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The Antitrust Risks of Four to Three Mergers: Heightened Scrutiny of a Potential ThyssenKrupp/Kone Merger
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This study examines the heightened scrutiny of four to three mergers by competition authorities in the current regulatory environment, using the potential merger of two of the world's largest elevator and escalator businesses — Germany's ThyssenKrupp and Finland's Kone — as a case study.

In recent years, regulators have become more aggressive in merger enforcement in response to populist criticisms that lax merger enforcement has led to the rise of anticompetitive "big business." In this environment, it is easy to imagine regulators intensely scrutinizing and challenging or conditioning virtually any merger that substantially increases concentration.

The next opportunity for antitrust authorities to dispel criticism by flexing their muscles in a four to three merger review may be just around the corner. It is widely reported that ThyssenKrupp is contemplating the sale of its elevator business, with Kone as a potential buyer. This potential deal provides an opportunity to highlight the likely challenges, complexity, and cost that regulatory scrutiny of such mergers actually entails — and it is likely to be a far cry from the lax review and permissive decisionmaking of antitrust critics' imagining.

In the case of a potential ThyssenKrupp/Kone merger, the combined entity would face lengthy, costly, and duplicative review in multiple jurisdictions, any one of which could effectively block the merger or impose onerous conditions. It would face the automatic assumption of excessive concentration in several of these, including the US, EU, and Canada. In the US, the deal would also face heightened scrutiny based on political considerations, including the perception that the deal would strengthen a foreign firm at the expense of a domestic supplier. It would also face the risk of politicized litigation from state attorneys general, and potentially the threat of extractive litigation by competitors and customers.

Whether the merger would *actually* entail anticompetitive risk may, unfortunately, be of only secondary importance in determining the likelihood and extent of a merger challenge or the imposition of onerous conditions.

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