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Class Actions in Competition Law

Agenda

I. About us
II. Background
III. Objective
IV. Plan
V. Key Messages
I. About us

ZHAW School of Management and Law
One of Swiss leading business schools: scientifically grounded, interdisciplinary, and strongly oriented to real-world business practices.

Center for Competition and Commercial Law
Focuses on selected aspects of international commercial law at the intersection of business and law. We facilitate cooperation and build networks with premier academic and business partners.
Who are the « real » victims of an antitrust law violation?

Clients and consumers

II. Background

Procedural difficulties

High risks

High costs
II. Background

Improvement through Class Actions

- **Opt-out**: All members of a defined group are bound into the action unless they opt out

- **Opt-in**: Members have to opt in to the action
II. Background

Subject Matter of Antitrust Class Action

- **Follow-on claim**: Civil law action is initiated after the public procedure has established an infringement

- **Stand-alone claim**: Regardless of public law procedure
II. Background

Geographical spread of Class Actions

EU: Efforts to introduce class action law suits
Advantages of Class Actions

- Administration of Justice is **simplified**
  - Cost effective
  - Identical decisions for a variety of similar situations

- **Eliminating imbalance** of power

- **Public Interest**
  - Deterrence
  - Economy
Risks of Class Actions

- **Liability** and **financial consequences** for companies

- **Leniency notice** from competition authorities could be undermined

- **De facto absence of defences**
  - Defendant bears costs of their own legal representation
  - Settlement is preferred (legal blackmailing)
III. Objective

Strengthening Antitrust Civil Law
Introduction of Class Action Law Suits

1. Analyse functioning of antitrust class action lawsuits

2. Establish "Best Practices Class Action in Competition Law"
III. Objective

Consolidated observation of facts

Scientific grounded prediction of economic & social benefits

Extensive examination of risks & rewards

Implementation of gained findings to establish Best Practices
Best Practices

- **Enforce the position of consumers** and improve their protection

- Integrate advantages **without leading to « over the top » claims** for damages

- **Different style of analysis**: Class action as a process instrument (e.g. punitive damages, contingency fees for lawyers, fishing expeditions)
IV. Plan

Phase 1
- Survey the relevant legal systems and case studies → identify the substance & implementation of class actions

Phase 2
- Evaluate results
- Create «Best Practices Class Action in Competition Law Regimes»

Phase 3
- Propositions for implementation in specific law regimes

Phase 4
- Evaluate tools and tricks
- Assist legal framework guaranteeing class actions
IV. Plan

Relevant Legal Systems

**Approach:** Limited jurisdictions and results in a reasonable time
V. Key Messages

- Efforts to **strengthen private enforcement** in several countries and EU → **Consumer Protection**

- Class Actions simplify the Administration of Justice: **Saving time and money**

- Objective: Establish «**Best Practices Class Action in Competition Law**» and assist implementation

**To find the most efficient and best practices for Class Actions in Competition Law**
Thank you for your attention!

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