becoming a lucrative market for practitioners, either as advocates for consumers or respondent companies. For Finnish industry and commerce this can be seen as another guarantee that class actions in Finland will not become a major issue, at least not as long as the law remains as it is now enacted.

It should, however, be kept in mind that if the new Act proves to be insufficient in ensuring that the objectives set for the system are achieved, the legislature may always amend the law. Now that the ice has been broken, future expansion of the system is far easier to bring about should there be the need for it.

Notes

1 The working group responsible for the final report leading to the new act was actually the fourth working group. The third working group issued its report in 2005, but the work of the fourth group was a direct continuation of the work of the 2005 working group.
2 In certain aspects, such as with regard to assessing the impartiality of the judge, a member of the class is however considered equal to a party.
3 According to the law in force at that time, an administrative decision, such as the one adopted by the Energy Market Authority and the Supreme Administrative Court, did not entail any obligation for the electricity company to return the excessive charges collected. The law has since been amended.
4 Additional members may be included in the course of the proceedings if this does not unnecessarily delay the proceedings or cause undue inconvenience to the respondent.
5 In accordance with the principles of Finnish law, compensation may be received only for actual damage suffered, and no punitive damages are allowed. In situations where proof of the actual damage cannot be obtained or is difficult to obtain, however, the court may assess the amount of damage.

Class actions and mass actions in Germany

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The enforcement of collective claims has become increasingly relevant in German civil litigation in recent years. Although the German Code of Civil Procedure traditionally does not provide for class or group mass actions, it became apparent that this might be a deficiency when approximately 16,000 small investors individually filed claims against Deutsche Telekom AG, arguing that Telekom had concealed significant risks in its stock exchange prospectus. As a consequence of the Telekom claims, the German legislature adopted the so-called *Kapitalanleger-Musterverfahrensgesetz* (KapMuG) (Capital Investors' Model Proceedings Act),[1] which became effective on 1 November 2005. The KapMuG is applicable to proceedings before a court of the first instance in which claimants assert:

- claims for compensation of damages due to false, misleading or omitted public capital markets information; or
- claims for fulfilment of a contract which is based on an offer under the Securities Acquisition and Takeover Act.

The Act is expressly intended as an experiment to test collective claims enforcement and will remain in force for an initial test period of only five years. At that time, the KapMuG will automatically expire unless the legislature decides to extend its term. If the Act should prove successful, collective claims enforcement might be extended to other areas where mass damages are likely to occur, such as product liability and antitrust law.

Under the KapMuG, both plaintiffs and defendants can file an application with the trial court for the establishment of a Model Case Proceeding in order to clarify legal questions or establish the existence or non-existence of conditions justifying or ruling out the claim. If at least ten such applications are filed in similar cases within four months, the higher regional court will open a Model Case Proceeding in which it will select one of the claimants to be the 'Model Plaintiff'.

The court will choose a case that is exemplary for the mass claims and that best illustrates the factual and legal questions and issues. The higher regional court will then decide on the legal questions at issue, which decision(s) will become binding for the courts of first instance that are trying the individual cases.

On 15 February 2007, the Higher Regional Court of Stuttgart rendered the first Model Case decision in a proceeding of several investors who accused DaimlerChrysler AG of not having published in time the resignation of its CEO, Jürgen Schrempp.

The Model Case had been initiated on 3 July 2006, after ten investors had filed for a Model Case Proceeding before the local court of first instance against DaimlerChrysler AG. The Higher Regional Court ruled that DaimlerChrysler had not breached disclosure duties incumbent on it. The local court of first instance is bound by this decision and will now have to dismiss the claims of all investors. In this first Model Case Proceeding the KapMuG has proven to be effective. Instead of ruling on similar legal questions in numerous proceedings only one Model Case had to be tried. Therefore, the KapMuG helped to save time and money for all investors and moreover omitted the risk of conflicting court decisions.

On the other hand, the Telekom case has shown that the KapMuG in its present form is not an ideal instrument to administer an extremely large number of claimants. The reason is that the KapMuG does not discharge the trial judges from treating each and every claim individually. Rather, the KapMuG merely allows the higher regional court to decide on certain abstract legal questions that are decisive for the underlying cases. Before and after a Model Case Proceeding, however, the trial judges have to handle all pending claims case by case. In particular, the trial judges have to read and consider each and every submission of all claimants. In the Telekom case, just one judge of the District Court of Frankfurt has to deal with 16,000 claimants, all of whom are entitled to file individual briefs and submissions. As a consequence, the Telekom cases move forward only very slowly and the KapMuG has not proven to be a big help, yet.

Therefore, though it serves well for smaller and midsized mass claims, certain aspects of a Model Case under the KapMuG should be improved to allow more efficient treatment in the case of an extremely large number of claims. Consideration should then be given to extending the Model Case principle to other legal areas appropriate for mass claims such as antitrust law, where it appears there is a need for effective mass action. For example, the European Commission discovered recently several cartels that had harmed a large number of consumers. However, the individual damages of most consumers amounted to only a few Euro each and so most of them hesitated to initiate court proceedings. As a consequence, a new business model emerged: companies have been formed with the sole purpose of gathering these consumers' claims and raising them collectively against the cartel members. In February 2007 the District Court of Düsseldorf decided that such collection companies may file these claims in their own name and in one (collective) court proceeding; however, this judgment is not yet binding and it may take several years before the German Federal Supreme Court will finally decide on the legitimacy of this business model. It would also be preferable for the injured parties to have an effective means of enforcing their rights without the need to sell their claims to a third party whose interests are purely economic. Such means could be a model case proceeding similar to that of the KapMuG.[2]

Notes

1 BGBl 2005, I, 2437 of 16.08.2005.

2 For a discussion of the ability of consumer associations to bring actions in Germany on behalf of multiple claimants, see Wünsche, 'German Federal Court of Justice strengthens position of consumer associations', *IBA International Litigation Newsletter* (May 2007), pp 86-87.