

M&A Nugget: Non-Competes- “The Reverse”

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Buyers of businesses typically require the target and its owners to sign non-compete agreements which restrict the seller and its owners from competing after the closing. Those agreements obviously benefit the buyer. Non-compete provisions must, however, also be examined from a different perspective. As part of due diligence, the buyer examines the seller's contracts to determine what contracts the buyer will assume, or take over. The contracts usually include leases, supply agreements and distribution agreements. Those contracts may contain non-compete restrictions or exclusivity provisions which bind the seller and benefit the other party to the contract. If the buyer assumes the contracts, the buyer takes on and is also bound by the non-compete and exclusivity provisions. It is therefore important for the buyer to carefully review contracts for the “non-compete reverse”.