

P.R.I.M.E. Finance

Panel of Recognized International Market Experts in Finance

Derivatives Disputes



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Presentation by G. Massimiliano Danusso
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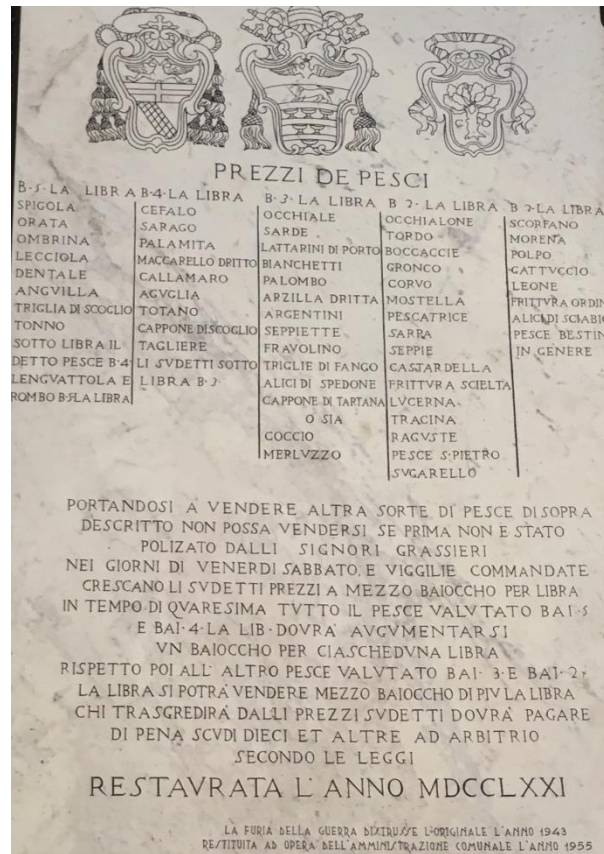
Government imposed prices in ancient Rome



Emperor Diocletian and a fragment of his Edict on Maximum Prices
(*Edictum De Pretiis Rerum Venalium*) issued in 301



Government imposed prices in Rome (18th century)



Plaque establishing imposed fish prices in 18th century in Rome, actually in a fish market



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Price imposed on derivatives?



Hot issues and recent decisions

- Prato decision in the High Court and prospects of appeal
- The Santander case
- Court of Appeal of Milan
- The Corte dei Conti new approach



Some issues raised by swap counterparties

- Mark to market (mtm) at inception must be 0
- Mtm at inception must be disclosed
- «Implicit Costs» must be disclosed and affect the economic convenience test
- Conflict of interest in case of advisory agreement or implicit advisory services must be disclosed
- Swaptions are speculative instruments?



Prato decision - I

- Positive elements of the decision:
- No implied commissions
- No article 41 violation
- No par value swaps



Prato decision - II

- The extremely negative side:
- Article 30
- The central argument is based on art. 3.3 of the 1980 Rome Convention



The Santander case - I

- A new approach to article 3.3
- A fundamental decision particularly for Italian banks dealing with Italian clients under ISDA



The Santander case – II

A detailed review of the decision: the international elements of the situation

1. The ISDA itself
2. The back to back structure
3. The assignability of the contract
4. The use of the English language
5. The Over The Counter (OTC) international market

Both cases are now on appeal



Some hopeful trends in the Italian market - I

- Court of Appeal of Milan 858/2016
- Contracts may be speculative
- Inclusion of previous mark to market does not affect the *causa*
- The mark to market at inception is not relevant
- Generic information on inherent risk sufficient



Some hopeful trends in the Italian market - II

- Tribunal of Turin 316/2016:
- Art. 30 not applicable in case of extensive negotiations



Some hopeful trends in the Italian market - III

Other positive decisions:

- Tribunal of Turin 30 July 2015
- Supreme Court 3624/2016



Worrying decisions

- Tribunal of Rome 13 April 2016 on article 30
- New frontiers: hybrid contract
- Tribunal of Udine 711/2015



Corte dei Conti new approach

- Recent decisions on derivatives and role of the advisors
- The current investigation on the Derivatives of the Republic



Questions?



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