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ROFRs and issues related to multi-point franchise acquisitions

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Because many single point dealerships have already been swallowed up, single point asset sales and purchases are becoming less and less common. Most deals these days involve multiple points. There are several issues that are unique to multi point franchise sales that are not often discussed, but that can significantly impact a deal.

They include: Whether to use one or more purchase agreements; if one agreement is used, whether to itemize the goodwill for each franchise; what issues arise for sellers when one manufacturer exercises its right of first refusal but declines to purchase assets related to other franchises that are part of the deal; and how to prevent ROFR from happening in the first place.

One of the more pressing issues for most buyers is whether the manufacturer will exercise the right of first refusal. Buyers don't want to end up going through all the work of negotiating a buy/sell and conducting due diligence (not to mention lining up financing and people for the store), just to find that the manufacturer has exercised its right of first refusal.

Some manufacturers are attempting to require dealers to use separate purchase agreements for each franchise to make it easier for the manufacturer to exercise its right of first refusal. It is much easier for a manufacturer to exercise right of first refusal if there is a separate purchase agreement for each franchise.

However, in large, multi-franchise transactions, it is more economical and practical to use one purchase agreement and to state one amount for goodwill. This is the way I have been doing it for the last 30 years and in the hundreds of deals I have handled, even those including more than a dozen franchises.

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