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# Johnson, Bunce & Noble, P.C.

## Special Newsletter

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## Planning to Buy Out Your Competition

### *Using “Synergy” to survive this economy*

As any small- or mid-sized business owner will tell you, this is a tough economy. Mergers and acquisitions were not as prevalent two years ago for small- and mid-sized businesses. Although the buying rampage was alive and well for large businesses, the others tended to focus on their own business—without much regard for buyouts, competition strategies, and the like.

Things have changed. What worked before for small- and mid-sized businesses must be reevaluated. Companies that were flush with revenue now find those streams drying up. One alternative is to merge or acquire your competition. A well-known theory - Synergy - can help small- and mid-sized businesses survive this economy.

Synergy is loosely defined as the joining of two entities for the benefit of the whole. Taking it a step further, those two entities can combine (merge) or one can buyout the other (acquire) in order to gain a competitive advantage.

This theory can be and is often applied to the world of mergers and acquisitions. For example, if Company A and Company B are direct competitors, and both are

struggling, each company should take a close look at the other. If there can be benefits from a merger or acquisition, that course of action may be the difference between success and failure in this economy.

In order to implement this theory wisely, there must be proper planning. Those steps are generally as follows:

### 1. Evaluating Competition

Generally, this step is performed without tipping off anybody, including potential targets, of your motives. Evaluating your competition is the most difficult and eye-opening process a business owner will ever go through.

In order to do this properly, you must step into the shoes of your competition and find out what their strengths, weaknesses, opportunities, and threats are. Are you one of their threats? Once this analysis is complete, you must also take into account the “human factor” - do you trust and can you work with your competition?

### 2. Confidentiality Agreement

Once a target is selected, you may open discussions with the target company. Rarely should you begin these discussions without a confidentiality agreement in

place. Additionally, the agreement must have provisions that will safeguard your business in the event of a breakdown in negotiations.

### 3. Information Exchange/ Due Diligence

Once the agreement is in place, you must perform due diligence to make sure that the merger or acquisition can benefit your company. This step often requires the involvement of accountants, financial planners, attorneys, and other professionals. Quite frankly, if you are at this point without those professionals, you are probably set up for failure.

### 4. Pre-Implementation Planning, Implementation Planning, and Post-Implementation Planning

Once all of these steps are complete (which takes longer than you might think), then the remainder of the process proceeds as any “normal” transaction—selection of merger, stock purchase, asset purchase, etc.; tax ramifications planning; how to handle management and employees; handling publicity; real estate issues; closing the transaction; etc.

About the author: Brian F. Johnson, Esq. is an Illinois attorney focusing in business, real estate, and estate planning matters.

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