRY: Thank you, Your Honor.

3 THE COURT: Yes.

4 BY MR. PERRY: (Continuing):

5 Q. Mr. Cossett, we were discussing ecommerce and digital
6 capabilities, such as retail media.

7 Do you recall that?

8 A. Yes.

9 Q. Does Kroger track its performance in those areas
10 relative to its competitors?

11 A. Yes, we do.

12 Q. I'd like to show you a document --

13 MR. PERRY: And this is for the private screen
14 only, please, Mr. Rennick.

15 BY MR. PERRY: (Continuing):

16 Q. This is an internal Kroger analysis. DX1528. It's a
17 February 28th email. The top date is February 28th, and in
18 the middle as an email from Cara Pratt, September 21, '23.

19 From Cara Pratt to you. Do you see that?

20 A. Yes, I do.

21 Q. Who is Cara Pratt?

22 A. Cara Pratt runs our retail media network, Kroger
23 Precision Marketing.

24 Q. Does she report to you?

25 A. Yes, she does.

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1 Q. Did you receive this email in the ordinary course of
2 business?

3 A. Yes, I did.

4 Q. Did you review and rely on the information set forth in
5 it?

6 A. Yes.

7 MR. PERRY: Your Honor, we move the admission of
8 DX1528.

9 MR. MATHESON: No objection, Your Honor.

10 THE COURT: It will be received.

11 MR. PERRY: Thank you.

12 BY MR. PERRY: (Continuing):

13 Q. Mr. Cossett, can you tell us what's happening in this
14 email with particular reference to the chart at the bottom?

15 And I'll remind you that the figures in the Kroger
16 column are confidential, but just to confirm, is it your
17 understanding that the figures in the "others" are from
18 public sources?

19 A. Yes, they are.

20 Q. And the Kroger numbers are not public; correct?

21 A. They are not, correct.

22 Q. Very well. With that understanding, could you tell us
23 what's happening or what's being shown in this chart?

24 A. Yes. This is intended -- as a leadership team, we can
25 go after our alternative profit business. This is intended

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1 to compare Kroger to other retailers, both total sales, but
2 also their ecommerce business, our ecommerce business in the
3 first column, and our relative alternative profit media
4 business.

5 So the third role would be the advertising, the retail
6 media network business, and the bottom row would be what is
7 that business as a share of sales for the company, and that
8 compares us to the rest of the -- of the players that are
9 listed on this page.

10 Q. And we've already talked about Instacart; right?

11 A. Yes, we did.

12 Q. The rest of the players listed on this page are
13 Walmart, Target, and Amazon.

14 Why is Kroger comparing its ecommerce and retail media
15 capabilities to Walmart, Target, and Amazon at this time?

16 A. As the numbers show, we have a significant gap that we
17 need to continue working on bridging against with
18 competitors and as those regarded as key players and key
19 leaders in the space.

20 Q. Is Kroger taking steps to remediate or close that gap
21 that you just identified from its competitive -- with its
22 competitors?

23 A. Yes, we are.

24 Q. Let's move on, Mr. Cossett, to the merger that brings
25 us all together today and this week and last week and in the

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1 week before that.

2 MR. PERRY: But not next week, Your Honor.

3 THE COURT: Not next week.

4 BY MR. PERRY: (Continuing):

5 Q. How does the merger -- you just explained a variety of
6 capabilities and business aspects related to digital --
7 digitization, digital capabilities, data, and so forth, at
8 Kroger.

9 How does all of that relate to the merger, from your
10 perspective as chief technology officer of Kroger?

11 A. The merger is just a continuation of that
12 transformation journey. Just like the other boxes are kind
13 of proxy for some of the transformation that Kroger
14 navigated over the years, the merger is kind of the next
15 step in that transformation journey.

16 Q. Is the merger designed to overcome particular
17 obstacles, from your perspective as chief technology officer
18 of Kroger?

19 A. Yes. Absolutely it does.

20 Q. Can you explain some of those?

21 A. Starting with technology, obviously bringing to
22 companies, with their respective assets and teams, allows us
23 to continue our innovation or transformation journey on the
24 tech side; but I would say, more importantly, the merger
25 with Albertsons allows us to accomplish a few things.

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1 Specifically, getting national coverage, which will help us
2 grow our ecommerce and our loyalty platform and generate
3 data that we can monetize, which is critical for us to
4 continue to remain relevant in the alternative profit
5 business and compete with some of the companies we mentioned
6 earlier.

7 Q. And those companies would include Amazon?

8 A. Yes. Absolutely. Amazon, Walmart, Costco. Companies
9 who have been particularly effective at establishing a
10 competitive advantage in this field.

11 Q. Are you aware, Mr. Cossett, of any skepticism in the
12 investor community regarding Kroger's ability to effectively
13 compete with Amazon and Walmart and others in digital
14 capabilities in the ecommerce?

15 A. Very much so. It remains a -- both a pain point but
16 also a source of inspiration. We have to continue to invest
17 and do better and continue to grow in ecommerce and digital
18 and also alternative profit.

19 Q. Let me show you a document which is DX2730.

20 MR. PERRY: And, Your Honor, this is the
21 February 23, 2021, investor deck that was previously entered
22 into evidence.

23 And, Mr. Rennick, if we could turn to slide 2, which is
24 on page 3.

25 ///

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1 BY MR. PERRY: (Continuing):

2 Q. First of all, just some terminology, this is an
3 investor presentation; correct?

4 A. That's correct, yes.

5 Q. And in that context, who are the bears?

6 A. "Bears" refers to the group of investors or analysts
7 with a negative sentiment on a given company, in this case,
8 on Kroger. So investors or analysts who are skeptical about
9 Kroger's long-term performance and therefore more negative
10 about the prospect of success long-term.

11 Q. So on the bottom of this slide, it says "The Bears" And
12 it has four bullets. Is that your understanding, that this
13 is a summary of the skeptical view of the Kroger Company's
14 future?

15 A. That's correct, yes.

16 Q. And in the last one -- last bullet on that chart is,
17 quote, "Inability to effectively compete against Walmart and
18 Amazon over the long-term." And is that a concern you had
19 heard as chief technology officer of Kroger in 2021?

20 A. Yes, it is. Yes.

21 Q. And how are you addressing that concern with the
22 merger?

23 A. Obviously, the skepticism has not subsided. It
24 continues to be a key focus for investors and therefore key
25 focus for our strategy, which is to continue to bridge the

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1 gap that exists between Kroger and Walmart and Amazon on the
2 ecommerce and alternative profit side.

3 The merger allows us to accelerate both, accelerate the
4 growth in ecommerce, getting that national coverage that we
5 refer to, bringing capabilities together and bringing the
6 differentiated experience and a more personal experience to
7 more families.

8 On the alternative profit, the data that gets generated
9 through the merger, by increasing the size and the coverage
10 of the company, also allows us to generate the profit that,
11 as we discussed on the flywheel, allows us to fuel the
12 investment in the company.

13 Q. Including the price investments?

14 A. Price investment and expense investment and wages
15 investment.

16 Q. You've mentioned national coverage a couple of times,
17 Mr. Cossett.

18 Does Walmart have national coverage today?

19 A. Yes, they do.

20 Q. Does Costco have national coverage today?

21 A. Yes.

22 Q. Does Amazon have national coverage today?

23 A. Yes, they do.

24 Q. Does Kroger have national coverage today?

25 A. We do not.

Cossett - D

1 Q. Let me show you another document. DX1254, and this is
2 an October '22 investor presentation deck. Did you review
3 and approve the materials contained in this particular
4 presentation?

5 A. Yes.

6 Q. And is this similar to the other ones? I believe this
7 one was not a meeting. This was a post of some sort. Do I
8 understand that correctly?

9 A. Yes.

10 Q. Otherwise, is it similar to the other investor
11 presentations we've looked at?

12 A. Yes. Absolutely.

13 MR. PERRY: Your Honor, we move the admission of
14 DX1254.

15 MR. MATHESON: No objection.

16 THE COURT: It will be received.

17 MR. PERRY: Thank you.

18 Mr. Rennick, this is a public document. If we could
19 turn to page 8.

20 BY MR. PERRY: (Continuing):

21 Q. The Court has seen various versions of this during the
22 trial, Mr. Cossett, but this is the one that was actually
23 presented to investors shortly after the merger was
24 announced; is that right?

25 A. Yes. That's correct.

Cossett - D

1 Q. And how does this relate to the national coverage issue
2 that you were just discussing in respect to digital
3 capabilities in ecommerce?

4 A. I think the chart, the drawing, illustrates the
5 complementarity of the physical geographies that Kroger and
6 Albertsons operate in. Therefore, by associating -- by
7 merging the two entities, increasing the coverage of the
8 company, the merged companies, and its proximity to more
9 families across the United States.

10 Q. Now, you mentioned proximity. What's the relation, if
11 any, between ecommerce, which is in the internet, and
12 proximity, which is on the ground?

13 A. Physical proximity is a crucial aspect of our business.

14 Obviously, for the brick-and-mortar business, our
15 stores and customers shopping our stores, but it's also a
16 critical element for our digital business, online
17 transactions that are fulfilled from our stores and then
18 take to our customers, for example, for delivery.

19 So increasing the proximity increases not just the
20 ability to service the customers for brick-and-mortar
21 transactions, store transactions, but also support their
22 needs for online transactions.

23 Q. Got to make sure the ice cream doesn't melt; right,
24 Mr. Cossett?

25 A. That's correct.

Cossett - D

1 And, you know, back to the point around seamless that I
2 mentioned earlier, it's really that convergence of both the
3 physical and the digital world that is creating that
4 opportunity, that experience, that personalized experience,
5 for our customers.

6 Q. Earlier in this trial, Mr. Cossett, we heard the term
7 "no compromise" in connection with Kroger's operations.

8 Does that term have a meaning in your world as chief
9 technology officer of Kroger?

10 A. Yes, it does.

11 Q. And can you explain that for the Court?

12 A. We have, historically, as a company, always aspired at
13 meeting the customer needs. The term of "no compromise" or
14 "shopping without compromise" was coined a few years ago to
15 reflect the commitment and the ongoing investment we were
16 making in our strategy.

17 Specifically, we want to make sure customers have, you
18 know, access to choice and quality; have the option to shop
19 with us the way they want, whether it's in-store or
20 online -- as we mentioned, pickup or delivery for -- for the
21 online -- but also have the ability to get it when they
22 wanted; and, again, the importance of proximity, and without
23 having to compromise on the value, where we use our
24 personalization capability to bring that relevant
25 personalized value to the customer.

Cossett - D

1 Q. Is this another concept, Mr. Cossett, that you and the
2 Kroger Company have publicly discussed with the investor
3 community with regard to Kroger's ongoing and future
4 operations?

5 A. Yes, we have.

6 Q. I'd like to show you another document, Mr. Cossett,
7 DX2973?

8 MR. PERRY: Your Honor, this is the 2022 investor
9 presentation that was previously admitted into evidence.

10 And I'd like to turn, Mr. Rennick -- and this is a
11 public document -- to slide 44 -- page 44. Excuse me.

12 BY MR. PERRY: (Continuing):

13 Q. Does this slide, Mr. Cossett, relate to what you were
14 just discussing regarding "no compromise"?

15 A. Yes. It was the content we shared with our investors
16 to articulate our strategy and our commitment to our
17 customers.

18 Q. It says at the bottom that other retailers are
19 compromising on the customer experience or the economic
20 model.

21 Do you have an understanding of what that meant or what
22 you were conveying to investors in that respect?

23 A. Yes. Absolutely.

24 The first -- maybe touching on the customer experience
25 point, we have and continue to be committed to meeting the

Cossett - D

1 customers where they want to be, from a shopping experience
2 perspective; again, whether it's in-store or online.

3 So it starts with quality and choice of what they want;
4 the products that they want to shop; the assortment, the
5 variety, and quality that they want to shop.

6 The second pillar of that "no compromise" experience is
7 the "when" they want to shop. Obviously, very clear for
8 brick-and-mortar or store visits, but also as it relates to
9 pickup and delivery, there's a broad spectrum of
10 expectation, in terms of timing. And then the "how,"
11 whether they come to our stores or prefer pickup or delivery
12 to their home.

13 And all this, lastly, without compromising on the value
14 that they can get through the promotion and the prices that
15 we give.

16 So, really, demonstrating to our investor that
17 commitment is not one or the other. It's the combination of
18 all four.

19 And in contrast, we believe, and I would say our
20 investors recognize that other retailers elect, for economic
21 reason, to make a choice and compromise on that expense.
22 They may overemphasize the choice of product but, you know,
23 de-emphasize the value.

24 And if you think about a company like Amazon, who has
25 really focused on broadening the assortment, making it

Cossett - D

1 simple, convenient to get anything, they haven't necessarily
2 focused as much on the value, prompting customers to make a
3 compromise on the overall experience.

4 And same with Walmart, who may have focused on value,
5 not necessarily on the choice.

6 Our objective, our aspiration, and our strategy is to
7 remove the need for that compromise.

8 Q. How does the merger, if at all, Mr. Cossett, relate to
9 Kroger's no compromise go-to-market strategy?

10 A. It partly enables it and largely accelerates it.

11 Again, being able to reach more families, bringing
12 capabilities and -- and the experience that we can build
13 together, that will allow customers to shop with us, engage
14 with us, without having to compromise.

15 Q. Now, is it your understanding, or do you have an
16 understanding of whether the merger will have any impact on
17 the alternative profit business that you mentioned earlier?

18 A. It will have a significant impact.

19 Again, that coverage will generate a more relevant
20 reach or coverage of the United States, which, in turn,
21 creates data that can be monetized more effectively with
22 advertisers or CPGs, who -- Consumer Packaged Goods, who
23 want insight about their customers across their operations.

24 Q. Is this another point that you and the Kroger Company
25 have conveyed to investors in the marketplace regarding the

Cossett - D

1 merger?

2 A. Yes, we have.

3 MR. PERRY: If we could put up, Mr. Rennick,
4 DX1254.

5 Your Honor, this is the October 14, 2022, investor
6 presentation that was previously admitted into evidence.

7 And turn, Mr. Rennick, to page 18.

8 BY MR. PERRY: (Continuing):

9 Q. What's being shown here, regarding alternative profits,
10 Mr. Cossett, in the merger?

11 A. This slide, in particular, is touching on some of the
12 efficiencies, and this -- this particular visual shows the
13 evolution of moving from a Kroger standalone business, which
14 has a billion-plus at the time of the presentation, a
15 billion-plus in alternative profit and in coverage of
16 roughly 60 million families. Moving to a combined company
17 that would allow us to exceed a billion and a half in --
18 \$1.5 billion in net operating profit, generated through that
19 business portfolio, and engaging and covering over
20 85 million families.

21 Q. And that growth in alternative profits, is it your
22 understanding -- is it -- do you have an understanding as to
23 whether any of that growth in alternative profits would be
24 returned in the form of price investments, wage investments,
25 and so forth?

Cossett - D

1 A. All of it.

2 Q. Thank you, Mr. Cossett.

3 Let's go back to DDX20, slide 1. The final point on
4 your career.

5 What has been your personal involvement as chief
6 technology officer and an officer of the Kroger Company with
7 the merger that brings us all here?

8 A. As an officer, we obviously were involved in the early
9 discussion and the consideration of whether the merger with
10 Albertsons was a good strategy opportunity. So provided a
11 perspective on that and, ultimately, contributed to the --
12 what we refer to as the due diligence process that took
13 place in the summer of 2022.

14 And, lastly, as it relates to divestiture specifically,
15 obviously, was significantly involved in the divestiture
16 process, all the way to the selection and the preparation
17 for both the integration, the merger, and the separation,
18 which relates to the divestiture.

19 MR. PERRY: Thank you.

20 THE COURT: Well, this is going to be a good time
21 for our morning break. Let's take a ten-minute break since
22 the Court took an earlier break.

23 Thank you.

24 MR. PERRY: Thank you, Your Honor.

25 (Recess taken.)

1 DEPUTY COURTROOM CLERK: All rise.

2 THE COURT: So please be seated. With apologies
3 from the Court, something has come up, and so the Court is
4 going to need to be a recess until tomorrow at 9:00. I have
5 rearranged my schedule, and I'm going give you an extra day.
6 This is something that has come up and is unexpected that
7 the Court has to take care of, but it will not affect the --
8 except for us taking this break right now -- how much time
9 counsel will have to present its case and cross-examine
10 witnesses.

11 With the Court's -- so court is in recess until
12 tomorrow at 9:00.

13 (Day 10 adjourned at 10:55 AM.)

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C E R T I F I C A T E

Federal Trade Commission v. Kroger, et al.

3:24-cv-00347-AN

Preliminary Injunction Hearing - Day 10

September 9, 2024

I certify, by signing below, that the foregoing is a true and correct transcript of the record, taken by stenographic means, of the proceedings in the above-entitled cause. A transcript without an original signature, conformed signature, or digitally signed signature is not certified.

/s/Jill L. Jessup, CSR, RMR, RDR, CRR, CRC

Official Court Reporter
Oregon CSR No. 98-0346

Signature Date: 9/9/2024
CSR Expiration Date: 9/30/2026

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