

Sheinberg, Samuel I.

From: [REDACTED]
Sent: Thursday, April 15, 2021 10:49 AM
To: Walsh, Kathryn E.; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Musick, Vesselina
Subject: FW: Item 3(b) - Employment Agreements

From: Berg, Karen E. <KBERG@ftc.gov>
Sent: Thursday, April 15, 2021 10:49:21 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Item 3(b) - Employment Agreements

[REDACTED]
We are looking for non-competes that constrain the seller post-acquisition, so it doesn't appear you need to produce these.

From: [REDACTED]
Sent: Tuesday, April 13, 2021 4:50:55 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Subject: Item 3(b) - Employment Agreements

Hi PNO,

I'm looking at Informal 1702002 (<https://www.ftc.gov/enforcement/premerger-notification-program/informal-interpretations/1702002>) where you say "we are fine with not receiving non-competes that are in the form of a continuing employment agreement and the acquired person is not a party to said agreement."

By "acquired person" does this mean the UPE/seller or the entire person, i.e., including the acquired entity?

I'm looking at a situation where, in connection with the sale of Target (a reportable transaction), Target signed employment agreements with a number of employees, and all of those include non-competes. Neither the buyer nor the seller is a party to these agreements, however.

Based on the language quoted above, I think I would need to include all of them since the acquired person is a party, since that "person" includes the acquired entity. But perhaps I'm misreading Informal 1702002?

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

