

# Regulating the real estate industry

WE CONTINUE with our 'resumed' campaign with a contribution by Dr David Fabri, LL.D., a lecturer in consumer protection and legislation at the University of Malta:

The position with regard to the regulation of estate agents in Malta is that such regulation, in any specific manner, does not yet exist. I am confident that it will come in time.

Most economic and professional activities which affect our lives, including our financial affairs and other important transactions, are, to one extent or another, subject to specific legislation and control in Malta.

One can certainly debate and argue on the manner and the degree of intrusiveness of the legal framework that may be devised for this sector.

There are various alternatives and precedents that may be considered. It should not be an exercise to impose a system of control just for its own sake, or merely to create a new source of revenue.

A proposal for a new regulatory framework should have clear and proper objectives, founded on an understanding of the market and the way it operates with its imperfections and needs, and taking into account legitimate grievances received from time to time from consumers of estate agency services.

One way is to adopt a financial services-type framework of licencing, coupled with the introduction of the fit and proper test for persons interested in assisting members of the public with their property needs.

This may be seen as unduly stringent. Or one can opt for a softer approach with a basic registration procedure and low entrance thresholds. However, I would certainly not support any suggestion to move towards some form of self-regulation, which would inevitably lapse into an ineffective pretence.

Government has no current policy on the regulation of estate agency. Certainly, the subject currently lacks a sense of urgency. One reason could be that there is no EU Directive on this subject that Malta could have been obliged to transpose.

However, it is useful to remember that some years ago a Nationalist government had actually given some attention to this subject and had assumed a general policy position which it was happy to publish. However, 14 years ago and sundry ministers and parliamentary secretaries responsible for consumer protection later, this published policy seems to have been completely forgotten.

So here it is, straight out of the White Paper published under the

heading "Rights for the Consumers" in August 1991, at a time when Dr Michael Frendo served as the first ever Parliamentary Secretary with specific responsibility for consumer protection. (Incidentally, this White Paper laid the foundations for a significant amount of consumer legislation in subsequent years, particularly in the shape of the Consumer Affairs Act, passed by Parliament in 1994 and brought in to force in 1996.)

The White Paper dedicated no less than half of page 29 to "Purchasing a House". After explaining that "the purchase of a house may be the most important and expensive transaction entered into by a consumer throughout his entire life and thus requires consideration", it promised that attention would be given to the matter by the Consumer Protection Council.

This refers to a council-that-never-was, envisaged in the White Paper as the new administrative and central structure for consumer protection.

Instead, the following year, the then Minister L. Gatt chose to immediately set up a new government department dedicated to the promotion of consumer interests, namely the Department for Consumer Affairs, which still exists today.

In any event, government promised that the new structure would tackle the following three objectives, that:

- a) property-dealing enterprises give their non-commercial customers a fair deal;
- b) estate agents do not indulge in abusive sales methods; and
- c) advertisements and other information defused to promote the selling of a house are substantially truthful and relevant."

In reality, no such action has been taken and no specific regulation of property sales or estate agency has been introduced to date. The current legal situation appears to me to be untenable and inappropriate.

Sooner or later, this subject shall have to be addressed. Hopefully, the exercise eventually undertaken would reflect a common sense and proportionate response to local realities, and not evolve into a typical knee-jerk quick fix shamelessly copied from some inappropriate foreign model.

I would advise that care be taken to ensure that:

- a) the agenda for such an exercise should not to be dominated or led by the industry itself as significant vested interests are involved;
- b) any suggestion that could hijack the initiative towards insipid codes of practice or self-regulation should be nipped in the bud; and
- c) the new regulatory set-up would actively promote competition and con-

## CONSUMER AFFAIRS



**Adrian Muscat Inglott**

sumer choice and not inadvertently create some new form of closed shop or cartel.

Subject to these three reservations, representatives of the industry would have to be involved and consulted.

Finally, one has to reflect on the possible fate of the various amateur "sensara", operating, often quite efficiently and cheaply in many villages in Malta and Gozo. Would they be declared illegal?

Perhaps, an attempt may be made to somehow rope them into the new legislative framework under a system of registration and broad oversight. Hopefully, this brief note shall provide your readers with some food for thought and shall prompt useful debate." (Dr David Fabri, LL.D.)

Your comments on the issue, dear readers, are welcome.