In "Private enforcement," a private Party takes a claim that another Party has violated the law to a court, accompanied by a demand to be compensated for damages. Private enforcement is in the public interest in that it advances access to justice for those who have been harmed by violations while sparing the public (prosecutors, regulators, etc.) the expense of investigations, because the Parties should be motivated to bring their private information to the court. In Germany, however, private enforcement has mostly failed to take off, in large part due to the lack of a class action in German courts. Plaintiffs have to pursue their small individual claims against defendants with deep pockets who, as repeat players, enjoy big economies of scale. Innovative trial attorneys have recently begun to use assignments of claims to establish de facto class actions in Germany. In June, the Federal Court of Justice (BGH) will take the first in a series of decisions concerning the viability of this badly needed opportunity of collective redress. These decisions also have important implications for the fight between established attorneys and the legal tech industry. This talk will examine the key issues, focusing on competition and consumer damages cases before the Court and the relevance of a public choice perspective for genuinely legal arguments.

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