

Trade in audiovisual programs between Brazil and Europe.

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This article sets out to examine the consequences of the “Television Without Frontiers” (TWF) directive on the exportation of Brazilian audiovisual programs to Europe.

It focuses mainly on Portugal, which represents the primary outlet for Brazilian producers. It shows notably that a flexible interpretation of the directive’s principles has little effect on Brazilian producers’ access to European markets.

1. Introduction

In terms of audiovisual programs, Brazil’s trade structure reveals a strong specialization in television drama¹. In this sector, the country is a net exporter² thanks for the most part to the *telenovelas*. Being sold in over 130 countries, they made up over 90% of the export revenues earned by Brazilian audiovisual programs in 1999. Similarly, the export revenues of TV Globo, the first Brazilian network and principal domestic producer, increased by about \$100m in 1999, a number not far removed from that of the main American studios. This performance, all the more remarkable since TV Globo’s export structure is based around *telenovelas*, illustrates the strong competitiveness of this format in foreign markets. Consequently, we will concentrate the rest of the analysis on this sector.

Historically, Europe was at the heart of the internationalization of Brazilian producers (in this case with the broadcaster TV Globo in a situation of quasi-monopoly in the Brazilian television market). Due to cultural links and to the absence of linguistic barriers, Portugal was the first foreign market targeted by TV Globo. Exportations to Portugal were facilitated by the absence of dubbing costs and of domestic competitors³ (nothing like the Latin American markets, which are nonetheless eager consumers of *telenovelas*). In fact, RTP, in a monopoly position, established itself as Globo’s main foreign customer between 1977 and 1987.

¹ Conversely, in the film sector, the country remains massively dependent on foreign (American) productions. In 1999, almost 90% of cinematic works broadcast by the national stations were of American origin. That same year, more than 80% of films shown in cinemas were American productions. They accounted for more than 80% of admissions. For its part, the market share of domestic cinema remains less than 10% (7.5%), despite a significant rebound attributable to the establishment of state aids.

² That position explains the recent communication from Brazil to the WTO (09/07/2001). The country mentioned that: “*the cultural exception argument... does not seem to take into account the fact that cultural products and services are part of an industry of clear economic and commercial importance, the audiovisual sector being its most dynamic segment and one of export interest to some developing countries*”.

³ From 1982, Portuguese producers have positioned themselves in this sector. From 1982 to 1987, 12 *telenovelas* were produced. This step expressed the fear on the part of the Portuguese cultural elites of “reverse colonization”.

However, Europe's attractiveness is not limited to the Portuguese market. The involvement in the 80's of TV Globo in a phase of capitalistic acquisition of holdings found expression in the purchase of the station Télé Monte Carlo. This act aims at securing its outlets in Europe, using as a foothold the only really competitive (and therefore buoyant in terms of demand) market: the Italian market.

The audiovisual landscapes of most European countries have profoundly changed during the 80s and 90s. The change unfolded in two stages:

*The first stage (1985-1994) consisted of the Hertzian television market being opened up to competition. It was accompanied by a profound change in the financing structure of the market, with a rise in the potential of advertising revenues.

*The second stage, still under way, corresponds to the development of Pay-TV on cable and satellite (and soon on the Hertzian network), notably thanks to the digital revolution.

Despite this growth in Pay-TV (variable across countries), the free generalist channels remain the principal actors in the domestic markets of European countries as a whole (as much in terms of audience as of financial resources). Our analysis will concentrate on the behaviour of these broadcasters. In this framework, we will first analyse the reason why the changes noticed between 1985 and 1994 could considerably increase the potential demand of European broadcasters for foreign television dramas from countries like the United States or Brazil.

However, this first section describes a potential demand ensuing from broadcasters' natural behaviour, a behaviour unconstrained by regulation. The second part of our reflection evaluates, in the case of Portugal, the capacity of the mechanisms of the TWF directive (transcribed in its most minimal form into Portuguese legislation) to alter the natural propensity of domestic broadcasters to resort to Brazilian *telenovelas*.

2. The consequences of opening European television up to competition: an increase in potential outlets for Brazilian *telenovelas*

From the second half of the 80's, most European countries began opening up their television industries to competition. In the Hertzian television market, this meant the emergence, besides public operators, of a private audiovisual sector financed solely by advertising revenues. Thus, between 1982 and 1994, the number of Hertzian channels in Europe increased from 34 (including 26 public channels) to 78 (including 36 public channels). 77% of this growth is attributable to the appearance of new private channels. In Portugal, two new channels were created: the station TV1 in 1991 and the station Sic in 1992. Similarly, in Spain, Antena 3 was created in 1989 and Telecinco in 1990. In France La Cinq (off-air in 1992) and TV6 (later M6) appeared in 1986, while TF1 was privatised in 1987.

This evolution was accompanied by an important change in the financing of the television sector, notably the central role taken by advertising revenues from then on. According to van Cuilenberg and Slaa (1993), the role of advertising in the balance of the entire Western European audiovisual industry increased from 34% in 1985 to nearly 40% in 1989, while income from the licence fee dropped from nearly 37% in 1985 to only 26,8% in 1989. In France, while the licence fee made up the principal source of television financing in 1980, it only contributed 21% of the resources in 1990, with advertising establishing itself as the main source of financing⁴ (52% of funds in 1990 as opposed to 40.3% in 1980). Likewise, in Portugal, the weight of public finance in television financing has become marginal since 1991. This phenomenon results from the financial needs of the two new broadcasters, but also from the growing share of advertising in the financing of public channels. Commercial revenues (advertising, sponsorship, program sales...) already making up RTP's main source of finance, grew from 1991 on with the replacement of the licence fee by public subsidies⁵.

The coexistence of private producers fully financed by advertising and public broadcasters largely dependent on advertising will structure the terms of competition. This is played out as a confrontation among broadcasters, at the level of the audience, to capture the greatest share of available resources in the advertising market. It therefore determines the programming behaviour of broadcasters in an innovative way.

The work of television economists allows us to specify the consequences of advertising funding on the programming structure. The audience being an exogenous variable, a television channel in fact sells two types of audiences to advertisers. It first suggests a realised audience, but this audience only being measurable *ex-post*, the broadcaster also suggests a hoped-for audience. This, predicted *ex-ante* by the station, is the variable which determines the nature of the broadcaster/advertiser relationship. Depending on a multitude of parameters difficult to foresee during contract negotiations, it is subject to great uncertainty. The management of this uncertainty structures the programming behaviour. In effect, in a context where the broadcaster seeks to maximise the value of its advertising time, its intermediate objective is to see to it that the hoped-for audience becomes predictable with the smallest possible margin of error. The development of the programming schedule⁶ is aimed therefore at establishing viewer loyalty to reduce the natural tendency to volatility (and therefore to minimise uncertainty).

Under these circumstances, the television drama is naturally a key program in the schedules of broadcasters financed in full or in part by advertising. This genre, and more particularly drama series, soaps or *telenovelas*, depends on recurring characters evolving in a known situational framework in which the setting imposes a regular meeting-place. It

⁴ In 2000, 40% of French television funds came from the advertising, 36% from subscriptions and 24% from the licence fee.

⁵ In 1999, public subsidies provided 15% of resources for Portuguese television, against 57.8% for advertising and 27.1% for subscriptions. Similarly, according to the Audiovisual European Observatory (2001), they represented 43% of the RTP budget in 1998 (against 55% for commercial resources).

⁶ Furthermore, Besen, Krattenmaker, Metzger, et Woodbury (1984) show that a low-budget program, generating a smaller audience than other programs, can find its place in the schedule of a commercial television station.

allows not only viewer loyalty (the audience gets attached to characters and to the plot of a series and perhaps wants to find out the ending) but also the quick and easy drawing-in of the audience (notably for series based on characters confronted in each episode by a new situation which unfolds according to rules known to the audience).

The evolution of European broadcasters' schedules over the course of the 80s confirms the direct link between advertising revenues and the increasing scheduling of television dramas. Cocq (2000) considers that, in the French case, the television drama has been the principal beneficiary of increased competition. Between 1983 and 1991, the number of hours of television drama broadcast was multiplied by 10 (or an increase of 11 211 hours). In total, its share of global supply went from 11.6% in 1983 to 31% in 1991. For RTP1, Traquina (1995) shows that the majority share of advertising in the financing of this increase (from 1985) is expressed first by an increase in the scheduling of dramas. From 1975 to 1986, although in a monopoly position, the volume of drama broadcast went from 614 hours (16.9% of global supply) to 1 050 hours (21.5%). This trend intensified with the arrival of private competitors. In 1992, drama represented 32.8% of the station's global supply, a volume of 2 270 hours.

To satisfy these needs, broadcasters arbitrate between the production of new domestic programs (or the purchase of old domestic programs if an efficient domestic production industry exists) and the purchase of foreign programs. Assuming an unregulated market, Cocq (2000) shows that in the French case in the early 90's⁷, the economic behaviour of French broadcasters led them to favour American dramas. This tendency varies, however, according to the degree of maturity of the broadcaster.

Thus, for the leading channels in the market, the profit-maximising objective for the prime-time slot, on which most resources are concentrated, means the pursuit of audience maximisation (and from there to the constituent revenue of net profit). This behaviour, because of the preferences of viewers for domestic programs⁸, implies the scheduling of a production certainly more costly in comparison to an American work⁹, but perceived as the best way to satisfy the objective above. Conversely, at times when the audiences (and therefore the revenues earned by the programs) are smaller, these channels will naturally favour the minimisation of costs (and therefore American programs) to keep to the objective of profit-maximisation.

⁷ In the early 90s, the level of supply of rebroadcastable (and therefore capable of satisfying the needs of new entrants) French works was very low. Limited in effect to works owned by the Institut National de l'Audiovisuel, the broadcast rights of those produced between 1982 and 1990 were held by the original broadcaster. Coming from a monopolistic system of production (the Société Française de Production) and intended to sustain demand for the programs of the public television monopoly, these productions have difficulty responding to the new audience capture criteria.

⁸ In 2000, the twenty highest audiences achieved in 30 European countries (within Western, Eastern and Central Europe) revealed the high preference of viewers for domestic dramas. Therefore, among the 130 dramas ranked in the box-office, 70% were domestic products. This proportion reached 90% in Western Europe (source : European Key Facts (2001), author's calculs).

⁹ According to Villevet (1994), the acquisition cost of an hour of American television drama for French broadcasters is between 40% (in the case of a former French production) and 2% (in the case of an original French production of quality) of the cost of a French drama.

The behaviour of so-called secondary channels (the new entrants) differs. The first years of a new channel are characterised by limited financial resources and loss-making activities. In this context, the profit-maximising objective is achieved by the minimisation of the cost of the program roster, and therefore by resorting to American programs in all time slots.

The transposition of this analysis framework to the Portuguese market requires that we take into account the unique cultural relations between Brazil and Portugal. Indeed, the privileged relationship formed in the 70's and 80's between TV Globo and the RTP resulted in a form of domestication of Brazilian products in the Portuguese market. Geraldo Casé, artistic director of Globo's international Division considers that in 1988: "*The audience patterns in Brazil coincide with the audience patterns in Portugal. Furthermore, the preferences of the portuguese people are getting closer and closer to those of the Brazilian people*". In fact, during this period, the TV Globo's *telenovelas* attracted the largest audiences of the first public channel.

Compared to the competitiveness of American programs in foreign markets, the Brazilian *telenovelas* present a peculiarity in the Portuguese market. Besides an economic advantage (shared by American products), they benefit from a unique cultural advantage.

****An economic advantage:***

This advantage illustrates the pertinence of the analysis of Wildman and Siwek (1988) on the international trade in television programs. Following the teachings of the new theory of international trade, these authors underline the importance of the size of the domestic market in the structure of international trade for these products. This variable, because of the economic specificity of television programs (strong economies of scale), is not neutral in relation to the sharing of the gains from trade: international trade between two countries of different sizes confers greater benefits to the country with the bigger domestic market than on its partner.

According to the Idate information (2001), Brazilian television, with an advertising market of \$2.9bn in 2000, is one of the most prosperous in the world. According to this criterion, it is ranked 6th behind American, Japanese, British, German and Italian televisions. In this context, the *telenovelas*, jewel of Brazilian broadcasters' schedules and source of the largest audiences, naturally benefit from the greater part of these abundant resources and can be absorbed by the domestic market.

These characteristics are further amplified by the weak audience fragmentation of Brazilian television, which is largely dominated by the activity of TV Globo. This network, in a position of quasi-monopoly during the 70's and part of the 80's, still accounted for more than 50% of the national audience in 1999 and captured more than 60% of advertising funds. From an international point of view, it is a unique case: in comparison, the audience share of TF1, which is the first European channel at this level, was only 34.9% in 1999. With TV Globo also being the main domestic producer of *telenovelas*, these will benefit fully from this advantageous position. According to Mato

(1999), if the production of an episode of a Globo *telenovela* intended for prime-time costs between \$50,000 and \$60,000 (an average *telenovela* consists of 160 episodes), then 30 seconds of advertising during the program is valued at \$60,000.

Cushioned by the domestic market, the Brazilian *telenovelas* are therefore sold in foreign markets at their marginal distribution cost¹⁰ with the possibility of discriminatory pricing¹¹ according to the economic characteristics of these markets. Following the example of American products, they therefore have an advantage in terms of price-competitiveness over domestic productions. This price-competitiveness is coupled with a qualitative advantage linked to the difference in available resources¹².

***A cultural advantage**

Brazilian *telenovelas* have a cultural advantage linked to their integration into the Portuguese domestic market. Under these circumstances, Brazilian *telenovelas* are not affected by the preference of Portuguese viewers for domestic programs, unlike American programs.

In this context, the opening of the Portuguese market to competition had to result, in the absence of regulation, in the uptake of Brazilian *telenovelas* in great numbers and in all time slots. The strong specialisation of Brazil in this sector would however leave a gap for domestic and European producers in formats such as the series or sitcom. It is in these that they would find themselves in competition with the Americans.

3. The impact of the transposition of the TWF directive to the Portuguese market

On the 3rd of October 1989, the Council of the European Community adopted the TWF directive¹³. Its main objective is, in accordance with the founding principle of free circulation of services, to ensure the co-ordination and harmonisation of national legislative arrangements in order to facilitate and promote cross-border televisual activities. There is also a political objective: the creation of an independent European audiovisual industry of broadcasters. The measures prescribed (Articles 4 and 5) aim at constraining the natural tendency of broadcasters to resort to foreign productions, the goal being to obtain efficient levels of supply and demand for domestic and European programs.

¹⁰ Nevertheless, this price-competitiveness of Brazilian productions is not solely attributable to a voluntary aggressive price policy. It can also reflect the exercise of bargaining power on the part of importing firms. Noam (1991) explains the persistently low prices of American dramas in Europe as the result of monopsony power exercised by European broadcasters. According to the author, this power, inherited from the monopoly situation, survives the passage to competition by reason of the persistence of a limited number of operators (oligopsony) and their financial capabilities.

¹¹ According to Mato (1999), the purchase price of a one-hour episode varied in 1998 from \$15,000 for a German generalist channel to \$50 for a Zambian broadcaster.

¹² In 2000, the advertising resources of Portuguese television rose to \$330m, or 1/8 of the size of the Brazilian market.

¹³ This directive was modified by the directive of June 30th 1997.

These measures, combining broadcasting obligations and production obligations, fit into an overall philosophy that leaves a large prerogative to member-states. In fact, though Article 4 (1997 directive) stipulates: “*that broadcasters reserve for European works... a majority proportion of their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping*”, it is specified that: “*member-states shall ensure this principle **where practicable and by appropriate means***”. Furthermore, if this proportion cannot be achieved, point 2 of Article 4 stipulates that “*it must not be lower than the average for 1988. However, in respect of the Hellenic Republic and the Portuguese Republic, the year 1988 shall be replaced by the year 1990*”.

This flexibility applies also to production obligations (article 5), according to which national broadcasters must devote to European works created by producers who are independent from broadcasters:

- either “*at least 10% of their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping*”,
- or “*at least 10% of their programming budget*”.

Such latitude results in deep divergences as to the transposition of the directive into the national law of member-states. However, apart from France¹⁴, which introduced the most restrictive obligations, most countries contented themselves with the minimum thresholds.

In Portugal, the debate surrounding the opening up of television to competition was focused on the choice of firms for assigning frequencies. All other crucial issues associated with the opening up of the market, such as sources of financing, balanced programming, national production, were neglected. Certainly, the new Television Law of 1990 established diverse generic objectives for all television broadcasters, such as “*the promotion and defence of cultural values that express national identity*”, contribution to the formation of a “*critical conscience, stimulating creativity and free expression of thought*”. These same objectives are reaffirmed in the new statutes for the state-owned broadcaster, RTP, which were adopted in 1992. It is also stipulated that RTP should, as an obligation of public service broadcasting, support and promote cinema and other forms of audiovisual production and expression. The regulatory arsenal put in place to satisfy these needs is nevertheless limited.

The new Television law of 1990¹⁵ requires broadcasters to devote 40% of their broadcast time to programs in Portuguese, 30% of which should be of Portuguese origin.

¹⁴ If the emergence of an independent production sector of broadcasters came to be the norm in most European countries during the 80s, France is nevertheless alone in having backed an independence of producers based on their financial participation in the production process. The viability of this attitude assumed the emergence of a second market, the only way to ensure producers' profitability. This phenomenon explains in large part the particularly constraining character of French regulation.

¹⁵ The new Television Law of 1998 (14/07) didn't bring any change on these points.

Furthermore, the programming of a minimum percentage of European works must be ensured. Lastly, channels are required to reserve at least 10% of their programming time to independent productions. So that the Portuguese thresholds are not only lower¹⁶ than those of the directive, but by retaining the Portuguese language as the criterion of assessment (following the example of the Spanish legislation), they also institute a not very restrictive framework for broadcasters. A framework all the more favourable since:

*As Traquina (1995) underlines, “*these national quota requirements are not specific with regard to program genre. Thus, there are no explicit requirements with regard to the national production of fiction programs*”¹⁷.

*The regulation authority, the High Authority for Social Communication, has no monitoring role with regard to legally binding programming obligations.

*The regulation of the advertising market is particularly flexible. For channels as a whole, advertising air-time cannot exceed 15% of daily programming time (or a level of 9mn per hour on average, as opposed to 6mn in France) and cannot exceed 12mn per hour (8mn for French public channels). Also, unlike France, which forbids advertisement breaks during dramas on public channels and which limits them to one on private channels, Portugal allows them (every 45 minutes for cinema films and television dramas of at least 90mn, one or two breaks for television dramas of less than 90mn, the interruptions being separated by an interval of at least 20 minutes).

The programming behaviour of Portuguese broadcasters is therefore essentially determined by their economic objectives. That said, as assumed previously, television drama occupies an important place, with supply assured by Brazilian and American programs.

The work done by Raquina (1995) perfectly illustrates these tendencies. The author analyses the programming structure used by Portuguese broadcasters over a period of one week (5-12 April 1993). Television drama emerges as the favoured genre during prime-time for broadcasters as a whole. Over that period, television drama represented 41% of prime-time for the two public stations (as against 21% for sport), 44% for SIC (as against 23% for news) and 26.8% for TV-1 (as against 22.8% for cinema films). For this genre, the share of domestic production is virtually non-existent (8.7 % of the time scheduled by all of the television channels for television drama). Only RTP 1 and TV-1 turn to national productions (representing up to 16% and 17.8%), which are concentrated in the *telenovela* sector.

Brazil and the United States provide nearly 65% of television drama demand by Portuguese channels. 94% of Brazil's supply consists of *telenovelas*. At this rate, Brazil is the primary supplier, providing 46.5% of broadcaster demands (as opposed to 11.5% for the United States, 16.8% for domestic production, the rest of Europe being completely absent). Conversely, the United States asserts itself in the other two segments (sitcoms

¹⁶ This flexibility is the consequence of the “*where practicable*” contained in the directive.

¹⁷ Cf. Traquina (1995), p.228

and dramas). For these two sectors the United States supplies 68.6% of broadcasters' needs (as opposed to 27% for Brazil, 1.1% through domestic production and 19.7% for the rest of Europe). In all, 40.7% of demanded fiction television is provided by American productions, 24.1% by Brazilian programs and 10.2% by European programs.

This quantitative information overshadows slightly the essential strategic position of Brazilian *telenovelas* within the Portuguese arena. They have shown themselves to be the variable determining the relative competitiveness of a broadcaster. Competition between channels is played out in seeking the rights to the most popular *telenovelas*, in this case those of TV Globo. At this level, capitalistic links¹⁸ between the Brazilian network and SIC were determinant in the evolution of the relationship between the channels. In September 1994, SIC obtained exclusive rights to future Globo productions (from January 1995), putting an end to RTP as a competitor in this sector. According to Sousa (1997), this act was decisive in the rise to power of the private operator¹⁹: “by mid 1995, mainly due to Globo’s *telenovelas*, SIC became the most watched TV channel in the country”²⁰.

These characteristics, obtained on the basis of one week’s programming ten years ago, nevertheless remains representative of the behaviour of Portuguese Hertzian broadcasters. According to European Key Facts (1999), the United States supplied 56% of the total stock of programs broadcast by Portuguese channels in 1998, Brazil 29%, Europe 10%, and Portugal 6%. According to the European Audiovisual Observatory (2001), 53% of dramas imported by Portugal in 2000 came from the United States, 22% from Brazil, and 12% from the rest of Europe.

The directive leaves member states significant room to manoeuvre and forces little constraint²¹ on them. The Portuguese experience is exemplary here. Taking advantage of the “*where practicable*” comment, this country implemented a very flexible interpretation of the directive. Our study shows that the obligations imposed on Portuguese broadcasters alter only marginally their scheduling behaviour. Thus, the Brazilian *telenovelas* could fully benefit from competition in the Portuguese television

¹⁸ TV Globo owns 15% of SIC’s capital, the maximum amount permissible under Portuguese legislation. In fact, Sousa (1997) shows that relations between the two groups are not limited to this financial link: “*Being Globo – in SIC’s executive eyes- a model commercial television, SIC’s manager travelled to Brazil in order to understand how the Brazilians were organized and how the company performed... There has been a Trans-Atlantic movement : SIC’s technicians have travelled to develop their expertise and Globo’s experts have come to Lisbon to provide their services at SIC’s studios*”. Cf. Sousa (1997), p. 4.

¹⁹ Although in 1994, SIC, with an average daily audience share of 24.3% was the second Portuguese channel behind RTP1 (with an audience share of 48.2%), it is the most popular channel since 1995. In 2000, it represented 44.4% of the daily audience (53% in the prime-time slot), as against 26% for RTP1 (31.4% during primetime).

²⁰ Cf. Sousa (1997), p. 5.

²¹ In its third report on the application of the TWF directive, the European Commission stated the following: “*Portugal gave the results for five channels. Three did not meet the majority quota requirement in 1995, and two in 1996... The reasons put forward by the Member State have to do with competition from Brazilian productions, which have already covered their costs when they arrive on the market and are therefore more competitive than home-grown Portuguese productions*”. Despite this breach, no penalties were imposed, as according to point 2 of Article 4, “*findings showed that progress was being made*”.

industry. The regulation's only impact was to replace, in very modest proportions, part of the demand for American programs to the benefit of European productions.

Nevertheless, Portugal remains an exception in Europe. This country displays a series of characteristics (low advertising revenues, domestication of Brazilian programs) which could notably restrict the impact of the regulation. As the Eurofiction²² (2001) study indicated, the dominant behaviour in terms of programming television drama in Europe is structured according to the following dichotomy: domestic drama on prime-time / foreign fiction (mostly American²³) on day-time (cf. Table 1). This datum seems to indicate that obligations could have a greater impact in countries other than Portugal. Those obligations could restrict the potential demand of complementary broadcasters for the Brazilian programs likely to be broadcast during prime-time (by replacing them with domestic programs). The study of Spanish market helps us clarify our analysis.

Table 1. Geographic origin of television drama scheduled by the principal channels (sample week of 12-18 mars 2000).

		Domestic	US	European	Others
GB	<i>Full day</i>	47%	43%	0%	10%
	<i>Prime-time</i>	51%	49%	0%	0%
Germany	<i>Full day</i>	36%	57%	5%	2%
	<i>Prime-time</i>	56%	44%	0%	0%
France	<i>Full day</i>	25%	56%	15%	5%
	<i>Prime-time</i>	75%	25%	0%	0%
Italia	<i>Full day</i>	19%	64%	4%	13%
	<i>Prime-time</i>	43%	51%	6%	0%
Spain	<i>Full day</i>	20%	56%	7%	17%
	<i>Prime-time</i>	51%	37%	12%	0%

Source : Eurofiction (2001).

5. The impact of the transposition of the TWF directive to the Spanish market

For cultural reasons, Spain represents an important potential outlet for Latin American *telenovelas*. Due to language differences, Brazilian producers are confronted on that market to the competition of Spanish Latin American productions (from Venezuela, Argentina and Mexico). Following the example of Portugal, Spain has had a very flexible interpretation of the TWF Directive. However, some specificities in its broadcasting

²² This proposes an analysis of the television drama economy in five European countries (Germany, Spain, Britain, France, Italy).

²³ The findings of the European Audiovisual Observatory (2001) show the weak circulation of European programs within Europe. In 1999, only 15% of non-domestic dramas broadcast by the main channels of European countries were European, as opposed to 71% of American origin. This weak representation of European dramas expresses the incapacity of the TWF directive to improve the circulation of European works, an incapacity all the more glaring since this share has been going down since 1994 (when it was 21.1%).

scene, particularly regarding the size of its advertising market²⁴, led to a different programming behaviour²⁵ from that of Portugal.

The transposition of the TWF Directive took place very late in Spain. The 25/1994 Law merely recapitulated the minimal clauses²⁶ : 51% of broadcast works must be²⁷ of European origin (of which 50% should be of Spanish language). This notification implies a preferential clause towards *telenovelas* produced by the Hispanic countries of Latin America, to the detriment of Brazilian programs. Even if the 22/1999 Law, which adapts the new Directive of 1997, does not modify the content of this obligation, it initiates new investment obligations: broadcasters must²⁸ invest 5% of their previous year turnover in the production of European fiction works (TV fiction or movies).

In reality, authorities have been very flexible regarding the implementation of broadcasting quota (cf. Table 2). From 1995 to 1998, the private channel Tele 5 did not respect the broadcasting quota. Antena 3 only started to conform to it in 1998. The good state-owned channels' behaviour has to be full of nuances, according to Gaillard (2001), « *it is mainly based on cheap programmes broadcast on day-time* »²⁹.

Tableau 2: % of European fiction broadcasted by Spanish channels

	1995	1996	1997	1998
TVE1	58%	50%	53%	55,7%
TVE2	77%	76%	66,1%	69%
Antena 3	43%	42%	45,1%	51,9%
Tele 5	33%	38%	39,7%	45,2%

Source: Gaillard (2001).

²⁴ In 1999, the advertising resources of Spanish television rose to \$1,9bn, or six times the size of the Portuguese market.

²⁵ These aspects are also characteristic of the Italian market, another important potential outlet for Latin American programs. In 1991, Latin American countries (21%) and the United-States (70%) provided 91% of television drama broadcast by private Italian channels (6,2% for Italian productions). *Telenovelas* represented 20,8% of the global TV fiction's supply. On this segment, Latin American countries (particularly Brazil and Mexico) provided 89% of channels' demand (6,5% for domestic production, 0% for American production).

²⁶ In Italy, the transposition of the 1989 directive was one of the most flexible in Europe. The Mammi Law of 1990 established broadcasting quotas for cinema productions only. Besides, no production requirements were mentioned. The 122/1998 Law transposing the 1997 Directive establishes a new system. It stipulates that:

*The European production must at least represent 50% of the monthly broadcasting time in each audiovisual program category,

* Broadcasters must devote "at least 10% of their transmission time" to independent works,

*It also establishes investment requirements. The Rai must also invest 20% of the license fee revenue in independent domestic productions. This share amounts to 10% (of advertising revenues) for private channels.

²⁷ Among these works, 10% must be produced by independent producers.

²⁸ In accordance with this requirement, Antena 3 must invest, yearly (from 1999 to 2002), 6,01 billions Euros in Spanish TV fiction production. In the same way, RTVE must devote, yearly, 18 millions Euros in Spanish fiction (movie and TV fiction).

²⁹ Cf. Gaillard (2001), p. 87.

In spite of this flexibility and the absence of producing requirements until 1999, the Spanish market has been characterised during the 90's by the expansion of the domestic TV fiction production. The Spanish fiction, which was almost non-existent in the early 90's (280 hours produced), appeared in 1999 as one of the most dynamic in Europe. Spain, which produced 1455 hours of TV fiction in 1999 (for a total value of 198 millions Euros), is the second European producer on this segment, behind Germany (1828 hours) but in front of UK (1324 hours), France (665 hours) and Italy (504 hours).

The development of a domestic fiction implies a restriction of a part of broadcasters' demand for Latin American productions. In 1999, Spanish fictions started to have a central place on the prime-time niche, whereas Latin-American productions were totally excluded from this segment and only concentrated on day-time (cf. Table 3).

*Table 3: Origin of TV fiction broadcasted by Spanish Channels (including Autonomicas channels)
(Sample Week 28/02-06/03/1999)*

	Domestic	USA	Europe	Latin America	Total
Full day	16%	74%	1%	10%	100%
Prime-time	43%	57%	-	-	100%

Source : Eurofiction (2001).

However, this evolution is only slightly due to the broadcasting quota. It actually seems to result from the evolution of the broadcasters' economic behaviour. The regulating flexibility in the early 90's combined to the large size of the advertising market allowed new private channels to quickly reach their profitability level. Antena 3 showed a profit margin in 1992 (2 years after its creation), Tele 5 in 1991 (1 year after its creation). After a stabilisation phase, these channels have benefited from their good financial position to modify their programs. Coherently with our description of the expected behaviour of broadcasters, they have therefore favoured domestic fictions³⁰ on the prime-time. Under these conditions, the recent introduction of investment obligations should only have a marginal impact. They merely confirm an existent and natural behaviour.

6. Conclusion

A recent study by Gaillard (2001) on the directive emphasizes: *“that the diversity of states' positions, the diversity within states between political authorities as between market actors, the variable efficiency of lobbyists before the Commission and the European Parliament, could only result in a compromise. The most visible expressions of this compromise are the now famous **where practicable and by appropriate means**”*³¹. In other words, the directive does not really restrain³² member states.

³⁰ These aspects are also characteristic of the Italian broadcasters' behaviour. Nevertheless, in their case, the substitution movement is less obvious (in 1999, Italy has only produced 504 hours of TV fiction). Under these conditions, the new system implemented by the 122/1998 Law should have a more significant impact on broadcasters. Demand for Latin American *Telenovelas* should therefore be limited.

³¹ Cf. Gaillard (2001), p. 17

³² In its third report on the application of the TWF directive, the European Commission stated the following: *“Portugal gave the results for five channels. Three did not meet the majority quota requirement in 1995, and two in 1996...The reasons put forward by the Member State have to do with competition from*

The Portuguese, Spanish and Italian experiences are exemplary here. Our study shows that a flexible interpretation of the directive's principles has little effect on Brazilian producers' access to European markets. In the case of Portugal, the regulation's main impact was to replace, in very modest proportions, part of the demand for American programs to the benefit of European production. As far as Italy is concerned, the regulation's effect was void until 1999. However, the new investment obligation should reduce the demand for Brazilian programs on prime-time (to the benefit of domestic productions). Lastly, in Spain, the only restrictive effect lies in the language mention. It implies a preferential treatment for *telenovelas* produced by the Hispanic countries of Latin America.

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Brazilian productions, which have already covered their costs when they arrive on the market and are therefore more competitive than home-grown Portuguese productions". Despite this breach, no penalties were imposed, as according to point 2 of Article 4, "findings showed that progress was being made".

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