Contents – summary

Introduction	19			
PART I: Enforcement of Competition Law – From Public to Private Method Chapter 1. Retween Public and Private Enforcement				
Chapter 1. Between Public and Private Enforcement – Inconsistency or Mutual Complementing?	41			
Chapter 2. Private Enforcement of Competition Law in Europe - Towards Coherent Regime of Antitrust Law Enforcement	80			
Chapter 3. Group Litigation – A Key Element of the Modern System of Competition Law Enforcement	144			
PART I – General Conclusion	236			
PART II: Towards Increased Efficiency of Competition Law Enforcement in Europe – A Need of Common Approach to Collective Redress Chapter 1. The European Way Towards Common Approach				
to Collective Redress - What is the Direction?	243			
Chapter 2. Analysis of Selected National Solutions on Collective Redress – From French Dilemmas to Polish Clear-Cut Solution	305			
Chapter 3. The European Way Towards Common Approach to Collective Redress – How to Achieve the Goal?	432			
Conclusion	493			
Bibliography	499			

Contents

Introduction I. General description and research objectives II. Thesis overview and main scientific hypothesis III. Significance of research (scientific and social relevance) IV. Research methodology V. Main limitations VI. Structure PART I. Enforcement of Competition Law – From Public to Private Me	19 21 30 32 33 34
Chapter 1. Between Public and Private Enforcement	
- Inconsistency or Mutual Complementing?	41
I. Competition law and its enforcement	
1. Notion of enforcement	
2. Enforcement in the area of competition law	
3. Two methods of competition law enforcement	
II. The principle of public enforcement of European competition law	
1. Main characteristics of public method	
1.1. Deterrence-based approach	
1.2. Institutionalised character.	
1.3. Wide access to proofs	
1.4. "Social approach" to competition law enforcement	
2. Limitations of public method.	
2.1. Lack of compensation of victims of violations	
2.2. Limited efficiency in case of "small" competition law	55
infringements	56
2.3. Strong dependence on state	
III. Private method as an alternative way of competition law enforcemen	
1. Private interior as an alternative way of competition law emorement	
2. Main characteristics of private method	
2.1. Decentralised character	
2.2. "Double nature" of private enforcement	
2.3. Civil character of the enforcement process	
2.5. Civil character of the emolecment process	

3. Advantages of private enforcement	65
3.1. Achievement of corrective justice	65
3.2. Increasing level of deterrence	66
3.3. Increasing level of detection	68
3.4. Creation of checks and balances on public authorities	69
4. Disadvantages of private method	70
4.1. Risk of over-deterrence	70
4.2. Risk of using private method as a strategic tool	72
4.3. Risk of disruption of public enforcement policies	73
5. Private method – a complement to the public system of antitrust	
enforcement	76
Conclusion Chapter 1	78
Chapter 2. Private Enforcement of Competition Law in Europe	
- Towards Coherent Regime of Antitrust Law Enforcement	80
I. Development of the European system of private enforcement	80
1. Court of Justice of the European Union and private enforcement	81
1.1. CJEU's case law as a starting point for private enforcement	
of antitrust law in Europe	82
1.2. CJEU's case law as an impulse for changes in the area of private	
enforcement	84
1.3. CJEU's case law as a response to current problems of private	
enforcement	87
2. European Commission and private enforcement	93
2.1. European Commission's policy as a response to CJEU's case law	93
2.2. European Commission's "private enforcement package"	,,,
- a final step in the development of European doctrine	
of private enforcement?	96
II. Increasing importance of private enforcement in Europe	103
1. Changes in the national legal orders	103
1.1. Poland	104
1.2. France	110
2. Increasing number of individual claims – empirical assessment	117
III. The concept of a mixed (hybrid) system of competition law enforcement	11,
- the general scheme for more effective enforcement of antitrust law in Europe	122
1. Allocating a principal role in the enforcement process	122
to the competition authorities	123
	123
2. Determining mutual relationship between public and private	125
enforcement	123
	129
3.1. Broadening the rules on discovery	
3.2. Limiting the costs of private proceedings	134 139
3.3. Increasing the role of group litigation	
Conclusion Chapter 2	142

Chapter 3. Group Litigation – A Key Element of the Modern System of Competition Law Enforcement			
I. The concept of group litigation	1		
1. The idea of "collectivisation" – how to better protect the individual			
interests	-		
2. Group litigation as a solution to the problems of individual claims			
2.1. Increased access to justice			
2.1.1. Increasing access to justice by limiting the costs			
of litigation	1		
2.1.2. Increasing access to justice by overcoming "rational apathy"			
of injured individuals	1		
2.1.3. Increasing access to justice by limiting a "diffuse of interests"	1		
2.2. Reduction of asymmetry between the victims of law	-		
infringements and law perpetrators			
2.2.1. Traditional ways of reducing asymmetry between the			
victims of law infringements and law perpetrators			
2.2.2. Group litigation as a mean to reduce the asymmetry			
between the victims of law infringements and law			
perpetrators			
2.3. Increased detection, prosecution and deterrence			
of anticompetitive behaviours			
2.3.1. Group litigation and the detection and prosecution			
of anticompetitive behaviours			
2.3.2. Group litigation and the deterrence of anticompetitive			
behaviours			
2.4. Greater judicial economy and predictability			
3. Types of group litigation mechanisms			
3.1. Nature of representation			
3.1.1. Joinder procedures			
3.1.2. Representative actions			
3.1.3. Collective actions			
3.2. Rules on group formation			
3.2.1. Opt-out mechanism			
3.2.2. Opt-in mechanism			
3.2.3. Mixed systems			
4. Typical problems of group litigation mechanism			
4.1. The principal-agent problem			
4.1.1. The American and European approach to the principal-			
agent problem			
4.1.2. The principal-agent problem and different models of group			
litigation			

4.1.2.1. Representative actions and the principal-agent	182
problem	184
4.2. The free-rider problem	186
4.2.1. The free-rider problem in the area of antitrust law	186
4.2.2. The free-rider problem and the mechanism of group	
litigation	187
4.2.2.1. Collective actions and the free-rider problem	187
4.2.2.2. Representative actions and the free-rider problem	188
4.2.2.3. Rules on group formation and the free-rider	
problem	189
4.3. The problem of financing	190
4.3.1. Group litigation and the costs of legal proceedings	191
4.3.2. Possible ways of group litigation's financing	192
4.3.2.1. Self-financing	192
4.3.2.2. Legal cost insurance	192
4.3.2.3. Third-party funding	193
4.3.2.3.1. State funding	193
4.3.2.3.2. Private funding	195
4.3.2.3.3. Funding by lawyer	197
II. The American system of class actions – a starting point	
in the introduction of a group litigation mechanism in the area	
in the introduction of a group litigation mechanism in the area of competition law	
in the introduction of a group litigation mechanism in the area of competition law	199
in the introduction of a group litigation mechanism in the area of competition law	199 199
in the introduction of a group litigation mechanism in the area of competition law	199 199 204
in the introduction of a group litigation mechanism in the area of competition law	199 199 204 208
in the introduction of a group litigation mechanism in the area of competition law. 1. Origins of the American system of class actions	199 199 204 208 209
in the introduction of a group litigation mechanism in the area of competition law. 1. Origins of the American system of class actions	199 199 204 208 209 213
in the introduction of a group litigation mechanism in the area of competition law. 1. Origins of the American system of class actions 1.1. From opt-in to opt-out – evolution of class actions mechanism 1.2. Class actions as a response to antitrust law violations 2. Main characteristics of the American system of class actions 2.1. The principle of certification 2.2. The rules on formation of a group. 2.3. Pre-trial discovery and disclosure rules	199 199 204 208 209 213 216
in the introduction of a group litigation mechanism in the area of competition law. 1. Origins of the American system of class actions 1.1. From opt-in to opt-out – evolution of class actions mechanism 1.2. Class actions as a response to antitrust law violations 2. Main characteristics of the American system of class actions 2.1. The principle of certification 2.2. The rules on formation of a group. 2.3. Pre-trial discovery and disclosure rules 2.4. Contingency-fees and cost-shifting rules	199 199 204 208 209 213 216 219
in the introduction of a group litigation mechanism in the area of competition law. 1. Origins of the American system of class actions 1.1. From opt-in to opt-out – evolution of class actions mechanism 1.2. Class actions as a response to antitrust law violations 2. Main characteristics of the American system of class actions 2.1. The principle of certification 2.2. The rules on formation of a group. 2.3. Pre-trial discovery and disclosure rules 2.4. Contingency-fees and cost-shifting rules 3. Main drawbacks of the American-style class actions.	199 199 204 208 209 213 216 219 223
in the introduction of a group litigation mechanism in the area of competition law. 1. Origins of the American system of class actions 1.1. From opt-in to opt-out – evolution of class actions mechanism 1.2. Class actions as a response to antitrust law violations 2. Main characteristics of the American system of class actions 2.1. The principle of certification 2.2. The rules on formation of a group. 2.3. Pre-trial discovery and disclosure rules 2.4. Contingency-fees and cost-shifting rules 3. Main drawbacks of the American-style class actions 3.1. Instrumental use of class actions.	199 199 204 208 209 213 216 219 223 223
in the introduction of a group litigation mechanism in the area of competition law. 1. Origins of the American system of class actions 1.1. From opt-in to opt-out – evolution of class actions mechanism 1.2. Class actions as a response to antitrust law violations 2. Main characteristics of the American system of class actions 2.1. The principle of certification 2.2. The rules on formation of a group. 2.3. Pre-trial discovery and disclosure rules 2.4. Contingency-fees and cost-shifting rules 3. Main drawbacks of the American-style class actions 3.1. Instrumental use of class actions. 3.2. Violation of a right to free trial	199 199 204 208 209 213 216 219 223 223 226
in the introduction of a group litigation mechanism in the area of competition law. 1. Origins of the American system of class actions 1.1. From opt-in to opt-out – evolution of class actions mechanism 1.2. Class actions as a response to antitrust law violations 2. Main characteristics of the American system of class actions 2.1. The principle of certification 2.2. The rules on formation of a group. 2.3. Pre-trial discovery and disclosure rules 2.4. Contingency-fees and cost-shifting rules 3. Main drawbacks of the American-style class actions 3.1. Instrumental use of class actions 3.2. Violation of a right to free trial 3.3. The risk of over-deterrence	199 199 204 208 209 213 216 219 223 223 226
in the introduction of a group litigation mechanism in the area of competition law. 1. Origins of the American system of class actions 1.1. From opt-in to opt-out – evolution of class actions mechanism 1.2. Class actions as a response to antitrust law violations 2. Main characteristics of the American system of class actions 2.1. The principle of certification 2.2. The rules on formation of a group. 2.3. Pre-trial discovery and disclosure rules 2.4. Contingency-fees and cost-shifting rules 3. Main drawbacks of the American-style class actions 3.1. Instrumental use of class actions. 3.2. Violation of a right to free trial 3.3. The risk of over-deterrence 4. American class actions and the European debate on group litigation	199 199 204 208 209 213 216 219 223 223 226 228
in the introduction of a group litigation mechanism in the area of competition law. 1. Origins of the American system of class actions 1.1. From opt-in to opt-out – evolution of class actions mechanism 1.2. Class actions as a response to antitrust law violations 2. Main characteristics of the American system of class actions 2.1. The principle of certification 2.2. The rules on formation of a group. 2.3. Pre-trial discovery and disclosure rules 2.4. Contingency-fees and cost-shifting rules 3. Main drawbacks of the American-style class actions 3.1. Instrumental use of class actions. 3.2. Violation of a right to free trial 3.3. The risk of over-deterrence 4. American class actions and the European debate on group litigation – a need for convergence?	199 199 204 208 209 213 216 219 223 226 228 231
in the introduction of a group litigation mechanism in the area of competition law. 1. Origins of the American system of class actions 1.1. From opt-in to opt-out – evolution of class actions mechanism 1.2. Class actions as a response to antitrust law violations 2. Main characteristics of the American system of class actions 2.1. The principle of certification 2.2. The rules on formation of a group. 2.3. Pre-trial discovery and disclosure rules 2.4. Contingency-fees and cost-shifting rules 3. Main drawbacks of the American-style class actions 3.1. Instrumental use of class actions. 3.2. Violation of a right to free trial 3.3. The risk of over-deterrence 4. American class actions and the European debate on group litigation	199 199 204 208 209 213 216 219 223 223 226 228

PART II. Towards Increased Efficiency of Competition Law Enforceme	ent
in Europe - a Need of Common Approach to Collective Redress	

Chapter 1. The European Way Towards Common Approach	
to Collective Redress - What is the Direction?	243
I. The idea of collective redress – European alternative to American	
class actions system	244
1. The reasons for development of group litigation in Europe	246
1.1. Increasing access to justice	246
1.2. Increasing judicial economy	248
1.3. Ameliorating functioning of the internal market	250
2. The history of development of group litigation in Europe	252
2.1. Green Paper on damages actions for breach of EC antitrust rules	
- a need for collective redress recognised	253
2.2. White Paper on damages actions for breach of EC antitrust	
rules – a step towards introduction of common collective redress	
instrument in Europe	255
2.3. Green Paper on Consumer Collective Redress – alternative	
way of development in the area of group litigation	258
2.4. Public consultation "Towards coherent European Approach	
to collective redress" – preserving a status quo?	261
2.5. European Parliament resolution on "Towards a Coherent	
European Approach to Collective Redress" – a new voice	
in the European debate on group litigation	265
2.6. Communication and Recommendation on collective redress	
- a final word in the European debate on group litigation?	266
II. The main characteristics of European approach to group litigation	274
1. Rejection of US-style class actions	275
2. Introduction of strong safeguards against the abuse	278
2.1. Opt-in mechanism	278
2.2. "Loser-pays" principle and the issue of funding	283
2.3. Judicial control of collective actions	287
3. Rapprochement of national solutions	291
III. The European approach to collective redress – main shortcomings	
and still unresolved problems	294
1. Between safeguarding and efficiency – how to strike a right balance?	294
1.1. Group formation – between opt-in and opt-out	294
1.2. Financing of collective claims – the problem of third-party	
funding	297
1.3. Between public and private enforcement – providing	
an equilibrium	299
2. Incoherent mosaic of national solutions – how to ensure	
convergence?	300
Conclusion Chapter 1	303

Ch	apí	er 2.	Analysis of Selected National Solutions on Collective Redress	
- f	ron	n Fre	ench Dilemmas to Polish Clear-Cut Solution	305
[.	Fre	ench	way towards group litigation - how to find a proper equilibrium?	306
	1.	Coll	ective redress – an issue of ongoing debate	307
		1.1.	Calais-Auloy reports - proposal of class actions in the French	
			legal system	307
		1.2.	Joint representative action – a step towards group litigation	309
		1.3.	Working group on collective redress – a failure of reform	313
		1.4.	French Competition Authority – group litigation and antitrust	
			law	318
		1.5.	Yung-Beteille report – towards collective redress à la française	321
		1.6.	Bonnefoy amendment – preserving status quo	326
		1.7.	"Hamon Law" – a final voice in the French debate?	327
			1.7.1. Scope of application	330
			1.7.2. Legal standing	330
			1.7.3. Rules on group formation and organisation of collective	
			proceedings	331
			1.7.4. "Hamon Law" – partial response to the problem of group	
			litigation	335
	2.		reasons for French reluctance towards collective redress	335
		2.1.	The fear of violation of legal principles	336
			2.1.1. An endanger to due process rule	336
			2.1.2. The risk of nul ne plaide par procureur rule violation	338
			2.1.3. The principle of equality of arms	339
			The risk of lawyers' ethical standards violation	341
			An obstacle in the economic growth	343
	_		The risk for public enforcement policies	345
	3.		lective redress à la française – an alternative for the EU?	346
			Specific based approach – consumers and competition protection	347
			Representative organisation as an enforcement agent	350
		3.3.	2-stage procedure – from judgment on responsibility to	252
		2.4	compensation	353
		3.4.	Group litigation as a complement to public enforcement	356
	4	<i>3</i> .3.	Important role of mediation	359
			luation of French proposal	361
11.			solution on collective redress – a step towards protection	363
			viduals against competition law violations	363
	1.		lective redress in the Polish legal system	303
		1.1.	The law of 17 December 2009 on collective redress litigation – a new instrument of individuals' protection	365
			- a new instrument of individuals protection	365
			1.1.2. Reasons for introduction	366
			1.1.2.1. Increasing access to justice	366
			1.1.2.1. Increasing access to justice	367
			1.1.2.2. Hiereasing efficiency of a judicial system	507

368

369

369

370

370

371

374

375

	2.4.1. Parties entitled to initiate a lawsuit
	2.4.2. Parties covered by a collective claim
	2.4.3. Relationship between the group's representative
	and the group's members
	2.4.3.1. Position of the group's representative
	2.4.3.2. Position of the group's members
2.5.	Standardisation of claims and certification – the first stage
	of collective proceedings
	2.5.1. Standardisation of claims – a particularity of Polish
	approach to collective redress
	2.5.2. Certification of claim – a similarity with American class
	action model?
2.6.	Rules on group formation – the core element of collective action
	2.6.1. Opt-in principle
	2.6.2. Conditions for joining a group
	2.6.3. The elements of declaration on joining a group
	2.6.3. Consequences of joining a group
	2.6.4. Court's decision on a group formation
2.7.	Different ways of dispute resolution
	2.7.1. Judgment on responsibility
	2.7.2. Judgment resolving a dispute
	2.7.3. Settlement agreement
2.8.	Rules on financing of collective claim
	2.8.1. Contingency fees agreements.
	2.8.2. Reduced fees for bringing collective claim
	2.8.3. Guaranty deposit as the another safeguard against
	the abuse.
3. Col	lective redress and Polish practice
	Collective redress in Poland – empirical assessment
	3.1.1. BRE Bank case
	3.1.2. LINK4 case.
3.2.	Advantages of Polish approach to collective redress
·	3.2.1. Positive effects of judgment on responsibility
	3.2.2. Limitation of costs of proceedings
	3.2.3. Wide scope of parties covered by the collective actions

1.1.2.3. Ensuring better achievement of internal market

2. Main characteristics of Polish approach to collective redress......

2.1. Position of collective redress within the national legal order.....

2.2. Scope of application

2.2. Organisation of group proceedings.....

2.4. Parties entitled to bring collective claim

2.2.1. Personal scope

2.2.2. Subjective scope.....

purposes

		3.3. Limitations of Polish solution
		3.3.1. Difficulties with the standardisation of claims
		3.3.2. Inefficiency of guaranty deposit
		3.3.2. Duration of the proceedings and a mechanism
		of notification
		3.3.2. Limited role of ADR
	4.	Polish solution on collective redress – a model for the EU?
Co		usion Chapter 2
		ter 3. The European Way Towards Common Approach
		llective Redress - How to Achieve the Goal?
I.		ropean directive on collective redress – a step towards harmonisation.
	1.	Directive as a solution for existing differences
		1.1. Limitations of current approach to collective redress
		1.2. Advantages of a directive
	2.	The character of a directive – finding a balance between states'
		autonomy and a need of efficiency
		2.1. Horizontal versus specific approach
		2.2. Minimum versus maximum harmonisation
	3.	Legal basis for the EU intervention in the area of collective redress
		3.1. Art. 101 and 114 TFEU as the legal basis for a sector specific
		directive
		3.2. Art. 81 and 114 TFEU as the legal basis for horizontal directive
		3.3. Directive and the criterions of subsidiarity and proportionality
II.		ain elements of the proposed solution - effective mechanism
		r the enforcement of antitrust law
	1.	Victims of violations, representative organisations and public bodies
		- broad concept of legal standing
		1.1. Scope of legal standing
		1.1.1. Injured individuals
		1.1.2. Representative organisations
		1.1.3. Public bodies
		1.2. Assessment of legal standing
		1.3. Relationship between a lead plaintiff and the injured individuals
	2.	Organisation of collective proceedings – towards greater flexibility
		2.1. Certification
		2.2. Other stages of collective proceedings
		2.3. Possible outcome of collective claim
		2.4. Role of the court in collective proceedings
	3.	Opt-out mechanism or a hybrid model – towards the effective system
		of group's formation
		3.1. Opt-out mechanism
		3.2. Hybrid model
		TREVIET WARE



4.	Manager and gatekeeper – increasing role of a judge	468
	4.1. Certification of claim and a role of a judge	469
	4.2. Formation of a group and a role of a judge	470
	4.3. Assessment of claim and a role of a judge	471
	4.4. Division of damages and a role of a judge	472
	4.5. Costs of the collective action and a role of a judge	472
5.	Contingency fees and the new methods of financing	
	- essential element of collective redress	475
	5.1. Reduction of costs of collective proceedings	475
	5.2. Innovative methods of financing	476
	5.2.1. Contingency fees agreements	476
	5.2.2. Other methods of third party funding	479
6.	Collective redress and ADR – increased importance of alternative	
0.	methods of dispute resolution	484
	6.1. Advantages of ADR	485
	6.2. Limitations of ADR in the area of antitrust law	486
	6.3. Required response in the area of ADR	488
	6.3.1. Creating incentives to settle.	488
	6.3.2. Establishment a mechanism of collective ADR	490
	6.3.3. Ensuring coherence between public enforcement, collective	170
	redress and ADR	490
Conc	lusion Chapter 3	492
Conc	lusion Chapter 5	7/2
Concl	lusion	493
Conci	usion	473
D:LI:	ography	499
DINIIC	grapmy	マノフ