

WAS THE KRAFT HEINZ MERGER A TAXABLE ACQUISITION OR A TAX-FREE REORGANIZATION?

GRETCHEN LAWRIE

California State University, Los Angeles

In 2015, H.J. Heinz Holding Corporation (Heinz Holding) acquired Kraft Foods Group, Inc. (Kraft) for over \$52 billion. Together, the companies became the Kraft Heinz Company, the third largest food and beverage company in North America and the fifth largest in the world with an estimated combined revenue of \$28 billion (Kraft Heinz Merger or Merger).¹

At the time of the Merger, Kraft was a publicly traded Virginia corporation, headquartered in Northfield, Illinois and one of the largest consumer packaged food and beverage companies in North America with 22,000 employees in the United States and Canada and revenues in 2014 of \$18.2 billion. In the U.S. and Canada, it manufactured and marketed cheese, meats, coffee, packaged dinners, snack nuts, and other grocery products under various brand names, such as Kraft, Capri Sun, Jell-O, Velveeta, and Kool-Aid.²

Heinz Holding was a privately held Delaware company, headquartered in Pittsburgh, Pennsylvania owned by the multi-business conglomerate, Berkshire Hathaway, Inc. (Berkshire) and the global investment firm, 3G Capital, Inc. (3G Capital). It manufactured and marketed to over 200 countries ketchup, sauces, soups, beans, and pasta under various brand names, including Heinz, Weight Watchers Smart Ones, T.G.I. Friday's snacks, and Plasmon infant nutrition.³ What were the U.S. tax and non-tax consequences of the Merger for Kraft, Heinz Holding, and their shareholders?

The author developed the case for class discussion rather than to illustrate either effective or ineffective handling of the situation. The case and its accompanying instructor's manual were anonymously peer reviewed and accepted by the *Journal of Case Research and Inquiry, Vol. 5, 2019*, a publication of the Western Casewriters Association. The author and the *Journal of Case Research and Inquiry* grant state and nonprofit institutions the right to access and reproduce this manuscript for educational purposes. For all other purposes, all rights are reserved to the author. Copyright © 2019 by Gretchen R. Lawrie. Contact: Gretchen R. Lawrie, California State University, Los Angeles 5151 State University Dr. Los Angeles, CA 90032, glawrie@calstatela.edu

The Companies

Kraft Foods Group, Inc.

In 1903, James L. Kraft started a wholesale cheese-distribution business in Chicago and incorporated the business in 1909 as the J.L. Kraft Bros. & Company. It opened its first cheese factory in 1914. In 1915, it began manufacturing pasteurized processed cheese and sold six million pounds of it to the U.S. Army during World War I. It went public in 1924.

H.J. Heinz Holding Corporation

In 1869, Henry J. Heinz and L. Clarence Noble formed a partnership, the Heinz Noble & Company, and began selling horseradish, vinegar, and pickles. After the partnership went bankrupt in 1875, Henry Heinz, his brother John Heinz, and his cousin Frederick Heinz formed another partnership, F & J Heinz, and began manufacturing and selling ketchup, pickles, and other condiments. In 1888, Henry Heinz bought out his brother and cousin and renamed the company H.J. Heinz Company (Heinz), which made its first public offering in 1946. In 2013, Heinz Holding acquired Heinz for over \$28 billion with Heinz's shareholders receiving \$72.50 in cash for each share of their Heinz common stock. After the acquisition, Heinz Holding became a privately held company.⁴

At the time of the merger of Kraft and Heinz Holding, 3G Capital owned 425 million shares or 46 percent of Heinz Holding's common stock and Berkshire also owned 425 million shares of Heinz Holding's common stock. Combined with warrants giving Berkshire the right to acquire 46 million additional shares of Heinz Holding's common stock, Berkshire controlled 51 percent of Heinz Holding's common stock.⁵

Reasons for the Merger

When the Merger was announced in March 2015, Kraft's chief executive officer (CEO) and chairman of its board of directors, John Cahill, stated that the combination of Kraft and Heinz

Holding offered “...significant cash value to our shareholders and the opportunity to be investors in a company very well positioned for growth, especially outside the United States, as we bring Kraft’s iconic brands to international markets.”⁶ About the Merger, Alexandre Behring, the chairman of Heinz Holding’s board of directors and the managing partner of 3G Capital commented that: “[b]y bringing together these two iconic companies through this transaction, we are creating a strong platform for U.S. and international growth.”⁷

According to Kraft’s board of directors, factors that weighed positively in favor of Kraft’s board voting in favor of the Merger were:

“the synergies and other benefits to the combined company...including an enhanced competitive and financial position, increased diversity and depth in its product line and geographic areas... and the potential to realize... an estimated \$1.5 billion in annual cost savings from the increased scale of new organization, the sharing of best practices and cost reductions by the end of 2017.”⁸

At a March 2015 presentation to investors, several reasons for the Merger were discussed including that it would create “a global powerhouse in food and beverage,” substantially improve the scale of both companies in “key North American retail and food service markets,” and allow for “potential brand expansion opportunities.”⁹

Merger Timeline

At a meeting on January 25, 2015, Heinz Holding’s chairman, Mr. Behring, spoke to Kraft’s CEO, Mr. Cahill, about Heinz Holding being interested in merging with Kraft. After the meeting, both companies reviewed certain non-public information about their respective businesses. On January 29, 2015, Mr. Behring informed Kraft that Heinz Holding intended to present a formal merger proposal to Kraft.¹⁰

On February 8, 2015, Heinz Holding submitted to Kraft a formal proposal for the two companies to merge with Heinz Holding shareholders owning 53 percent and Kraft shareholders owning 47

percent of the combined company's stock and Kraft shareholders receiving a \$12.50 per share special cash dividend. After reviewing the proposal, on February 9, 2015, Kraft's board of directors decided that Heinz Holding's proposal undervalued Kraft, but agreed to continue merger discussions with Heinz Holding. On February 24, 2015, Heinz Holding proposed increasing the Kraft shareholders' interest in the combined company to 48 percent and increasing the special dividend to \$15 per share. On March 3, 2015, Kraft told Heinz that it was *"strategically interested in a potential transaction with Heinz Holding, but that the economic terms proposed by Heinz were inadequate."*¹¹

On March 6, 2015, Mr. Behring told Mr. Cahill that Heinz Holding would increase the Kraft shareholders' ownership interest to 49 percent and increase the special dividend to \$16.50 per share for a total dividend of \$10 billion, but that this was Heinz Holding's best and final offer. On March 24, 2015, Kraft's board of directors concluded that Heinz Holding's revised offer was fair to and in the best interests of Kraft and its shareholders, and therefore it unanimously voted to approve the Merger and Merger Agreement and to recommend that Kraft's shareholders vote in favor of the Merger. Later that day, Kraft and Heinz Holding executed the Merger Agreement.¹²

On the following day, it was announced that Heinz Holding would be acquiring Kraft for approximately \$50 billion with Kraft shareholders owning 49 percent and Heinz Holding's shareholders, Berkshire and 3G Capital, together owning 51 percent of Heinz Holding, which was to be renamed the Kraft Heinz Company. Also, as part of the Merger, Kraft shareholders would receive a special cash dividend of \$16.50 per share of their Kraft common stock for an aggregate \$10 billion dividend and would exchange their Kraft shares for Heinz Holding common stock valued at approximately \$40 billion.¹³

In response to the Merger announcement, Kraft's CEO, Mr. Cahill stated that Kraft looked *"... forward to uniting with Heinz [Holding] in what will be an exciting chapter ahead."*¹⁴ Heinz Holding's CEO, Mr. Hess stated,

"We are thrilled about the unique opportunities this merger will create for our consumers worldwide, as well as our employees and business partners. Together, Heinz and Kraft will be able to achieve rapid expansion while delivering the quality, brands and products that our consumers love."¹⁵

Additionally, Berkshire's chairman and CEO, Warren Buffett stated,

"I am delighted to play a part in bringing these two winning companies and their iconic brands together... I'm excited by the opportunities for what this new combined organization will achieve."¹⁶

On July 1, 2015, Kraft's shareholders voted to approve the Merger with more than 98 percent of votes cast in favor of the Merger, which was more than 69 percent of all of Kraft's outstanding shares.¹⁷ About Kraft shareholders' vote, Heinz Holding's chairman, Mr. Behring stated that: *"Today's approval [by Kraft shareholders] to create the Kraft Heinz Company will unite two powerful businesses, deliver incredible shareholder value, and provide a platform for growth both domestically and internationally."¹⁸* Kraft chairman and CEO, Mr. Cahill stated that: *"This truly is a historic moment for our two companies as we combine to become a global food and beverage leader with an unparalleled portfolio of great brands."¹⁹*

Merger Transactions

To carry out the Merger transactions, in 2015 Kite Merger Sub Corp (Kite Corp) was incorporated in Virginia as a wholly owned subsidiary of Heinz Holding, and Kite Merger Sub LLC (KM LLC) was formed in Delaware as a wholly owned subsidiary of Heinz Holding.

On June 22, 2015, Kraft declared a special cash dividend in the amount of \$16.50 per share of Kraft common stock payable to Kraft's shareholders.

On July 1, 2015, Berkshire acquired 262.9 million shares of newly issued Heinz Holding common stock for \$5.26 billion and 3G Capital acquired 237.1 million shares of newly issued Heinz

Holding stock for \$4.74 billion, for an aggregate purchase price of \$10 billion, which was used to finance the \$10 billion special dividend paid to Kraft's shareholders.

On July 2, 2015, Heinz Holding issued approximately 593 million new shares of its common stock valued at \$42.5 billion to Kraft shareholders in exchange for their shares of Kraft stock. Also, on the same day, two merger transactions occurred. In the first merger transaction, Kraft merged with and into Kite Corp, with Kraft, not Kite Corp, surviving (Merger Transaction 1). In the second transaction, Kraft merged with and into KM LLC, with KM LLC, not Kraft, surviving as a direct wholly owned subsidiary of Heinz Holding (Merger Transaction 2).²⁰

Post-Merger

Upon completion of the Merger, Heinz Holding had paid \$52.9 billion to acquire Kraft, of which \$42.5 billion was the total value of the Heinz Holding common stock Kraft shareholders received in exchange for their Kraft stock, \$9.8 billion was the special cash dividend Kraft shareholders received, and \$0.6 billion was the value of equity that had been issued to replace incentive service awards Kraft had awarded employees prior to the Merger. Kraft shareholders owned 49 percent, Berkshire owned approximately 26.8 percent and 3G Capital owned approximately 24.2 percent of Heinz Holding, which was renamed the Kraft Heinz Company.²¹

Kraft's common stock ceased to be publicly traded and was delisted from the NASDAQ. On July 6, 2015, Kraft Heinz Company's common stock began trading under the symbol "KHC" on the NASDAQ at the opening price of \$71 per share. Kraft Heinz Company's board was made up of 11 directors, with Kraft appointing five of the directors and Berkshire and 3G Capital each appointing three of the directors. Mr. Behring became the chairman of Kraft Heinz Company, Mr. Hees the CEO, and Mr. Cahill the vice chairman.²²



Gretchen Lawrie

is Assistant Professor of Accounting at the College of Business and Economics in California State University, Los Angeles.



Appendix A U.S. Tax Law Concepts

Source: Author's notes

Overview

For U.S. tax purposes, the acquisition of a corporation's (Target) stock and/or assets by another corporation (Acquirer) may be treated as a taxable acquisition or a tax-deferred acquisition, commonly referred to as a tax-free acquisitive reorganization under Internal Revenue Code (IRC) § 368(a). Broadly, the term taxable acquisition means that Target is taxable upon the sale of its assets to Acquirer and Target's shareholders are taxable upon the sale of their stock to Acquirer. Whereas in a tax-free acquisitive reorganization, any taxes due on gains realized by Target, Target shareholders, or Acquirer are deferred until a subsequent event occurs, such as Target shareholders selling their Acquirer stock for cash after a tax-free reorganization.

Taxable Stock and Asset Acquisitions

In a taxable stock acquisition, Acquirer pays cash and/or notes for Target shareholders' stock, who will recognize gain or loss equal to the difference between the amount they received for their stock and the basis of their stock (Amount received for Target stock - Target stock's basis = Target shareholders' gain or loss).²³ Target becomes a subsidiary of Acquirer or liquidates. Acquirer takes a cost basis in the stock it acquired from Target shareholders and the basis of Target's assets remains the same.²⁴

In a taxable asset acquisition, Target transfers all or substantially all of its assets to Acquirer for cash and/or notes. Neither Acquirer or Target shareholders will recognize gains or losses, but Target will recognize gains or losses equal to the difference between its assets' fair market value (FMV) and the amount Acquirer paid for Target's assets and the amount of Target's liabilities Acquirer assumed (Target assets' FMV - amount Acquirer paid for Target assets - amount of liabilities assumed by Acquirer = Target's gain or loss).²⁵ Acquirer takes a cost basis in Target's assets.

Tax-Free Reorganizations

IRC § 368 provides for several different corporate tax-free acquisitive reorganizations, in which Acquirer uses its stock with either none or a limited amount of cash and other property (together referred to as boot) to acquire Target's stock and/or assets. To be treated as a tax-free acquisitive reorganization, certain statutory and non-statutory requirements must be met.

Appendix A, cont.

Statutory Requirements for Tax-Free Acquisitive Reorganizations

One type of acquisitive reorganization is an IRC § 368(a) (1) (A) or Type A merger or consolidation. In a Type A merger, Target's assets and liabilities are transferred to Acquirer with Target shareholders receiving Acquirer stock or a combination of stock and a limited amount of boot and Target dissolves by operation of state law. In a Type A consolidation, both Target's and Acquirer's assets and liabilities are transferred to a newly created corporation with both corporations dissolving and their shareholders becoming shareholders in the new corporation.²⁶ If Target merges into a wholly owned subsidiary of Acquirer that is a disregarded entity, such as a limited liability company (LLC), and Target ceases to exist, the transaction qualifies a Type A merger or consolidation, because Acquirer is treated as owning its disregarded entity's assets, including Target's assets that were transferred to the subsidiary.²⁷

In a IRC § 368(a)(1)(B) or Type B stock-for-stock reorganization, Acquirer acquires all or part of Target's stock solely in exchange for Acquirer's voting stock. Immediately after the acquisition, Acquirer must control Target, meaning that Acquirer (or its subsidiary) owns at least 80 percent of the total combined voting power of Target's stock and at least 80 percent of the number of shares in each class of Target's nonvoting stock. Target may continue as a subsidiary of Acquirer or be liquidated. If in the reorganization, Acquirer does not acquire 100 percent of Target's stock, Target shareholders will become shareholders of Acquirer.²⁸

In a IRC § 368(a)(1)(C) or Type C stock-for-assets reorganization, Acquirer acquires substantially all of Target's assets in return for consideration consisting solely of Acquirer's voting stock or a combination of Acquirer's voting stock and up to 20 percent of boot. Then, Target liquidates by exchanging Acquirer's stock for Target shareholders' stock and distributing boot and any other remaining Target assets to Target shareholders. After the reorganization, Target ceases to exist, Target shareholders become Acquirer shareholders, and Acquirer owns Target's assets. Generally, substantially all means that the transferred assets represented at least 90 percent of the FMV of Target's net assets (i.e., assets less liabilities) and at least 70 percent of the FMV of Target's gross assets.²⁹

In a IRC § 368(a)(2)(D) forward triangular merger, Target merges with and into Acquirer's wholly owned Subsidiary, with Subsidiary, not Target, surviving the merger. Specifically, Subsidiary transfers Acquirer's stock, cash, and other property (boot) to Target in return for substantially all of Target's assets, which Target distributes to its shareholders in cancellation of their Target stock. After the merger, Subsidiary holds both its and Target's assets, Target ceases to exist, and Target shareholders hold only Acquirer stock.

In a IRC § 368(a)(2)(E) reverse triangular merger, Target merges with and into Acquirer's wholly owned subsidiary, with Target, not Subsidiary, surviving the merger. The steps are the same as in a forward triangular merger, except Target shareholders' stock is not cancelled, but is distributed to Acquirer. After the merger, Target holds both its and Subsidiary's assets, Subsidiary ceases to exist, Acquirer holds Target stock, and Target shareholders hold only Acquirer stock.

The acquisition of a corporation's assets and/or stock can consist of two or more transactions, which, under the step transaction doctrine, may be treated for federal tax purposes as separate, independent transactions or combined together and treated as one transaction. For example, in Revenue Ruling 2001-46, 2001-2 CB 321, the Internal Revenue Service (IRS) applied the step transaction doctrine and ruled that if, under an integrated plan, a newly formed, wholly owned subsidiary of an acquiring corporation merges into a target corporation, as part of a reverse triangular merger, followed by the merger of the target corporation into the acquiring corporation, the transaction is a single statutory merger that qualifies as a tax-free Type A merger. If after a reverse triangular merger, Target merges into an LLC of Acquirer, rather than directly into Acquirer, the transaction may also be treated as a single Type A reorganization. Both of these transactions and other transactions that consist of two mergers are commonly referred to as double merger reorganizations.

Appendix A, cont.

Non-Statutory Requirements for Tax-Free Acquisitive Reorganizations

Besides meeting statutory requirements, a tax-free reorganization must also meet the following non-statutory requirements: 1) plan of reorganization; 2) business purpose; 3) continuity of business enterprise (COBE); and 4) continuity of interest (COI). A tax-free reorganization must be carried out pursuant to a plan of reorganization adopted by each party to the reorganization, but it does not have to be in a particular form or in writing. Other than avoiding federal income taxes, a reorganization must have a valid business purpose, such as expanding product lines, reducing administrative and other costs, or avoiding state and local taxes.³⁰ To meet the COBE requirement, Acquirer must either continue at least one significant line of Target's historical business or use a significant portion of Target's historic business assets in a business.³¹

For COI, Target shareholders must have a substantial equity interest in Acquirer after the reorganization, meaning that a substantial part of the value of the Target's stock must be exchanged for Acquirer's stock, which is measured by the percentage of Acquirer's stock that was used as consideration in the reorganization.³² For the IRS, the COI requirement is met if, in the aggregate, Target shareholders receive and hold Acquirer stock that equals at least 40 percent of Target's outstanding stock.³³ However, some courts have accepted a lower percentages, such as the United States Supreme Court, which held that a target corporation's shareholders receiving 38 percent of an acquiring corporation's nonvoting preferred stock was sufficient for COI.³⁴

Target Shareholders' Tax Consequences

In a tax-free reorganization, Target shareholders may have a realized gain if the FMV of Acquirer's stock plus the amount of boot (cash and FMV of property) they received in the reorganization exceeds their Target stock basis (FMV of Acquirer's stock + cash + FMV of other property - Target stock basis = Target shareholders' realized gain or loss). However, they will only recognize (pay tax) on a portion of their realized gain, which is referred to as a recognized gain. The amount of their recognized gain is equal to the lesser of the boot they received or their realized gain.³⁵ For example, if Target shareholders' realized gain is \$500 and they received \$100 of boot, their recognized gain is \$100, because the \$100 of boot is less than the \$500 of realized gain.

Target shareholders' basis in their Acquirer stock equals their Target stock basis plus any recognized gain minus the amount of boot received and minus the amount of liabilities assumed by Acquirer as part of the reorganization (Target stock basis + recognized gain - boot - assumed liabilities = Target shareholders' basis in Acquirer stock). If Target shareholders held their Target stock as a capital asset, their holding period in their Target stock is tacked on to their holding period in their Acquirer stock.³⁶ Their basis in boot received from Acquirer is its FMV on the date of the exchange and the holding period for the boot begins on the date of the exchange.³⁷

Target's Tax Consequences

In an acquisitive reorganization, Target will not recognize gain or loss on exchanging property for Acquirer's stock, nor on distributing Acquirer's stock to Target shareholders. Target will also not recognize gain or loss on boot received as part of the reorganization, if it distributes the boot to its shareholders. But, Target will recognize gain, not loss, if it distributes to its shareholders assets that were not transferred to Acquirer (i.e., retained assets), calculated as if Target had sold the distributed property for its FMV.³⁸

Appendix A, cont.

Acquirer's Tax Consequences

If Acquirer exchanges solely its stock for Target's stock and assets, Acquirer will not recognize gain or loss. However, if Acquirer also transfers other property (non-cash boot) as part of the reorganization, it will recognize gain or loss equal to the FMV of the property minus its basis.³⁹

Acquirer's basis in Target's transferred assets equals Target's basis in those assets plus any gain recognized by Target (Target assets' basis + Target's recognized gain = Acquirer's basis in Target assets). Target's holding period in its transferred assets is tacked on to Acquirer's holding period in those assets. Acquirer's basis in Target stock it receives from Target shareholders equals their basis in their Target stock plus any gain recognized by them (Target shareholders' basis in Target stock + Target shareholders' recognized gain = Acquirer's basis in Target shareholders' Target stock). Target shareholders' holding period in their transferred Target stock is tacked on to Acquirer's holding period in those shares.⁴⁰

Tax Consequences in Forward and Reverse Subsidiary Mergers

In a forward triangular merger, Acquirer and Subsidiary will not recognize gain or loss on the use of Acquirer's stock to carry out the merger, except to the extent the Subsidiary uses Acquirer stock in the merger that it did not receive from Acquirer under the reorganization plan.⁴¹ Acquirer's basis in its Subsidiary stock after the forward triangular merger equals Acquirer's basis in its Subsidiary stock plus the basis of Target's assets (Acquirer's basis in Subsidiary stock + basis of Target's assets = Acquirer's basis in Subsidiary stock).⁴² After the merger, Subsidiary has Target's assets and its basis in Target's assets is the same as Target's basis. And, Target's holding period is tacked on to Subsidiary's holding period in those assets.

In a reverse triangular merger, Acquirer and Subsidiary do not recognize gain or loss. When Subsidiary merges into Target, its assets and their historic bases transfer to Target. After the reverse triangular merger, Acquirer's basis in Target stock equals Acquirer's basis in its Subsidiary stock plus the basis of Target's assets (Acquirer's basis in Subsidiary stock + basis of Target's assets = Acquirer's basis in Target stock).

Tax Consequences for Acquirer's Shareholders

If Acquirer's shareholders do not participate in a tax-free reorganization involving the Acquirer, generally there is no reorganization-related tax consequences for Acquirer's shareholders. Generally, Acquirer shareholders would not realize and/or recognize gain or loss and their basis and holding period in their pre-reorganization Acquirer stock would be the same after the reorganization.

Appendix A, cont.

Advantages and Disadvantages of Taxable Acquisitions and Tax-Free Acquisitive Reorganizations

One advantage of taxable stock acquisitions is that there is only one level of tax because only Target shareholders realize taxable gain in the transaction. Two disadvantages are that all of Target's assets and liabilities are transferred in the transaction and the basis of Target's assets is not stepped up. Some of advantages of taxable asset acquisitions are that Acquirer can select specific Target's assets and liabilities, the basis of Target's assets is stepped up to the purchase price, and Target shareholders do not realize gain or loss, but Target will pay tax on any gain from selling its assets to Acquirer.

Some advantages of Type A reorganizations are that up to 60 percent of the consideration can be boot and Acquirer does not have to acquire substantially all of Target's assets. Two disadvantages are that by operation of law, Acquirer must assume all of Target's liabilities and some states require that both Acquirer's and Target's shareholders approve the reorganization. Although in Type B reorganizations, Target's liabilities can remain in a subsidiary and there is no substantially all requirement, the only allowable consideration is Acquirer's voting stock. Some of the advantages of Type C reorganizations are that Target's liabilities can remain in a subsidiary and up to 20 percent of the consideration can be boot. Also, even though Acquirer must acquire substantially all of Target's assets, Acquirer can select specific Target assets.

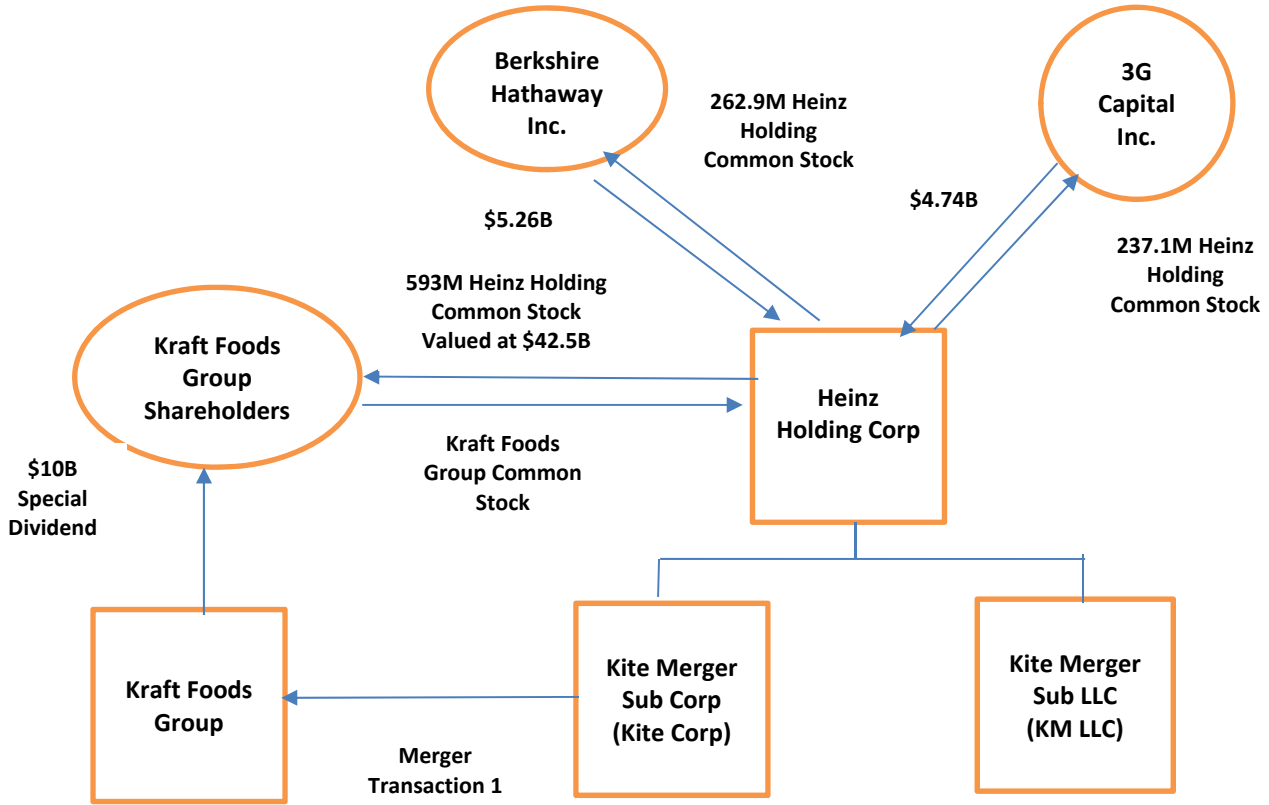
Although in both types of triangular mergers substantially all of Target's assets must be acquired, Target's liabilities can remain in the surviving entity (either Acquirer's Subsidiary or Target), and Acquirer's shareholders do not have to approve the merger. Even though boot can be used in both types of triangular mergers, the amount of boot in a forward triangular merger can be up to 50 percent, but only up to 20 percent in a reverse triangular merger.

Appendix B
Merger Timeline
Source: Author's notes

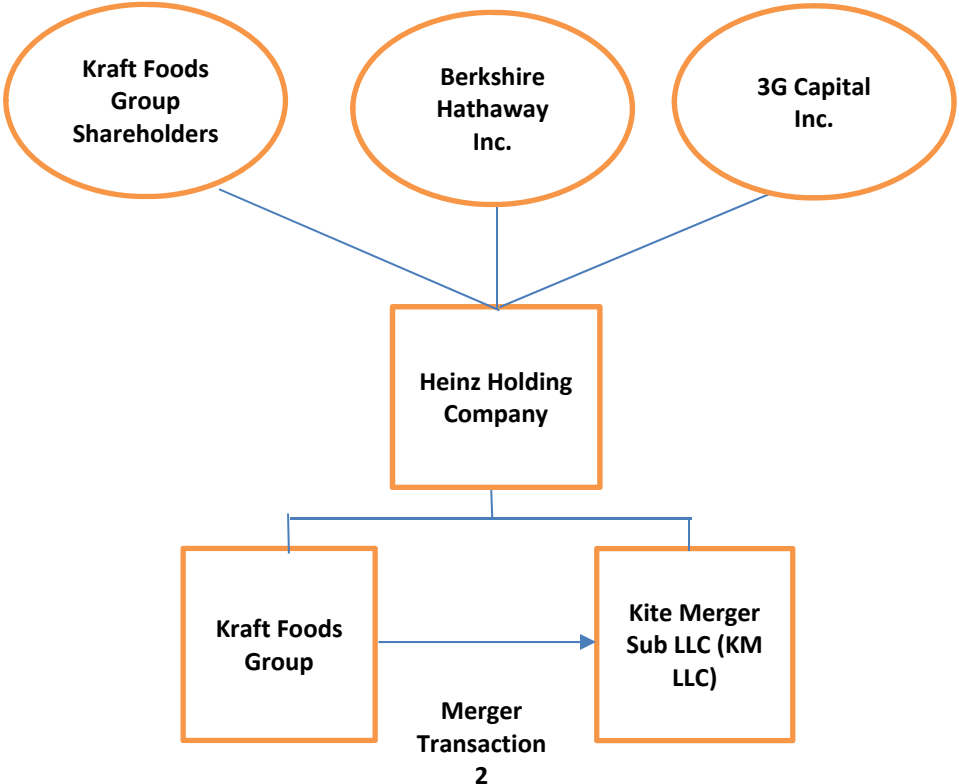
DATE	EVENT
1/25/2015	At a meeting, Heinz Holding chairman Alexandre Behring spoke to Kraft CEO John Cahill about Heinz Holding being interested in merging with Kraft.
1/29/2015	Mr. Behring informed Kraft that Heinz Holding intended on presenting a formal merger proposal to Kraft.
2/8/2015	Heinz Holding submitted to Kraft a formal proposal for the two companies to merge with Heinz Holding shareholders owning 53% and Kraft shareholders owning 47% of the combined company's stock and Kraft shareholders receiving a \$12.50 per share special cash dividend.
2/9/2015	Kraft's board of directors informed Heinz Holding that its proposal undervalued Kraft but would continue to discuss merging with Heinz Holding.
2/24/2015	Heinz Holding proposed increasing the Kraft shareholders' interest in the combined company to 48% and increasing the special dividend to \$15 per share.
3/6/2015	Mr. Behring told Mr. Cahill that Heinz would increase the Kraft shareholders' ownership interest to 49 percent and increase the special dividend to \$16.50 per share.
3/24/2015	Kraft's board of directors unanimously voted to approve the merger of Kraft and Heinz Holding (Kraft Heinz Merger or Merger) and to recommend that Kraft's shareholders vote in favor of the Merger.
3/24/2015	Kraft and Heinz Holding executed the Merger Agreement.
3/25/2015	The Merger was publicly announced.
6/22/2015	Kraft declared a special cash dividend in the amount of \$16.50 per share of Kraft common stock payable to Kraft's shareholders.
7/1/2015	Kraft's shareholders voted to approve the Merger.
7/1/2015	Berkshire acquired 262.9 million shares and 3G Capital acquired 237.1 million shares of newly issued Heinz Holding common stock for a combined purchase price of \$10 billion.
7/2/2015	In exchange for their Kraft shares, Heinz Holding issued over 593 million shares of its common stock valued at \$42.5 billion to Kraft shareholders.
7/2/2015	In Merger Transaction 1, Kraft merged with and into Kite Merger Sub Corp (Kite Corp) with Kraft, not Kite Corp, surviving. Then in Merger Transaction 2, Kraft merged with and into Kite Merger Sub LLC (KM LLC), with KM LLC, not Kraft, surviving as a subsidiary of Heinz Holding.

Appendix C Merger Transaction 1

Source: Author's notes

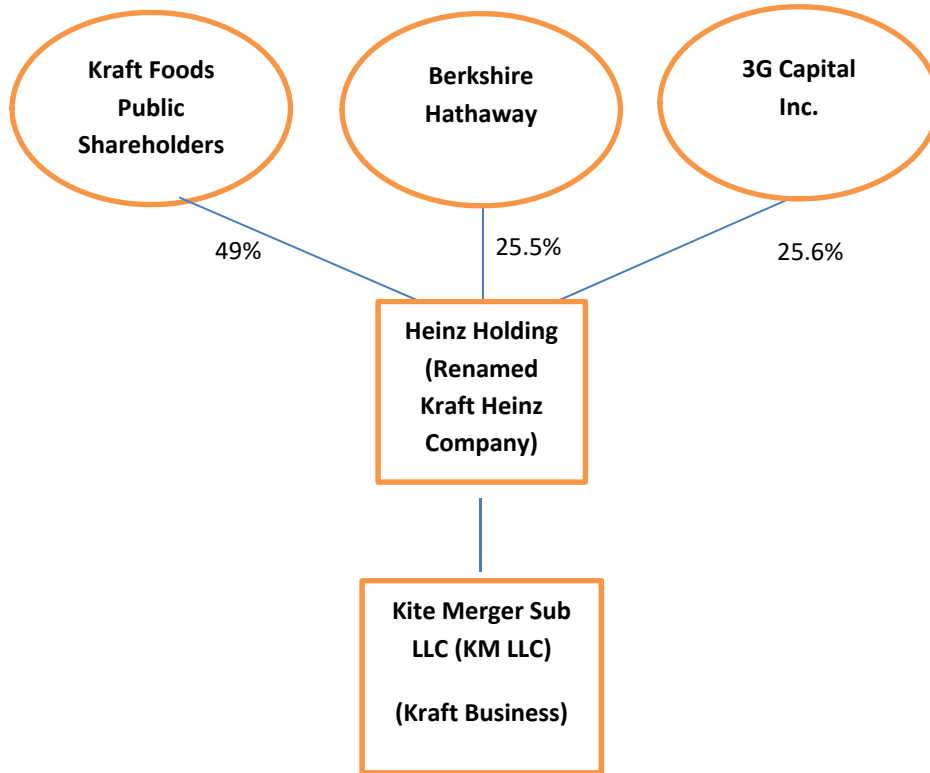


Appendix D
Merger Transaction 2
Source: Author's notes



Appendix E
Post- Merger

Source: Author's notes



Endnotes

- ¹ Kraft Foods Group, Inc. H.J. Heinz Company and Kraft Foods Group Sign Definitive Merger Agreement To Form The Kraft Heinz Company, Press Release (March 25, 2015) (Kraft Press Release (March 25, 2015)).
- ² Kraft Foods Group, Inc. United States Securities and Exchange Commission Form S-4 Registration Statement, Proxy Statement and Prospectus (June 2, 2015) (Kraft Proxy); Kraft Press Release (March 25, 2015).
- ³ *Id.*
- ⁴ Kraft Proxy; H.J. Heinz Company, United States Securities and Exchange Commission Form 10-K: Annual report for transition period from April 29, 2013 to December 29, 2013 (March 2014).
- ⁵ Kraft Proxy.
- ⁶ Kraft Press Release (March 25, 2015).
- ⁷ *Id.*
- ⁸ Kraft Proxy, p. 61.
- ⁹ Kraft Foods Group, Inc. and H.J. Heinz Holding Corporation, Creating a Global Food & Beverage Leader, Investor Presentation (March 25, 2015).
- ¹⁰ Kraft Proxy.
- ¹¹ Kraft Proxy, p. 58.
- ¹² Kraft Proxy; Kraft Press Release (March 25, 2015).
- ¹³ *Id.*
- ¹⁴ Kraft Press Release (March 25, 2015).
- ¹⁵ *Id.*
- ¹⁶ *Id.*
- ¹⁷ Kraft Press Release (June 9, 2015).
- ¹⁸ *Id.*
- ¹⁹ *Id.*
- ²⁰ Kraft Heinz Company, United States Securities and Exchange Commission Form 10-K: Annual report for fiscal year ending on January 3, 2016 (March 2016) (Kraft Heinz Company Form 10-K (2016)); Berkshire Hathaway Inc., United States Securities and Exchange Commission Form 10-K: Annual report for fiscal year ending on December 31, 2015 (February 2016). (BHC Form 10-K 2016).
- ²¹ Following the Merger, the total amount of Kraft Heinz Company's outstanding common stock was approximately 1.2 trillion shares (Kraft Heinz Company Form 10-K (2016)). BHC Form 10-K (2016)
- ²² Kraft Proxy; Kraft Press Release (March 25, 2015); Kraft Heinz Company Form 10-K (2016).
- ²³ 26 USC § 61(a)(3).
- ²⁴ 26 USC § 1012.
- ²⁵ 26 USC §§ 61(a)(3) and 1001.
- ²⁶ Treas. Reg. § 1.368-2(b)(1)(ii).
- ²⁷ Treas. Reg. § 1.368-2(b)(1)(iii) Ex. 2.
- ²⁸ 26 USC § 368(c); Treas. Reg. § 1.368-2(c).
- ²⁹ Rev. Proc. 77-37, 1977-2 C.B. 568.
- ³⁰ Treas. Reg. §§ 1.368-1(c), 1.368-2(g), and 1.368-3(a).
- ³¹ Treas. Reg. § 1.368-1(d).
- ³² Treas. Reg. § 1.368-1(e).
- ³³ Treas. Reg. § 1.368-1(e)(2)(v) Ex 1.
- ³⁴ *John A. Nelson Co. v. Helvering*, 296 US 374 (1935).
- ³⁵ 26 USC §§ 354 and 356.
- ³⁶ 26 USC § 1223(1).
- ³⁷ 26 USC §§ 358 and 1223(1).
- ³⁸ 26 USC §§ 361 and 1032.
- ³⁹ 26 USC §§ 361, 1001 and 1032; Rev. Rul. 72-327, 1972- CB 197.
- ⁴⁰ 26 USC §§ 362, 1223(1) and 1223(2).
- ⁴¹ Treas. Reg. § 1.1032-2.
- ⁴² Treas. Reg. § 1.358-6.



Journal of Case Research and Inquiry

Peer-Reviewed Cases, Notes and Articles

A publication of the Western Casewriters Association

Vol. 5
December 2019

ISSN 2377-7389