

The Lombard markets across the border

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For the population of the bailiwicks the markets on the Lombard side of the border were as important as their own. Varese, Domodossola and Tirano belonged, like Chiasso, Lugano, Bellinzona and Giubiasco on the Confederate side, to the chain of border markets of the cattle trade, and the towns of Upper Italy supplied southern Switzerland with rice and grain. Their markets and fairs were the places where the peasants and merchants of the Mendrisiotto, the Luganese and the Locarnese sold livestock and bought food and manufactured goods.¹ Luino on the eastern shore of Lake Maggiore obtained a market privilege from Emperor Charles V on 5 September 1541, at the request of the Rusca counts. The Wednesday market of Luino became one of the great cross-border markets of the region.² The fair of Tirano in the Valtellina, held around the feast of the Madonna di Tirano in September, served the Grisons trade in the same way.

The coexistence of markets on both sides of the border had two effects. It integrated the region economically, since prices on one side influenced those on the other and traders moved freely between them. It also made the border an opportunity: a peasant from the Mendrisiotto who took cattle to Varese and brought grain back crossed two customs regimes on each trip. The difference between the Confederate and Milanese duties, and between the treaty price and the market price of salt, was a source of profit for anyone who could avoid one or the other.

1 Market law: measures, brokers and the market peace

The markets were governed by a body of market law contained in the statutes of the towns and in the ordinances of the *landfogti*. Its main elements, which it shared with the market law of the towns north of the Alps, were the market peace at the place of the market together with safe conduct on the roads leading to it; the supervision of the quality, quantity and price of the goods offered and of weights and measures by sworn

officials; the fight against forestalling (*Fürkauf*), the speculative buying of grain, wine, butter, salt and cattle before they reached the market in order to resell them at a higher price; and the jurisdiction of a market court, which together with the market police secured the peace of the town.³ The statutes of Lugano and Locarno, which Chapter A.II discusses as sources of the bailiwicks' law, contain provisions of this kind.

Several of these institutions have direct modern descendants. The market peace survives in the rules on safe conduct in international judicial assistance and in the protection of market infrastructures from insolvency proceedings. The sworn broker survives in the regulated intermediary, while the rules against forestalling have been transformed into the law of market abuse. Weights and measures remain a matter of public law under the Federal Act on Metrology.⁴ There is no direct legal succession between these modern rules and the medieval market. What links them are the recurring problems of any market: trust between strangers, reliable measurement, fair access and quick resolution of disputes.

For the practitioner. The organization of the historical fairs illustrates risks that trade finance still manages today: - Sale on credit to buyers met once a year required a trusted intermediary (the broker or notary) who recorded the terms. Today the documentary credit and the bank guarantee perform this function. - Drovers selling on behalf of absent owners created agency risk. Modern commission and agency law (Art. 425 ff. CO) and the rules on the commission agent's duty to account address the same problem. - Settlement at the next fair created a fixed maturity. The bill of exchange and the deferred payment credit serve the same purpose. - Differences in duties across a border created incentives to misdeclare goods. Customs and sanctions compliance must still assume that incentive exists.

2 Notes

1. HLS, art. "Commercio di bestiame" (as above), for the border markets of Tirano, Chiasso, Bellinzona, Giubiasco, Lugano, Varese and Domodossola; HLS, art. "Agrarmarkt" (as above): "Die Südschweiz bezog Reis und Getreide aus Oberitalien." ↩
2. VerbanoNews, "Mercoledì 28 giugno il mercato di Luino diventa ufficialmente mercato di valenza storica", 21 June 2023, <https://www.verbanonews.it/aree-geografiche/lombardia/2023/06/21/mercoledì-28-giugno-il-mercato-di-luino-diventa-ufficialmente-mercato-di-valenza-storica/960290/>. ↩
3. HLS, art. "Märkte" (as above): "Das Marktrecht beinhaltete Bewilligung und Schutz des Handels", with "der am Ort gebotene

Marktfriede und der Geleitschutz auf den Zufahrtswegen", the control of "Qualität, Menge und Preis des Angebots, Mass und Gewicht" and of "Fürkauf"; HLS, art. "Marktregulierung" (Anne-Marie Dubler, Bernard Degen, version of 27.10.2009), <https://hls-dhs-dss.ch/de/articles/013732/2009-10-27/>, on the fight against "den spekulativen, preistreibenden Zwischenhandel aus Gewinnsucht, den sogenannten Fürkauf, bei Getreide, Wein, Butter, Salz und Vieh", on sworn officials "über Masse und Gewichte" and on the town peace "durch Marktrecht, Marktgericht und Marktpolizei gesichert". On the statutes of Lugano see Chapter A.II. ↩

4. Federal Act of 17 June 2011 on Metrology (MetA), SR 941.20, Art. 1 (legal units of measurement, placing on the market and control of measuring instruments, quantity indications for consumers, tasks of the Confederation and the cantons), at [droit-bilingue.ch](https://www.droit-bilingue.ch/de-fr/9/94/941.20-1-4.html), <https://www.droit-bilingue.ch/de-fr/9/94/941.20-1-4.html>. ↩

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