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COMMUNICATION FROM THE COMMISSION  
TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

**on the application of Articles 4 and 5  
of Directive 89/552/EEC**

**"Television without Frontiers"**



## **EXECUTIVE SUMMARY**

This is the second monitoring report on the implementation of Article 4 (European works) and Article 5 (independently produced European works) of the 1989 "Television without Frontiers" Directive. It covers the years 1993 and 1994. As with the previous report, it is based on national reports provided by each Member State as regards the broadcasters under its jurisdiction.

The conclusions of the report are as follows:

- \* There is a marked improvement in the quality of reporting by Member States. A number of methodological difficulties have been ironed out as compared to the previous period.
- \* In quantitative terms, the data is comprehensive.
- \* The report confirms that all Member States have transposed Articles 4 and 5, although the flexible wording of these provisions has resulted in differing levels of effectiveness and in variations as regards the basis on which they are applied.
- \* The number of channels surveyed was 148 (105 in 1992). Of these, 91 broadcast a majority proportion of European works in 1994 (as compared to 70 channels doing so in 1992).

Moreover, in almost all Member States, the majority of mainstream terrestrial broadcasters (which account for by far the largest share of the audience) achieved, or exceeded by a considerable margin, the majority proportion. There was only a limited number of exceptions and in most of these cases the proportion remained close to 50%. Many of those channels not reaching the majority proportion were recently launched channels and/or satellite channels with limited audience share, often providing specialist programming on a pay-TV basis.

- \* 119 channels out of 148 complied with the 10% minimum rule for independent productions (63 channels achieved this figure in 1992).
- \* The Commission is satisfied, in general terms, with the results of this second monitoring exercise, while reserving its right to take further measures as appropriate in specific cases.

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## INTRODUCTION

This communication covers the second series of Member States' reports on the implementation of Articles 4 and 5 of the Television without Frontiers Directive.<sup>1</sup>

Article 4(3) requires the Commission to obtain statistics from the Member States every two years on the proportion of television transmission time accounted for by European and independent programmes.

The specific aim of Articles 4 and 5 is to promote the production and distribution of such programmes as part of the framework for the free movement of television broadcasting services within the European Union.

The main aim of the Directive is to establish the legal framework for such free movement, where necessary by adequately coordinating national measures.

The first series of reports was the subject of a communication adopted by the Commission on 3 March 1994 and subsequently sent to the Council, Parliament and the Economic and Social Committee.<sup>2</sup>

This second reference period runs from 1 January 1993 to 31 December 1994 and the data are for calendar years.

The Member States were required to submit their national reports to the Commission by 3 October 1995. Reminders to this effect were sent to the Permanent Representatives in April 1995. In actual fact, the Commission received the reports over a period ranging from July 1995 to March 1996.

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<sup>1</sup> Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ L 298, 17.10.1989).

<sup>2</sup> COM (94) 57 final, 3 March 1994.

## **PROVISIONS AND TRANSPOSAL OF DIRECTIVE 89/552**

The Television without Frontiers Directive, which came into effect on 3 October 1991, serves as the legal reference framework for the pursuit of television broadcasting activities in the European Union on the basis of the coordination of certain provisions laid down by law, regulation or administrative action in the Member States.

The areas thus coordinated are jurisdiction (Article 2), promotion of the distribution and production of European television programmes (Articles 4 to 9), advertising and sponsorship (Articles 10 to 21), protection of minors (Article 22) and right of reply (Article 23).

By protecting the public interest in these fields at Community level, the Directive guarantees in each Member State the freedom of reception and retransmission of television programmes from other Member States of the Union.

It introduces the principle of the application to a broadcaster of a single body of law based on common objective connecting criteria designed to ensure that every broadcaster operating in the Union falls under the jurisdiction of one, and only one, Member State.

In this context of the free movement of television services, the coordination of national measures<sup>3</sup> achieved by means of Articles 4 and 5 prevents such measures from forming legal obstacles to the free movement of television programmes within the Community; by this very fact, it helps to encourage the production and distribution of European and independently produced programmes.

These measures thus serve an objective of a legal, economic and cultural nature expressly called for by the Council when the Directive was adopted in 1989. They constitute an area of harmonization necessary for ensuring the free movement of television

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<sup>3</sup> The vast majority of Member States have introduced such measures in the form of obligations to broadcast (or produce) European works or programmes produced in a given language or produced "locally".

programmes, which is legally possible now that the various national rules on broadcasting are coordinated at Community level.

Article 4<sup>4</sup> sets up a structure based on three pillars:

- establishment of a core of broadcasting time devoted to specific types of programme (all categories except news, sports events, games, advertising and teletext services);
- devotion of a majority proportion of broadcasting time to European works (as defined in Article 6). This is to be done where practicable and by appropriate means. Member States are required to ensure that this proportion is attained progressively, on the basis of suitable criteria. Where it cannot be attained, the

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<sup>4</sup> Article 4:

"1. Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve for European works, within the meaning of Article 6, a majority proportion of their transmission time, excluding the time appointed to news, sports events, games, advertising and teletext services. This proportion, having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria.

2. Where the proportion laid down in paragraph 1 cannot be attained, it must not be lower than the average for 1988 in the Member State concerned.  
However, in respect of the Hellenic Republic and the Portuguese Republic, the year 1988 shall be replaced by the year 1990.

3. From 3 October 1991, the Member States shall provide the Commission every two years with a report on the application of this Article and of Article 5.  
That report shall in particular include a statistical statement on the achievement of the proportion referred to in this Article and Article 5 for each of the television programmes falling within the jurisdiction of the Member State concerned, the reasons, in each case, for the failure to attain that proportion and the measures adopted or envisaged in order to achieve it.  
The Commission shall inform the other Member States and the European Parliament of the reports, which shall be accompanied, where appropriate, by an opinion. The Commission shall ensure the application of this Article and Article 5 in accordance with the provisions of the Treaty. The Commission shall take account in its opinion, in particular, of progress achieved in relation to previous years, the share of first broadcast works in the programming, the particular circumstances of new television broadcasters and the specific situation of countries with a low audiovisual production capacity or restricted language area.

4. The Council shall review the implementation of this Article on the basis of a report from the Commission accompanied by any proposals for revision that it may deem appropriate no later than the end of the fifth year from the adoption of the Directive.  
To that end, the Commission report shall, on the basis of the information provided by the Member States under paragraph 3, take account in particular of developments in the Community market and of the international context."

- proportion must not be lower than the average for 1988 in the Member State concerned (1990 in Greece and Portugal);
- review and evaluation by the Commission on the basis of statistical reports from the Member States.

Article 5<sup>5</sup> sets the proportion of transmission time (or alternatively of programming budgets) to be reserved for European works by producers who are independent of broadcasters at 10% of the same core time (or of programming budgets), subject to the same review requirements. An adequate proportion must be earmarked for recent works, that is to say, works transmitted within five years of their production.

The deadline for Member States to transpose the Directive was two years after its adoption, i.e. 3 October 1991. It is for them to ensure that broadcasters within their jurisdiction meet their obligations under it, including those of Articles 4 and 5.

In its examination of the transposal of the Directive, which from 1 January 1995 was extended to include the three new Member States (Austria, Finland and Sweden),<sup>6</sup> the Commission mainly verified that the obligations laid down in Article 4 and 5 had been incorporated into the national legal systems regardless of the kind of instrument (law, administrative order or other type of instrument) used.<sup>7</sup>

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<sup>5</sup> It reads:

"Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve at least 10% of their transmission time, excluding the time appointed to news, sports events, games, advertising and teletext services, or alternately, at the discretion of the Member State, at least 10% of their programming budget, for European works created by producers who are independent of broadcasters. This proportion, having regard to the broadcaster's informational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria; it must be achieved by earmarking an adequate proportion for recent works, that is to say works transmitted within five years of their production."

<sup>6</sup> Under the European Economic Area Agreement, which came into force on 1 January 1994, the three new Member States are required to submit statistics for 1994. So are Iceland, Liechtenstein and Norway, but only Norway has done so.

<sup>7</sup> "A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods" - third paragraph of Article 189 of the EC Treaty.

As pointed out in the communication of March 1994, the legal flexibility of the system derives from the wording of the obligations themselves ("where practicable and by appropriate means" and "progressively"), representing the political compromise sought by the Member States. The bodies which in the last resort have to fulfil those obligations are the television broadcasters.

On the basis of the statistical reports which the Member States are obliged to send to it at regular intervals (every two years) and for the second time in October 1995, the task assigned to the Commission is to monitor the results obtained from broadcasters concerning the televising of European works and independent productions on all the channels<sup>8</sup> at their command.

To enable it to fulfil this task, necessitating as it does the provision by the Member States of figures and explanations, the Commission has expressly asked the Member States to make an active contribution in this respect.

To this end, a methodological approach was worked out in 1993 at regular meetings with Member States' representatives, it being understood that responsibility for the production of reports lay entirely with the Member States themselves.

This approach led to the production of "Suggested guidelines for monitoring the application of the Television without Frontiers Directive", which were used for the first monitoring exercise, then updated and sent to the Member States in April 1995 for this second exercise. They are annexed.

The guidelines offer a number of common definitions and interpretations based on the logic of the Directive. Broadly speaking, this means:

- the definition of a broadcaster includes all the channels it operates;
- the jurisdiction to which a broadcaster is subject to depends on its place of establishment (Article 2(1));

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<sup>8</sup>

The term "channel" will be used in this communication to designate a "television programme" within the meaning of Article 4(3) as the broadcasters often operate more than one channel.

- broadcasting time used to calculate proportions does not include test-card display time;
- two criteria are used together to determine whether a producer is independent of the broadcaster - the broadcaster's capital holding in the producer (maximum 25%) and proportion of the producer's business done with the same broadcaster (maximum 90% over any three-year period);
- Member States are asked to supply statistics for the calendar years 1993 and 1994 (i.e. January to December);
- statistics are gathered from broadcasters in aggregate and for each channel they operate.

Member States were also asked to add all further information that might be useful, such as definitions, information categories and interpretations they used.

## SPECIFIC CONTEXT OF THE REVIEW OF DIRECTIVE 89/552/EEC

Article 26 of the Directive laid down that, by 3 October 1994 at the latest, the Commission was to present to Parliament and the Council a report on the application of the Directive accompanied by any proposals to adapt it to developments in the field of television broadcasting.<sup>9</sup>

On 22 March 1995, the Commission therefore adopted that report, together with a proposal for a Directive amending the 1989 Directive<sup>10</sup>. The aim of the proposal is to render more effective the legal framework set up to promote the development of television broadcasting activities in the Union.

The proposal seeks to clarify the rules on jurisdiction, the protection of minors and measures to promote European works. It adapts the text to the new economic circumstances of the sector, notably by laying down specific rules for teleshopping, the possibility of special-interest channels helping promote the European programmes industry by investing in European works and the adaptation of various provisions relating to advertising and sponsorship.

The scope of the Directive remains the same. It continues to apply to "point-to-multipoint" broadcasting services, including "pay-per-view" and "near-video-on-demand" but does not concern the new "point-to-point" services such as "video-on-demand" (VOD).<sup>11</sup>

The problems raised by the operation of these new types of services are to be studied in a Green Paper on the New Audiovisual Services which the Commission intends to finalize and present to the Community authorities in 1996.

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<sup>9</sup> To avoid any confusion in the mind of the reader, it should be pointed out that the exercise referred to here is distinct from that covered by this communication, which relates to the specific report provided for in Articles 4 and 5 (see Article 4(3)).

<sup>10</sup> OJ C 185, 19.7.1995; COM(95) 86 final.

<sup>11</sup> Further details concerning the proposal for a Directive amending the 1989 Directive are to be found in COM(95) 86 final, particularly the explanatory memorandum.

The Economic and Social Committee delivered its opinion on the Commission proposal on 13 September 1995.<sup>12</sup> On 14 February 1996 Parliament adopted a legislative resolution<sup>13</sup> approving it, subject to amendments. The Council adopted its common position on 11 June 1996.

This brief account of the state of play on this matter in no way prejudices the outcome of the interinstitutional deliberations on this new proposal, which is based on Article 189b of the Treaty, i.e. co-decision by the Council and the European Parliament.

The Commission draws attention to the fact that this communication, - which intentionally covers the national reports for 1993 and 1994, is based on the Directive in the wording in which it was adopted in 1989.

Lastly, it should be noted that alongside the Directive, which forms the legal reference framework for the European audiovisual area, a number of other audiovisual policy initiatives have been taken by the Community specifically to strengthen the competitiveness of the European programme industry through the provision of financial support, the most noteworthy examples being the MEDIA II programme (measures to encourage the development of the European audiovisual industry),<sup>14</sup> the Action Plan for the introduction of advanced television services in Europe<sup>15</sup> and the creation of a European Guarantee Fund to promote cinema and television production<sup>16</sup> as proposed by the Commission in November 1985.

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<sup>12</sup> OJ C 301, 13.11.1995.

<sup>13</sup> PE 196.583

<sup>14</sup> The Council adopted two decisions on 10 July 1995 (development and distribution aspects) and 20 November 1995 (training aspects) further to Decision 90/685/EEC of 21 December 1990 (OJ L 380, 31.12.1990).

<sup>15</sup> Council Decision 93/424/EEC of 23 July 1993 (OJ L 196, 5.8.1993).

<sup>16</sup> COM (95) 546.

## SUMMARY OF REPORTS FROM MEMBER STATES

This chapter gives a brief summary, without comment, of the material contained in the Member States' reports, compiled on the basis of a literal construction of Article 4. It will be remembered that Article 4(3) requires the reports to contain:

- "a *statistical statement* on the achievement of the proportion referred to in Articles 4 and 5 for each of the television programmes<sup>17</sup> falling within the jurisdiction of the Member State concerned";
- (where appropriate) the *reasons* in each case (according to the Member State concerned) for failure to attain that proportion;
- the *measures* adopted or envisaged to achieve it.

Other information explicitly provided by the national reports is also outlined.

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<sup>17</sup> See footnote 8.

## BELGIUM

The Commission received two reports, one from the Flemish Community (FlC) and the other from the French-speaking Community (FrC).

### FLEMISH COMMUNITY

#### (A) Statistical statement

##### 1. Summary table

Number of channels	Reference period	Method
5	calendar year	survey

##### 2. Proportions (%)

Channel (broadcaster)	European works (EW)		Independent productions (IP)		Recent works (RW)	
	1993	1994	1993	1994	1993	1994
TV1 (BRTN)	65.4	67	8.2	8.9	6.3	7.3
TV2 (BRTN)	72.7	79	20	15	15.4	12.3
VTM (VTM)	43	45	34	31	29.2	27.9
<i>Filmnet Plus</i> (Multichoice)	26	24	18.2	16.3	15.1	13.4
<i>The Complete Movie Channel</i> (Multichoice)	17.5	14.6	-	-	-	-

## (B) Reasons given by Member State for failure to reach proportion

### 1. European works

- *VTM*: the reason given is the date when the channel was launched (1.2.1989). The report makes two points: this channel, which is distributed by cable in the FLC, is local and not subject to Articles 4 and 5,<sup>18</sup> the percentage exceeds the average recorded in 1988, i.e. 40.26%.

- *Filmset Plus* and *The Complete Movie Channel*: the percentages declared by Multichoice are global with no detail; given the nature of the programmes broadcast by these channels, the proportions cannot be met.

### 2. Independent productions

- The report states that BRTN is complying with the 10%-of-budget proportion.

## (C) Measures taken or envisaged by the Member State

Not reported.

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<sup>18</sup> "This chapter shall not apply to local television broadcasts not forming part of a national network"  
- Article 9 of Directive 89/552/EEC; the Commission reserves the right to decide on the validity of this claim in the specific case of VTM.

## FRENCH-SPEAKING COMMUNITY

### (A) Statistical statement

#### 1. Summary table

Number of channels	Reference period	Method
6	calendar year	sampling (4 weeks a year)

#### 2. Proportions (%)

Channel (broadcaster)	European works (EW)		Independent productions (IP)		Recent works (RW)	
	1993	1994	1993	1994	1993	1994
RTBF1 (RTBF)	75.1	68.4	29.6	17.3	17	16
Sport 21 (RTBF)	11.5	83.3	0	50	0	0
Arte 21 (RTBF)	93.3	93.8	38.7	62.6	27	44
Tele 21/21 (RTBF)	76.7	84	53.4	32.1	32	16
RTL-TVi (TVi)	44.59	48.77	13.78	18.61	4.91	9.22

Canal+ (Canal+TVCF)	45.47	46.64	17	25.59	-	-
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(B) Reasons given by Member State for failure to reach proportion

A number of additional factual comments are made:

- Sport 21 and Arte 21 closed on 30.6.1995.
- Eleven non-transfrontier local television channels not forming part of a national network are mentioned (see Article 9 of Directive 89/552).

1. European works

- The report gives the 1988 average as the proportion accounted for by European works: 41.6%.
- *Sport 21*: the channel is devoted to sport; the sampling method lies at the root of the 1993 percentage.

2. Recent works

- *Canal+ TVSF*: the channel points out that its programme schedules consist mainly of recent films.

(C) Measures taken or envisaged by the Member State

Not reported.

(D) Further comment

The report specifies that a producer is considered to be independent if:

- it has a legal personality distinct from that of any broadcaster;
- no broadcaster has a blocking minority in it;
- it does not have a direct or indirect blocking minority in the broadcaster;
- in the case of co-production with a broadcaster, it is the producer which has legal responsibility and underwrites the production;
- the work was not produced more than five years before first being broadcast.

## DENMARK

### (A) Statistical statement

#### 1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
3	calendar year	

#### 2. Proportions (%)

<i>Channel (broadcaster)</i>	<i>European works (EW)</i>		<i>Independent productions (IP)</i>		<i>Recent works (RW)</i>	
	1993	1994	1993	1994	1993	1994
DR	77	72	11	10	-	66
TV2	63	65	67	64	77	86
DK4	-	100	-	100	-	10

### (B) Reasons given by Member State for failure to reach proportion

- All the channels surveyed observed the proportions laid down in Articles 4 et 5.
- DK4 began broadcasting in December 1994.

### (C) Measures taken or envisaged by the Member State

Not applicable.

(D) Further comment

The report states that the definition of "independent production" used is taken from company law (the relationship between parent and subsidiary). The producer is independent of the broadcaster unless the latter:

- has a majority holding in the producer;
- is entitled to appoint or dismiss a majority of the producer's staff;
- is a co-owner of the producer and can exert a decisive influence over it, by virtue of its articles of association or an agreement with it;
- is a co-owner of the producer and also has a majority of the voting rights, by agreement with the other owners;
- is a co-owner of the producer and has a determining influence over it.

## GERMANY

### (A) Statistical statement

#### 1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
14	calendar years	survey

#### 2. Proportions (%)

<i>Channel (broadcaster)</i>	<i>European works (EW)</i>		<i>Independent productions (IP)</i>		<i>Recent works (RW)</i>	
	1993	1994	1993	1994	1993	1994
ARD (ARD-Rundfunkanstalten)	90.3	90.2	42.7	43.3	87.3	92.5
ZDF (ZDF)	83.4	79	51.2	51.9	74	72.4
3 SAT (ZDF-ORF-SRG-ARD)	95.3	95	35	31.5	67.7	75.7
Deutsche WelleTV (Deutsche Welle)	65.78	66.54	36.2	34.2	89.59	89.69
DSF (Deutsches Sportfernsehen GmbH)	100	100	18.5	20.25	100	100
KABEL 1 (K1 Fernsehen GmbH)	12.2	15.1	12.2	15.1	33.6	29.8

N-TV (n-tv Nachrichtenfernsehe n GmbH & Co.KG)	100	100			100	100
Premiere (Premiere Medien GmbH & Co.KG)	60.3	59.32	10	10		
PRO SIEBEN (PRO SIEBEN Television GmbH)	39.4	43.2	29.5	28.3	17	18
RTL (RTL Deutschland Fernsehen GmbH & Co. Betriebs KG)	54	56	37	38	81	79
RTL 2 (RTL 2 Fernsehen GmbH & Co. KG)	38	36.1	1	2.2	100	100
SAT 1 (SAT 1 Satelliten Fernsehen GmbH)	53.9	47.1	27.21	29.1	36.75	35
VIVA TV 5VIVA TV Fernsehen GmbH & Co.KG)		42		1.5		100
VOX (VOX Film und Fernseh GmbH & Co.KG)	76.5	63.8	90.7	98.7	75	75

(B) Reasons given by Member State for failure to reach proportion

European works

- KABEL 1 and RTL 2: the reason given is the date the two services began (1992 and 6.3.1993). They cover a very small area and earn very little from advertising.

- VIVA TV: began in 1994.

- PRO SIEBEN: between 1989 (when it began) and 1995, this channel made efforts to increase the proportion of European works. In 1995 it reached 50%.

(C) Measures taken or envisaged by the Member State

(D) Further comments

1. Concerning European works

The 100% figures for *DFS* and *N-TV* are because these channels broadcast mainly sport and news, which are excluded areas.

The figures for *Premiere* concern the first showing of films.

2. Concerning the definition of "independent producer"

The report states that a definition has been agreed with the broadcasters: "a producer is dependent upon a broadcasting corporation when the latter is able, in law, through the setting-up of a company or by contract, or in fact, to determine the former's commercial policy. The producer is not dependent for these purposes if the producer is actually able to determine its commercial policy itself, despite any influence exerted on it legally. Independence of a producer from a broadcaster involves:

- a major share of the producer's turnover deriving from operations with bodies other than the dominant broadcaster;
- the producer being a member of the German federation of television producers."

## GREECE

### (A) Statistical statement

#### 1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
8 (3 public, 5 private)	calendar year	survey

#### 2. Proportions (%)

<i>Channel (broadcaster)</i>	<i>European works (EW)</i>		<i>Independent productions (IP)</i>		<i>Recent works (RW)</i>	
	<i>1993</i>	<i>1994</i>	<i>1993</i>	<i>1994</i>	<i>1993</i>	<i>1994</i>
<i>ET1 (ERT)</i>	62	94	29	45	-	14.61
<i>ET2 (ERT)</i>	51.66	51.31	66.22	70.59	24.78	32.4
<i>ET3 (ERT)</i>	56.87	58.66	19.65	31.39	9.35	13.94
<i>ANT1</i>	60.02	61.96	24.4	24.54	42.05	52.5
<i>Mega Channel</i>	51.5	59.9	52.8	52.7	59.88	77.54
<i>New Channel</i>	71	77	71	77	49.94	60.07
<i>Seven X</i>	70	71	49	38	63.63	48.71
<i>Sky</i>	-	78	-	26.5	-	38.25

### (B) Reasons given by Member State for failure to reach proportion

- The report states that all channels respected the proportions for the years concerned, Sky having been surveyed only for 1994, when it started broadcasting.

(C) Measures taken or envisaged by Member State

Not reported.

## SPAIN

### (A) Statistical statement

#### 1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
13	calendar year	

#### 2. Proportions (%)

<i>Channel (broadcaster)</i>	<i>European works (EW)</i>		<i>Independent productions (IP)</i>		<i>Recent works (RW)</i>	
	1993	1994	1993	1994	1993	1994
TVE-1 (RTVE)	58	57	10.2	10.5	5	6.1
TVE-2 (RTVE)	74	63	10.8	12	5.3	5.8
ANT-3 (Antena 3TV)	48	49	7.6	10.4	4.2	3.4
TEL-5 (Gestevisión Telecinco)	50	51	11.08	12.27	2.86	2.02
CANAL+ (Soc TV Canal+)	41	42	36.2	37.1	34.9	35.8

<i>Channel (broadcaster)</i>	<i>European works (EW)</i>		<i>Independent productions (IP)</i>		<i>Recent works (RW)</i>	
CST (RadioTV Andaluza)	67	64	30.4	34.3	19.02	25.3
ETB-1 (Euskal Irrati Telebista)	82	81	14.5	13.4	7.7	6
ETB-2 (Euskal Irrati Telebista)	53	52	6.3	3.5	4.2	3.2
TV-3 (TV Catalunya)	59	65	1.34	1.93	1.15	1.65
TV-33 (TV Catalunya)	85	84	4.2	5.2	1.85	2.3
TVG (TV Galicia)	56	54	9.5	10.3	3.5	4
TVM (TV Madrid)	51	51	11.02	10.8	7	6.5
TVV (Radio- TV Valenciana)	64	63	13	15	10	9.6

(B) Reasons given by Member State for failure to reach proportion

Not reported.

*(C) Measures taken or envisaged by Member State*

- Authorities to monitor situation further.

## FRANCE

### (A) Statistical statement

#### 1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
14	calendar year	survey

#### 2. Proportions (%)

<i>Channel (broadcaster)</i>	<i>European works (EW)</i>		<i>Independent productions (IP)</i>		<i>Recent works (RW)</i>	
	1993	1994	1993	1994	1993	1994
TF1(1)	60.8	62.8	16.14	15.17	-	-
France 2 (1)	74.9	74.8	15	10	-	-
France 3 (1)	70.3	68.8	17.7	17.8	-	-
Canal + (1)	59.7	60.4	12.8	13.8	-	-
M 6 (1)	66.2	66.1	23.3	19.2	-	-
Canal J (3)	65.8	67	70	61	-	-
<i>Canal Jimmy (2)</i>	49.7	47.8	21	22	-	-
<i>Ciné-cinéfil (2)</i>	51	48.7	39.6	42.5	-	-

<i>Channel (broadcaster)</i>	<i>European works (EW)</i>		<i>Independent productions (IP)</i>		<i>Recent works (RW)</i>	
Ciné-cinemas (2)	55.8	52.7	41.3	38.7	-	-
MCM/Euro- musique (3)	76	80.4	56.9	50.1	-	-
<i>Multivision</i> (3)	-	45	-	45	-	-
Paris- Première(3)	88.3	86.6	25	61	-	-
Planète (2)	74.6	76	52	52	-	-
Série Club (3)	60.1	50.4	59.6	50	-	-

(B) Reasons given by Member State for failure to reach proportion

European works

- *Canal Jimmy, Ciné-Cinéfil*: the reasons given are the poor financial results achieved by cable television in France and the difficulties in obtaining European programmes.

- *Multivision*: launched in 1994, this channel is the first experiment in pay-per-view television, is carried on only a few networks, is not transmitted by satellite and has difficulty in obtaining attractive recent films. The results relate to eight months of broadcasting.

(C) Measures taken or envisaged by Member State

Not reported.

(D) Additional remarks

1. Independent and recent productions

- The figures provided relate to both independent and recent productions (see Articles 3, 9, 10 and 11 of Decree No 90-67 of 17/1/1990 containing more restrictive criteria concerning the basis for the definition of works, the concept of orders, the scope of the obligation, the limit on a broadcaster's stake in the capital of a production company).

- They represent:

IP and RW as percentages of the company turnover in respect of the channels(1)

IP as a percentage of the channels' programming budgets(2)

IP as a percentage of the channels' transmission time(3).

2. Particular cases

- *Arte*: Franco-German channel, launched on 28.9.92, to carry European arts programmes (EW broadcast in 1993: 94%; in 1994: 95%). "La Sept", the French partner in this EEIG, complied with the Article 5 obligation (percentage of programming budget: 36% in 1993 and 34.6% in 1994).

- *La Cinquième*: education, training and employment channel since 16.12.1994 screening mainly programmes of French origin.

- *TV5 Europe*: international, general-interest, French-language satellite channel broadcasting almost exclusively French and European programmes.

- France Supervision broadcasts in 16:9, most of its programmes being supplied by France 2 et France 3.

The report mentions other channels not covered by Articles 4 and 5: Euronews, LCI, Eurosport France, Eurosport International, Club du Téléachat, Chaîne du Téléachat, CTV, Rapido.

## IRELAND

### (A) Statistical statement

#### 1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
2	calendar year	survey

#### 2. Proportions (%)

<i>Channel (broadcaster)</i>	<i>European works (EW)</i>		<i>Independent productions (IP)</i>		<i>Recent works (RW)</i>	
	<i>1993</i>	<i>1994</i>	<i>1993</i>	<i>1994</i>	<i>1993</i>	<i>1994</i>
<i>RTE 1 and Network 2 (RTE)</i>	68	70	11	14	11	14

### (B) Reasons given by Member State for failure to reach proportion

Not applicable.

### (C) Measures taken or envisaged by Member State

Not applicable.

(D) Additional remark

- The definition of the term "independent producer" is that set out in Section 5 of the Broadcasting Authority (Amendment) Act, 1993. It lays down two criteria for determining whether or not a producer is independent: the producer must have control over the making of the programme and must be neither a subsidiary nor a holding company of the broadcaster. In the case of Ireland, which has only one television broadcasting corporation and a low audiovisual production capacity, the suggested maximum of 90% of the producer's output over a three-year period furnished to one broadcaster is not appropriate.

## ITALY

### (A) Statistical statement

#### 1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
12	calendar year	survey

#### 2. Proportions (%)

<i>Channel (broadcaster)</i>	<i>European works (EW)</i>		<i>Independent productions (IP)</i>		<i>Recent works (RW)</i>	
	<i>1993</i>	<i>1994</i>	<i>1993</i>	<i>1994</i>	<i>1993</i>	<i>1994</i>
<i>RAI 1</i>	68.83	69.04	7.15	8.66	-	-
<i>RAI 2</i>	59.25	66.17	5.40	3.37	-	-
<i>RAI 3</i>	85.16	85.48	7.03	7.62	-	-
<i>Canale 5</i>	80.50	79.92	0	0	-	-
<i>Italia 1</i>	37.62	36.50	0	0	-	-
<i>Rete 4</i>	40.20	40.30	0	0	-	-
<i>TBS</i>	40	39.99	10	10.46	-	-
<i>Beta TV</i>	67.10	70.84	50.07	50.36	-	-
<i>Tele Montecarlo</i>	41.09	41.35	9.45	14.23	-	-
<i>Telepiu 1</i>	39.25	34.43	-	-	-	-

<i>Channel (broadcaster)</i>	<i>European works EW)</i>		<i>Independent productions (IP)</i>		<i>Recent works (RW)</i>	
<i>Telepiu 2</i>	<i>66.15</i>	<i>69.66</i>	-	-	-	-
<i>Telepiu 3</i>	<i>57.76</i>	<i>54.68</i>	-	-	-	-

*(B) Reasons given by Member State for failure to reach proportion*

1. European works

- The report gives national averages covering the reference years (56.9% in 1993 and 58.14% in 1994) and points to a steadily rising trend since 1988, when the average was 43%.

2. Independent productions

- Whilst also quoting the national averages (11.14% in 1993 and 11.37% in 1994), regarded as stationary, the report explains that failures are attributable to uncertainty as regards the definition of "independent producer".

*(C) Measures taken or envisaged by Member State*

Not reported.

## LUXEMBOURG

### (A) Statistical statement

#### 1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
7	calendar year	survey

#### 2. Proportions (%)

<i>Channel (broadcaster)</i>	<i>European works (EW)</i>		<i>Independent productions (IP)</i>		<i>Recent works (RW)</i>	
	1993	1994	1993	1994	1993	1994
RTL4 (CLT)	45.3	41.1	29.4	30	25.9	23
RTL5 (CLT)	28.2	31.6	15.5	23.1	12.4	14.1
RTLTV (CLT)	54	56	36	37	Adequa te	Adequat e
RTL TVi (CLT)	44.59	48.77	13.78	18.61	4.51	9.22
RTL TV "hertzien" (CLT)	43.08	54.96	19.36	25.05	6.61	4.75

RTL TV "cable" (CLT)	51.69	55.44	24.3	26.38	6.44	4.72
Hei Elei (CLT)	100	100	1.9	15.08	1.72	14.96

(B) Reasons given by Member State for failure to reach proportion

1. European works

- RTL4, RTL5, RTL TVi: not enough European works suitable for these channels' audiences available at competitive prices, the channels being financed exclusively from advertising revenue. RTL5 (which opened in 1993) and RTL TVi made definite progress in 1994, this being confirmed in the case of RTL TVi, whose percentage of European works has been rising steadily since 1992. As regards RTL4, the report states that over 80% of its 1994 programming budget went to European works and that such works went out mainly at peak times.

- *RTL hertzien*: an improvement in 1994.

A separate table in the report shows the improvement in the average achieved by all channels, including RTL4, as compared with 1991/1992.

2. Independent productions

*RTL Hei Elei*: according to the report, this channel missed the target in 1993 because it broadcasts (for an average of slightly over an hour each day) in the Luxembourg language. It made progress in 1994.

(C) Measures taken or envisaged by Member State

The authorities have called on the broadcasting corporation to inform it of the measures it has taken or intends to take in order to comply with Articles 4 and 5 of the Directive, as transposed into Luxembourg law.

(D) Remark

Without mentioning percentages, the report also refers to "Galavision", a channel belonging to "Televisa S.A. de C.V.", under the heading "Programmes transmitted via a satellite under Luxembourg jurisdiction or by broadcasters using an up-link located in Luxembourg but not falling under the jurisdiction of any Member State." The broadcasting time accounted for by European works was below that required because of difficulties in obtaining European programmes of interest to the channel's Spanish-speaking audience and meeting the broadcaster's profitability requirements.

Luxembourg has called on the broadcaster to inform it of the measures it has taken or intends to take in order to comply with Articles 4 and 5.

## NETHERLANDS

### (A) Statistical statement

#### 1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
5	calendar year	sampling

#### 2. Proportions (%)

Channel (broadcaster)	European works (EW)		Independent productions (IP)		Recent works (RW)	
	1993	1994	1993	1994	1993	1994
Ned 1	76	78	33	30	28	24
Ned 2	70	76	43	43	40	42
Ned 3	81	71	14	15	11	13
TVPlus	62	68	34	38	11	18
Multichoice NL						

### (B) Reasons given by Member State for failure to reach proportion

Not applicable.

(C) Measures taken or envisaged by Member State

Not applicable.

(D) Remark

*Multichoice NL*: figures still awaited as this communication is being drafted.

## AUSTRIA

### A) Statistical statement

#### 1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
2 (public)	Calendar year 1994	exhaustive survey

#### 2. Proportions (%)

<i>Channel (broadcaster)</i>	<i>European works (EW)</i>	<i>Independent productions (IP)</i>	<i>Recent works (RW)</i>
	1994	1994	1994
ORF1	61.2	15.1	6.9
ORF2	70.6	14.3	7.4

### (B) Reasons given by Member State for failure to reach proportion

Not applicable.

### (C) Measures taken or envisaged by Member State

Not applicable.

## PORTUGAL

### (A) Statistical statement

#### 1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
5 (3 public, 2 private)	calendar year	- survey - sampling for RW on public channels (Aug. 1993 and 1994)

#### 2 Proportions (%)

<i>Channel (broadcaster)</i>	<i>European works (EW)</i>		<i>Independent productions (IP)</i>		<i>Recent works (RW)</i>	
	<i>1993</i>	<i>1994</i>	<i>1993</i>	<i>1994</i>	<i>1993</i>	<i>1994</i>
<i>Canal I (RTP)</i>	53	45	29	22	100	87
<i>TV2 (RTP)</i>	53	64	41	21	100	100
<i>RTP-I (RTP)</i>	100	99	66	55	70	62
<i>SIC (SIC)</i>	31	33	100	23	99	70
<i>TVI (TVI)</i>	16	18	4	5	88	89

(B) Reasons given by Member State for failure to reach proportion

1. European works

- *Canal 1*: The situation in 1994 can be explained by a multitude of factors, in particular the arrival of private operators, the channel's public service vocation and the economic environment.
- Sic: difficult economic situation, limited advertising market, fall in advertising expenditure, start-up of activity, cost and attraction of non-European programmes.
- Tvi: recent channel operating in the same environment.

2. Independent productions

- Sic: no figures for 1993.
- Tvi: economic situation, recourse to own and lower-cost productions.

(C) Measures taken or envisaged by Member State

- *Canal 1*: urged to take appropriate steps in the context of a regular dialogue with the authorities, who believe that this situation is temporary.
- Sic and Tvi: Authorities to monitor situation further.

(D) Remarks

- The report emphasised the specific position of countries with a low audiovisual production capacity or restricted language area.

## FINLAND

### (A) Statistical statement

#### 1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
3	Calendar year 1994	Sampling

#### 2. Proportions (%)

<i>Channel (broadcaster)</i>	<i>European works (EW)</i>	<i>Independent productions (IP)</i>	<i>Recent works (RW)</i>
	<i>1994</i>	<i>1994</i>	<i>1994</i>
<i>TV1 (YLE)</i>	85	7	7
<i>TV2 (YLE)</i>	78	15	15
<i>MTV3 (MTV)</i>	46.9	20.2	20.2

### (B) Reasons given by Member State for failure to reach proportion

#### 1. European works

- *MTV3*: The report states that the extension of programming time obliges the channel to resort to foreign programmes.

#### 2. Independent productions

- *TV1*: The data relate to the period 1.9 to 31.12.1994; the preliminary data for the period 1.1 to 30.6.1995 show a progression: 11% for *TV1* and 8% for *TV2*.

(C) Measures taken or envisaged by Member State

- The report considers that the situation of MTV3 should be corrected in 1995: the channel will increase its own production by 1.5 hours a day and in 1995 a series of German origin is expected to be included in the programme schedule.

## SWEDEN

### A) Statistical statement

#### 1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
11	Calendar year 1994	- ZTV: sample over 6 months

#### 2. Proportions (%)

<i>Channel (broadcaster)</i>	<i>European works (EW)</i>	<i>Independent productions (IP)</i>	<i>Recent works (RW)</i>
	<i>1994</i>	<i>1994</i>	<i>1994</i>
<i>TV4 (TV4 AB)</i>	<i>49.1</i>	<i>10</i>	-
<i>Filmnet Plus The Complete Movie Channel (Filmnet TV AB)</i>	<i>3</i>	<i>26.5</i>	-
<i>ZTV (ZTV AB)</i>	<i>76.1</i>	<i>33.2</i>	
<i>TVG (Stuvik AB)</i>	<i>100</i>	<i>100</i>	-
<i>TV6 (Stuvik AB)</i>	<i>50</i>	<i>50</i>	-
<i>Kanal 1 TV 2 (Sveriges TV) TV2</i>	<i>82</i>	<i>15</i>	-

<i>Kanal 1 TV2 (Sveriges Utbildingsrad)</i>	<i>96</i>	<i>29</i>	-
<i>TV 1000 (TV 1000 Sveriges AB)</i>	<i>29.06</i>	-	-

*(B) Reasons given by Member State for failure to reach proportion*

European works

- TV 1000 and Filmnet TV AB: both companies, competing on the same market, have to show films which are sufficiently attractive to justify the cost of subscriptions.

*(C) Measures taken or envisaged by Member State*

Not reported.

## UNITED KINGDOM

### (A) Statistical statement

#### 1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
35	calendar year	survey

#### 2. Proportions (%)

<i>Channel (broadcaster)</i>	<i>European works (EW)</i>		<i>Independent productions (IP)</i>		<i>Recent works (RW)</i>	
	<i>1993</i>	<i>1994</i>	<i>1993</i>	<i>1994</i>	<i>1993</i>	<i>1994</i>
BBC 1	71	66	23	22		
BBC 2	77	75	12	14		
ITV	66.9	67.6	24.7	24.8	23	21.3
Channel 4	59.2	60.5	47.3	49.4	39.4	40.3
The Adult Channel	38.2	40.1	24.8	29		
BBC World Service	99	99	11	9		
Bravo	33.2	45.1	1.5			
The Cartoon Network		1.7		1.7		
Country Music TV	1.1	1.6	1.1	1.6	1.1	1.6

The Discovery Channel	50.7	48.1	28.2	28.5		
The Family Channel	15.5	27.9	5.4	11.8	5.4	11.8
HVC	22.1	14.7	9.7	3		
Kindernet	74.6	78.8	69.9	69.8	6.2	2.5
TV 1000	22.3	29.4	22.3	29.4		
UK Gold	58	58.1	11	14.1	10.3	9.7
UK Living	55.2	56.6	55.2	56.6	46.5	50
TV3 DK	26	31.7	11.1	15		
TV3 Norway		27.8		13.7		
TV3 Sweden		39.4		19.7		
VH 1		97		75.5		
Vision	32.9	36	21.9	24.5	19.3	22.1
VJN "The Box"	64	68.6	24.5	27.2		
Travel		41.4		12.8		
TNT	6.4	10.9	6.4	10.9		
TCC (Children's Channel)	51.7	46	28.7	26.4		
TLC (Learning Channel)	84.7	57.8	43.1	41.6		
Sky Travel		31.4		12.2		12.2
Sky Soap		5.9				
Sky One	13	14.5	5.5	8.5		

Sky Movies	16.8	23.7	7.4	10.4		
The Movie Channel	13	16.3	9	11.1		
Sky Movies Gold	15.4	16.7	13	13.7		
Performance	62.6	71.5	25.9	26.7	9.9	14
NBC Super Channel	61.4	41.9	20.8	11.2	18.8	9
Nickelodeon	26.4	24.4	13.4	12.4		

(B) Reasons given by Member State for failure to reach proportion

1. European works

(a) because of the thematic character of the channel

- *Bravo*: the channel's classic format requires programmes designed for terrestrial networks
- *Country Music* TV: license revoked in October 1994; mostly US music.
- *HVC*: primarily 'B' movies, insufficient suitable material available except from the USA.
- TV 1000, Sky Movies, The Movie Channel, Sky Movies Gold: mostly cinema films, largely of US origin (as in the cinema).
- *Vision*: specialist religious channel reflecting the world-wide nature of the Christian faith.
- *The Cartoon Network*: launched in September 1992 and based on existing US library material; difficulty in acquiring suitable European animation programmes.
- *TNT*: opened in September 1993; existing US film library material.

(b) because of when the channel began broadcasting

- *The Family Channel, Nickelodeon*: began in September 1993; difficulty in acquiring suitable English-language programmes.
- *TV 3(DK/NO/SW)*: the Norwegian and Swedish channels resumed in 1994; ratio between cost and viewing figures unfavourable to European programmes.
- *VH 1, Travel, Sky Travel, Sky Soap*: began in 1994; cost of suitable European programmes.

(c) other reasons

- *The Adult Channel*: ending of a commercial agreement with a producer of European programmes.
- *The Discovery Channel, TCC, NBC Super Channel*: .
- *Sky One*: difficulties with trade unions, so that cost of secondary programmes favours US ones.

2. Independent productions

- *BBC World Service*: rescheduling in 1994 at the expense of some independent productions, because of contract stipulations.
- *Bravo*: the targets concerning independent and recent productions are excluded by the channel's format.

C) Measures taken or envisaged by Member State

The report states that the authorities have been speaking with the broadcasters of some thematic channels and will if necessary use the powers under Section 188 of the Broadcasting Act.

They are also continuing detailed discussions with the following channels in order to determine to what extent and over what period of time the attainment of the quota provisions could be regarded as practicable: *The Family Channel, HVC, TV 1000, TV 3 (DK/NO/SW), Vision, Travel, TNT, Sky Travel, Sky Soap, Sky One, Sky Movies, The Movie Channel, Sky Movies Gold, NBC Superchannel, Nickelodeon.*

Some further data show progress in achieving the quotas:

- *TV 1000*: European works accounted for 31.8% in the last three months of 1994 and 36% in 1995;
- *TNT*: European works accounted for 17.8% in late 1994 and 21.7% at the end of August 1995;
- *Sky One*: in the first two quarters of 1995 European works accounted for 36% and 31.2%.

The report states that the proportions have been or will be reached in 1995 or 1996 by the following channels: *The Adult Channel, BBC World TV, The Discovery Channel (59 % European content in 1995), TCC.*

Finally, it underlines a steady annual improvement for the following : *Bravo, The Cartoon Network* (at the end of 1994, the broadcasting of European works reached 9,6% and additional improvements has had to be made in 1995).

#### (D) Remarks

The report makes the following further remarks:

- the statistics were gathered in accordance with the "Suggested guidelines for the monitoring of the Television without Frontiers Directive";
- according to Broadcasters' Audience Research Board Ltd., the four main terrestrial channels account for 92% of the viewing public;

- a number of the satellite channels are not covered by the quota requirements under Articles 4 and 5 because of the nature of their programmes. The Commission has not included them in the table above. They are: Asia Net, The Chinese Channel, CNE, Japan Satellite TV, TV Asia, Muslim TV Ahmadiyya<sup>19</sup>, Namaste (non-European languages), Sky Sport, Sky Sport 2, SIS Racing Facts, Setanta Sport (sports channels), Sky News, The Parliamentary Channel (news), Quantum Home Shopping, QVC, Regal Shop, Sell a Vision (teleshopping).

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<sup>19</sup>

This channel broadcasts religious programmes, some of which are in non-European languages. The report states that the proportion of European works should have been complied with (as regards programmes in English) and that discussions will be held to establish future targets.

## NORWAY

### (A) Statistical statement

#### 1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
3	Calendar year 1994	- sampling for TV Norge - survey for the others

#### 2. Proportions (%)

<i>Channel (broadcaster)</i>	<i>European works (EW)</i>	<i>Independent productions (IP)</i>	<i>Recent works (RW)</i>
	<i>1994</i>	<i>1994</i>	<i>1994</i>
<i>NRK (NRK)</i>	80	13	-
<i>TV2 (TV2 A/S)</i>	24.2	10.5	-
<i>TV Norge (TV Norge A/S)</i>	21.3	9.2	-

### (B) Reasons given by Member State for failure to reach proportion

#### 1. European works

- TV2 and TV Norge: mainly the market situation.

The Norwegian Ministry of Cultural Affairs considers this argument inadequate.

(C) Measures taken or envisaged by Member State

- Situation to be closely monitored by the Ministry and the National Council for the Media, so that broadcasters comply with Articles 4 and 5.

(D) Remarks

Recent works

- The report states that none of the broadcasters surveyed RW, on the grounds that, with the exception of some cinema films, few programmes were more than 5 years old.

## COMMISSION OPINION

### A. METHODOLOGY

The previous monitoring exercise encountered a number of problems due to differences in the way the various national reports were presented and the lack of full figures concerning European works, independent productions and recent works. There was also little in the reports as to how the information in them was gathered and processed.

In order to facilitate this second exercise, the Commission supplied the Member States with the updated "Suggested guidelines for the monitoring of the TV without Frontiers Directive" (see above), and a matrix for the presentation of data. The Commission is happy to report that, by and large, the national reports are now fuller, clearer and better presented, but some comments are still in order on four of the main topics complicating the Commission's work, on which it reported methodological difficulties in 1993.

#### 1. Survey of television channels

##### 1.1 Jurisdiction

Five of the reports raise the question of which country's jurisdiction a given broadcaster falls under. *Luxembourg* and the *French Community in Belgium* both report RTL-TVi as falling within theirs, as was found during the previous monitoring exercise. Similarly, RTL Television is included in both the *Luxembourg* and *German*<sup>20</sup> reports, while those from both *Sweden* and the *United Kingdom* give data for TV 1000<sup>21</sup>.

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<sup>20</sup> It is to be noted that the percentages in the two reports are the same for European works but not for independent productions (discrepancy of 1% each year).

<sup>21</sup> The proportions for European works in 1994 are different: 29.06% in the Swedish report and 29.4% in the UK one.

If a given broadcaster is mentioned in reports from two different countries, this implies that it falls under both their jurisdictions. As the Commission pointed out in its previous report, these are real problems of conflict of jurisdiction, with more than one Member State claiming it over the same broadcaster. This does not accord with the spirit of the Directive, which is that only one state's law should apply. The Commission takes the view that this is in part directly due to the 1989 text of the Directive not being clear enough as to the criteria for deciding where a broadcaster is established. There is also the matter of defining what constitutes a broadcaster.

Although rather few such cases arose during the period covered by this report, the Commission is convinced that the expansion of satellite and cable networks<sup>22</sup> is bound to throw up real problems of jurisdiction affecting the operability of national regulations systems and hence of the Directive itself, unless common criteria on the matter are identified and complied with.

This is why, in its proposal of March 1995 for amending Directive 89/552/EEC, the Commission strengthened the establishment criterion, on the basis of the case law of the Community's Court of Justice concerning free movement of services, by introducing it into the body of the Directive, so as to make it easier to determine which Member State has jurisdiction, and at the same time adding a recital containing a number of elements enabling the concept of establishment to be qualified in the specific context of television broadcasting<sup>23</sup>. These include where the business is registered, where programming decisions are normally taken, and also where a significant number of staff are employed.

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<sup>22</sup> In 1995 alone, some 98 satellite and cable television channels started up in Europe (European Audiovisual Observatory, 1996 report).

<sup>23</sup> Op. cit., p. 28 et seq.

## *1.2 Channels covered*

The purpose of the monitoring exercise is to provide the Commission, every two years, with significant data for the reference period as to the channels covered, i.e. all except local ones which are not part of a national network (Article 9 of the Directive) and those essentially thematic ones dealing with the excluded subjects (sport and news). Member States are thus not asked to draw up complete lists of broadcasters and channels subject to their jurisdiction.

For the sake of transparency, however, the Commission does think that reports should list (as the *United Kingdom's* one did) all the channels put out by broadcasters subject to each Member State's jurisdiction, together with enough information to determine which of them are concerned by Articles 4 and 5, and should put them into categories.

Article 4(3) provides that figures are to be provided "for each of the television programmes falling within the jurisdiction of the Member States concerned", the actual obligations being on the broadcasters. Two reports gave figures covering a number of channels globally, which is not strictly in accordance with Article 4(3):

- the *Irish* report as regards RTE 1 and Network 2;
- the *Swedish* report as regards Filmset Plus/The Complete Movie Channel and Kanal 1/ TV 2.

This second monitoring exercise also points up a problem concerning the names of television channels which has made the Commission's work more difficult. Some national reports give figures for a channels under a different name from that used for the 1991/1992 report. If not informed by the Member States, the Commission cannot always determine whether this is a change of name, a new abbreviation, or a new channel.<sup>24</sup>

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<sup>24</sup>

The Luxembourg report for 1991/1992, for instance, refers to one channel as "RTL Television", while the 1993/1994 report has two channels called RTL TV "hertzien" and RTL TV "câblé". Unless told, the Commission cannot say whether these are both two new channels since 1991/1992 or whether one of them (and which) is the same as "RTL Television" in the first exercise.

As this is an exercise to be carried out every two years, all channels should be sufficiently fully and clearly reported each time. The Commission is unhappy that, by and large, too little or indeed no information is provided as to the nature, date of launch or status of the channels reported.

Specifically, and not exhaustively, the Commission notes the following lacunae in national reports:

- *Spain*: no information on Cinemania and Documania;
- *Italy*: no information on Odeon TV and RETE A;
- *Netherlands*: no statistics on Multichoice NL.

## 2. Reference period

### 2. 1. Coverage

As the reference period was two consecutive calendar years, Member States did not have the same problems in covering it as in the previous exercise, when difficulties arose because it covered fifteen months, from October 1991 to December 1992. Annual data for calendar years (see point 6 of the Guidelines) would thus seem to be the best thing for regularly returned statistics.

Although the point is not always specified in this second series of reports, the Commission notes that the most usual way of collecting the figures was to record channel-by-channel percentages of total annual broadcasting time.<sup>25</sup> Sampling, however, was used in a number of reports:

- the report from the *Flemish Community in Belgium* indicated the sample for 1993 (the weeks from 4 to 10 January, 3 to 9 May, 6 to 12 September and 4 to 10 October) and 1994 (4 to 9 January, 2 to 8 May, 5 to 11 September, 3 to 9 October);
- the *Netherlands* report stated that it had taken a representative sample of weeks, but did not specify which;
- the *Portuguese* report used a sample of August 1993 and 1994 for recent works broadcast by public channels;
- the *Swedish* report specified the sample for ZTV AB: spring and autumn 1994;

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<sup>25</sup>

Where the method is not specified, the Commission assumes that it is by annual survey.

- the *Finnish* report stated that the figures for recent and independent productions covered the period 1 September to 31 December 1994,
- the *Norwegian* report said that the percentages for TV Norge were based on four weeks in the four quarters of 1994, but did not specify which.

## 2.2 Statistical base

Very little was said in most of the reports about the statistical base, that is the categories of programmes regarded as "works" for the purposes of Articles 4 and 5. The Directive expressly refers to "transmission time, excluding the time appointed to news, sports events, games, advertising and teletext services".<sup>26</sup> This amounts to a reverse definition, i.e. of what is not regarded as a work, and percentages are calculated on the time remaining after that devoted to programmes of the five categories above has been deducted, a work being regarded as anything not falling within those categories. Seven reports (*Greece, Italy, Norway, Flemish Community in Belgium, Austria, United Kingdom, Denmark, Luxembourg*) included information showing the base used to be as provided for in the Directive.

This aspect is also affected by the way the two articles as presently worded have been transposed into each Member State's legislation (see point B below). Some have opted for the definition of a work as in the Directive and have thus taken over the same base for collecting statistics, whereas others have adopted a more regulatory approach<sup>27</sup> by themselves giving a positive definition of a television work which emphasizes some categories more than others, such as cinema films, teleplays or documentaries. This implies a policy choice to promote these works over others, the upshot being in general a narrower base than in the Directive.

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<sup>26</sup> See also point 3 of the "Suggested guidelines for the monitoring of the TV without Frontiers Directive (see Annex I).

<sup>27</sup> They calculate the percentage on the broadcasting times of certain programmes which they consider to be works.

### 2.3 Non-slipback clause

Article 4(2) of the Directive requires that, where a majority of European works broadcast is not attained, national reports should indicate the average for 1988 (or 1990 for Greece and Portugal). In the cases of Luxembourg, the United Kingdom, Spain, Italy, Belgium, France, Norway, Finland, Sweden, Portugal and Germany, some channels failed to reach the majority proportion, but only three of them (Flemish and French Communities in Belgium and Italy)<sup>28</sup> gave the average for 1988. Again the Commission must point out that it is hardly possible to monitor the application of Article 4(2) and countries' progress in broadcasting European works over a significant enough period if the 1988 average is not given.

## 3. Independent producers

### 3.1 Definition

Gathering figures on broadcasting of or investment in independent productions (the 10% rule laid down in Article 5 of the Directive) led to less difficulty than in the previous monitoring exercise, with the reports mostly giving more statistics. The Commission concludes from this that point 5 of the Guidelines has been better perceived as a general framework and better adapted to the specific characteristics of independent television production in the various countries. The television scene varies greatly from country to country, as do the effects on the economics of production, and the Commission remains convinced that it would not be appropriate to adopt any one cast-in-bronze definition of what an "independent producer" is, since the concept has to be flexible if it is to match the real situation in each country.

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<sup>28</sup>

These three reports give the 1988 averages already given in the first reports, for 1991/1992.

The national reports can be divided into those which do refer to the definition used (Ireland: Section 5 of the Broadcasting Authority (Amendment) Act, 1993; Netherlands: Article 52k of the Decree on the media; Luxembourg: Article 27 of the Law of 27 July 1991 Denmark: definition taken from company law; France: Decree 90-67 of 17 January 1990; French Community in Belgium; Germany: specific definition for statistical purposes, Norway, Sweden, Greece, Italy: favour a harmonized definition) and those which make no mention of it (Austria, Flemish Community of Belgium, Portugal, Finland, Spain, United Kingdom<sup>29</sup>).

### 3.2. Statistical base

Under Article 5, the Member States have discretion as to what the 10% rule is to be based on, either 10% of transmission time, excluding the time allocated to news, sports events, games, advertising and teletext services, or 10% of the programming budget. All the reports give figures based on broadcasting time, with three exceptions:

- France: the report states that Decree 90-67 of 17 January 1990 applies to non-cable channels. This requires that they order a minimum volume of works, expressed as a percentage of turnover (15 to 20% for television programmes, 3% for cinema films). It was also established that a broadcaster's programming budget is always less than his turnover: between 50 and 80%, according to the type of programming. As regards cable channels, the Commission notes that both bases were used in different cases;
- Sweden: according to the letter sent to the Swedish authorities by TV4, reproduced verbatim in the report, it opted for the programming budget base. Its budget amounted to some SKR 500 million, of which more than half was accounted for by European works by independent producers.
- Flemish Community in Belgium: the report specifically says that "BRTN complies with the 10%-of-budget limit".

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<sup>29</sup>

The United Kingdom reported a statutory instrument, the Broadcasting (Independent Productions)(Amendment) Order 1995, No 1925, containing the definition used.

### 3.3 Recent works

These reports are much more consistent than the previous ones in giving the proportion of recent works by independent producers, that is, those broadcast within five years of production. Only five reports fail to give figures: those for France (which does, however, state that the figures for independent productions also cover recent works), Norway (few programmes over five years old), and Sweden, the United Kingdom and Italy (no comment).

There was some uncertainty as to the basis for the percentage of recent works. In the Commission's view the proportion of recent works cannot exceed that of independent productions, the basis being the same (transmission time excluding that allocated to news, sports events, games, advertising and teletext services), but for almost all the channels covered by the Portuguese and German reports the figures for recent works are higher than those for independent productions. The same goes for four channels in the Greek report (ANT1, Mega Channel, Seven X, Sky) and two in Denmark (DR, TV2). This remaining unexplained, the Commission cannot deduce whether these are percentages of the proportion reserved for independent productions or whether they represent the totality of recent works broadcast, whether or not independent and whether or not European within the meaning of Article 6.

### 4. Channels failing to reach the required proportions

Channels failing to reach the proportions laid down in Articles 4 and 5 were reported by Luxembourg, Belgium, France, Portugal, Spain, Italy, Sweden, Finland, Norway, the United Kingdom and Germany. Unlike in the first exercise, most of the reports said why the channels concerned had not been able to comply and reported the measures taken or planned to induce them to do so. The Commission regrets that no, or only some, such information was given in the reports from Sweden, Italy, Spain and the two language communities in Belgium.

## **B. RESERVATIONS ON THE COMMISSION'S PART**

Before setting out the overall situation resulting from the figures reported by the Member States, the Commission considers that it must clarify some aspects of the way the statistical base for the obligations imposed by Articles 4 and 5 has been transposed into national legislation, in view of the flexibility and progressiveness for which they provide.

The Commission would also refer here to some provisions adopted by Member States (which may, under Article 3(1) of the Directive, apply more detailed or stricter rules to broadcasters subject to their jurisdiction<sup>30</sup>) to encourage the broadcasting of programmes in a given language or a given area. The aim is not only to facilitate a better interpretation of the figures reported,

but also, and above all, to sound the warning bell required before any attempt is made at an economic or other assessment without a thorough examination of the situation as a whole.

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<sup>30</sup>Their doing so does not prejudice the applicability of Article 59 of the EC Treaty.

State of play in transposal

MEMBER STATE Legislation	Statistical base	Other measure
LUXEMBOURG Article 27(1)(4) of the Law of 27.7.1991 on the electronic media	= Directive	
IRELAND Statutory Instrument No 251 67 1991 (Broadcasting Act 1990)	= Directive	
AUSTRIA Rundfunkgesetz-Novelle 1993 §2(b) (BGBl 505/1993	= Directive	
GERMANY Article 5 of the State Treaty of 31.8.1991 on broadcasting	Broadcasting time of full-length feature programmes, games, series, documentaries and the like	
DENMARK Article 2 of Order 100 of 5.3.1993	= Directive	
GREECE Article 4(1,5) of Presidential Decree 236 of 10.7.1992	Total broadcasting time (minus news)	

FRANCE Decrees 90-66 (Articles 4, 5, 7, 8) and 95-77 of 24.1.1995 (articles 6,12)	Annual broadcasting time of "audiovisual works" <sup>31</sup>	40% of programmes in original French
BELGIUM (French Cty) Article 24bis of the Decree of 17.7.1987 as amended by the Decree of 19.7.1991.	= Directive	a proportion (not specified) of original works by persons from the French Community
BELGIUM(Flemish Cty) Articles 16,17 of Decree 94/1494 of 4.5.1994	= Directive	a proportion (not specified) of Dutch-language
ITALY Article 26 of Law 223 of 6.8.1990	Annual broadcasting time of cinema films	50% of works from Italy (of the time devoted to European works)
NETHERLANDS Article 52/k/1 of the Order of 22.6.1992	= Directive	40% of programmes in Dutch or Frisian
SPAIN Articles 5(1,2) and 6 of Law 25 of 12.7.1994	Annual broadcasting time	50% of European works originally in one of the languages of Spain
UNITED KINGDOM Annex to the Royal Charter and Sections 16(2)(g/h), 25(2)(e/f) and 29(2)(f) of the 1990 Broadcasting Act	= Directive <sup>32</sup>	adequate proportion of British (BBC) and European (Channels 3, 4, 5) <u>works</u>

<sup>31</sup> "Audiovisual works" are defined in Article 4 of the Decree: everything apart from news, teletext, advertising, teleshopping, own promotion, sport, varieties, games, broadcasts other than fiction mainly done on set, full-length cinema films. Article defines a different base for full-length cinema films: the total number of such films broadcast annually.

<sup>32</sup> The UK report specifies that the figures were gathered in accordance with the "Suggested Guidelines". The 1990 Act also lays down precise rules of origin for S4C.

PORTUGAL Articles 19, 20 and 21 of Law 58/90 of 7.9.1990	= Directive	40% of programmes in Portuguese
FINLAND Articles 10 and 12 of Law 92/1213 amending the Cable Transmission Law		minimum proportion of Finnish programmes (15 to 50%)
SWEDEN Article 13 of the Broadcasting Act of 17.12.1992 (applies only to satellite TV: bill concerning conventional and cable TV)	= Directive (for satellite channels)	significant proportion of programmes in Swedish and programmes with Swedish performers and authors

### C. OVERALL RESULT

#### 1. Channels surveyed

The number of channels identified in the national reports was:

- 118 in 1993;
- 148 in 1994 (including 19 for Sweden, Finland, Austria and Norway).

The previous monitoring exercise found 105 channels in 1991/1992<sup>33</sup>, giving an increase of 13 channels between 1992 and 1993, and 11 between 1991 and 1994<sup>34</sup>, or a total of 24 between 1992 and 1994 (ignoring the three new Member States and Norway, which were taking part for the first time with figures for 1994 only).

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<sup>33</sup> See p. 17 thereof.

<sup>34</sup> This includes TV3 Norway and TV3 Sweden (see also the UK report), which were running in 1992, stopped broadcasting in 1993 and resumed in 1994.

## 2. Comments

### 2.1 Broadcasting of European works

#### (a) Communication of data required

All the reports gave, for all the channels reported, figures for European works broadcast over the reference period.

#### (b) Communication of reasons for some channels not complying

Most of the national reports state why some channels did not achieve a majority of European works broadcast. The Commission regrets that this was not so in the reports from Spain, Italy and (for one channel, TV4) Sweden.

#### (c) The figures given

Purely quantitatively, the total number of channels which reached the majority proportion, i.e. 50% or more of European works broadcast over each of the two reference years, was:

- 80 in 1993
- 91 in 1994 (those in Sweden, Norway, Austria and Finland amounting to 12).

As regards both Article 4 and Article 5 (see below), the Commission does not consider that it should draw any interpretative conclusions from these totals or make any comparative analysis. There are basic differences between the television industries of the different countries concerned, not only technically and organizationally but also as regards their options and objectives and the regulatory principles applied in implementing Community law.

As regards the reports including channels which did not achieve the majority proportion of European works, the Commission would make the comments set out below.

*Flemish Community in Belgium:* VTM, a private cable channel, has been making constant progress since 1992 and in 1993/1994 it exceeded the average for 1988. With TV1, which it resembles in being of general appeal, it accounts for most of the audience Filmnet Plus and The Complete Movie Channel are paying channels concentrating on films.

*French Community in Belgium:* Sport 21 put its situation right in 1994, but this was not very significant as most of its programmes are sport and thus outside the scope of Articles 4 et 5. Canal +, a paying channel concentrating on sport and cinema, and RTL-TVi, a private general interest channel, both exceeded the 1988 average, the former having improved on its 1992 figure while the latter fell back: it accounted for over 50% of viewers in 1993/1994.<sup>35</sup>

*Germany:* DSF and N-TV, broadcasting mainly sport and news, are not concerned by Articles 4 and 5. There is no problem with the major public general-interest channels. RTL has improved since 1991, as has Premiere, a paying thematic (films) channel. On the other hand, SAT 1 and PRO 7, covering almost all of Germany, with general-interest programming and lying third and fourth in the ratings, are improving only slowly over 1991, with SAT 1 even falling back slightly in 1994. Three channels which began broadcasting in 1993/1994 reported for the first time: RTL 2, a private general-interest channel, has national coverage but a limited audience; KABEL 1 and VIVA TV are thematic channels.

*Spain:* there is impressive progress for all channels compared with the 1991 figures in the previous monitoring exercise (there was already a great improvement in 1992). The case of Antena 3, whose proportion had fallen back since 1992, is not explained: it is a private general-interest channel, and one of the major national stations, with ratings almost as high as TVE-1 (between 20 and 30%). Canal+, a paying channel, is stationary.

*France:* All the major general-interest channels, which account for the lion's share of the audience, whether they are public or private, paying or not, are well in excess of the majority proportion. Canal Jimmy made progress over 1991/1992, while Cine-Cinéfil stayed still. They are both almost in compliance. Multivision is a first experiment in pay-per-view.

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<sup>35</sup>

European Audiovisual Observatory's 1996 yearbook.

*Italy:* Compared with 1991/1992, the major general-interest channels with national coverage, accounting for a large part of the total audience (about 20% between them) have slipped back (Italia 1) or remained stationary (Rete 4). The same goes for Tele MonteCarlo and Telepiu 1 (paying), which both cover almost the whole country and are general-interest channels but have fewer viewers. Their percentages are below the 1988 average.

*Luxembourg:* Although since 1992 the percentages achieved by Luxembourg channels, which are all private, have improved somewhat, the overall situation is still that most of them are having difficulty in reaching a majority proportion, even though they are general-interest channels and have transnational coverage. The main reason given for this is the cost of European programmes.

*Portugal:* The arrival on the Portuguese market of two new private broadcasters with general-interest programmes considerably modified the television scene in 1993/1994, when they accounted for 50% of viewing. This was the reason for Canal 1's percentage in 1994, and for those of the private stations, sharing the same market.

*United Kingdom:* The four main national terrestrial stations, with general-interest programming, still account for 92% of the audience (see UK report). On average over the two reference years their programmes were over 60% European. Because, among other things, of the way in which licences are awarded in the UK, the report refers to a large number of satellite channels, many of which have not reached the majority proportion. The fact is that these channels still have a limited audience (the BSkyB range having the largest audience growth rate), while the reasons given are most often a recent launch date and the cost of programmes (thematic channels).

*Sweden, Finland, Norway:* the percentages, covering 1994 only, show that public channels easily reached the majority proportion, while directly competing private channels (likewise with national coverage, general-interest programming, large audience) and thematic channels did not do so. As regards Sweden and Finland, which have been Member States since 1 January 1995, as also for Austria, the Commission would point out that it is continuing its examination of transposal into national law.

The Commission notes that, by and large, general-interest terrestrial channels, and in particular the public ones which have been in existence for many years now, have no difficulty in attaining a majority proportion of European works, and that home-produced works account for a fairly large share, whether this is because of specific regulations adopted in compliance with Community law, the implementation of schemes of national aid for television and cinema production, or audience preference.

Satellite channels' difficulties in reaching the majority proportion are mostly due to one or both of two factors: the date the channel was launched or the nature of its main type of programme. All the reasons put forward in the reports concerned boil down to one or the other, as a result of the blanket application of the Directive to all television channels. They include a channel's financial possibilities and the subject matter of its programmes, which determine what supply there is of suitable European programmes offering a cost/audience ratio which is sufficiently profitable and equivalent to that of similar non-European (mainly American) programmes.

## 2.2. Independent and recent productions

### (a) Communication of required data

Most of the reports give full data for most of the channels they list regarding the proportion of independent productions. Five of them are incomplete in this respect:

Flemish Community in Belgium: The Complete Movie Channel;

Italy: Telepiu 1, 2 and 3;

Sweden: TV 1000;

United Kingdom: Bravo (1994) and Sky Soap;

Netherlands: Multichoice NL.

The table below shows the situation regarding the broadcasting of an adequate proportion of recent works from independent producers.

No figures given	Figures given for all channels reported	Some figures missing
France Italy Sweden Norway	Spain Ireland Netherlands Portugal Austria Finland	Belgium (both Communities) Luxembourg United Kingdom Germany Greece Denmark

(b) Reporting of reasons for some channels not complying

- Regrettably, little in the way of reasons is given in the reports for some channels not reaching the proportion of independent productions. There is nothing on this in the Spanish and Norwegian reports, and practically nothing in the United Kingdom one.

- As regards reports in which information concerning recent works is missing, the situation is as follows:

. *Flemish Community in Belgium*: nothing concerning The Complete Movie Channel, no explanation given;

. *United Kingdom*: figures given for 11 channels, no explanation for missing figures;

. *Sweden, Italy*: no explanation for lack of figures;

. *Germany*: no figures for Premiere;

. *Denmark*: no figures for DR;

. *Greece*: no figures for ET1 (1993);

. *France, Norway, French Community in Belgium* (for one channel, Canal+), *Luxembourg* (for one channel, RTL TV): the reports state that the proportion is complied with *de jure* (France) or *de facto*.

(c) Figures supplied

The total number of channels reported as complying with the 10% rule for independent productions is:

- 87 in 1993;
- 119 in 1994, including 16 for *Norway, Sweden, Austria and Finland*.

As regards the reports listing non-complying channels, the Commission has the following comments:

Flemish Community in Belgium: no explanation given for TV1;

Germany: no explanation given for RTL 2 and VIVA TV, the figures being well below 10%, although both channels are recent;

Spain: no explanations are given for ETB-2, TV-3 and TV-33, whose figures are worse than in 1991/1992, while they are not recent channels. The figures for ANT-3 and TVG improved from 1993 to 1994.

Italy: apart from BETA TV, all channels are down compared with 1991/1992 and below the 10% limit. For Tele MonteCarlo, the proportion rose from 1993 to 1994. The situation in Italy is a somewhat marginal one, largely because there is no definition of an "independent production" which is applied across the board.

Portugal: TV1, a recently established channel, has had to rely on its own productions, for financial reasons.

United Kingdom: most channels, including the major terrestrial ones, reached or greatly exceeded the 10% proportion. In addition, the 1993 situation was corrected in 1994 by The Movie Channel, Sky Movies, TNT, and The Family Channel. Generally speaking, the 10% target, already reached at the time of the previous monitoring exercise, should raise no major problems, except for some

satellite channels started up by companies with large libraries of programmes accounting for most of their programming (such as The Cartoon Network).

Finland, Norway: this first survey shows that there should be no particular problems over the next few years.

- The Commission reaffirms its commitment to the objectives of Article 5, that is, promoting the development of a secondary market for commercial exploitation of productions, so improving the market prospects for independent producers, and encouraging investment in new productions. The results were much better than in 1991/1992, and things should continue to improve in the future, given the continued expansion of the television sector in Europe: the rising number of television channels will lead to greater demand for programmes, which should include many new ones, since many of the figures reported for recent works in this report for 1993/1994 are as high as for independent productions.

- The Commission deduces from the information provided that the channels which did not achieve the proportion laid down are those which have financial difficulties because they were launched recently, have specific programming features or belong to owners of existing libraries. They find themselves obliged, for a time, to broadcast their own programmes. In the Commission's view, the low proportion required and the choice which Article 5 gives between broadcasting and investment should enable all channels to move up and achieve the target.

#### **D. CONSIDERATIONS**

These results lead the Commission to the following conclusions:

- the number of channels concerned by Articles 4 and 5 rose as compared with 1991/1992;
- in strictly quantitative terms, there was an appreciable improvement overall.

This, however, should not be interpreted as either proving or disproving the effectiveness or the economic impact of Articles 4 and 5 on the development of the European television industry. The use in them of the expressions "where practicable" and "progressively" bears witness to the flexibility which is built into a system currently applying across the board to all television channels, both general-interest terrestrial ones and thematic satellite ones<sup>36</sup>, whatever their nature and whatever the individual situations in the particular Member States. This means that the extent to which the arrangements are being implemented varies between Member States. Nonetheless, as provisions of a Community Directive, Articles 4 and 5 are legally binding.<sup>37</sup>

This situation is a natural consequence of the very nature of Articles 4 and 5. They provide what amounts to the minimum coordination of the various national rules which is needed to ensure free movement in television broadcasting (since those Member States which so desire can impose further requirements on their own broadcasters), but do not in themselves make it possible to achieve the objective of strengthening European television broadcasting, to the same extent as a watertight, blanket system.

The Commission thus does not consider it reasonable to try to show any direct and definite link between the proportions achieved and the implementation of the system as laid down in the current text of the Directive. Definite conclusions can be drawn only where the proportions are enforced compulsorily and across the board.

- This comment must be accompanied by reservations as to the way in which the Member States have defined in their domestic legislation the statistical bases on which the proportions are calculated (see point B.).

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<sup>36</sup> The Commission's proposal for amending the Directive is intended to give greater legal certainty to Articles 4 and 5 by deleting the expression "where practicable" and making the option of investment in European works available for channels whose nature or subject matter make it difficult for them to comply with a broadcasting obligation.

<sup>37</sup> See footnote 7. There is a duty of behaviour.

In view of all the above, the Commission considers that it would be very risky to try to make an economic assessment on the basis of the raw figures reported by the Member States for the two monitoring exercises, that is, by comparing percentages which are for the most part not comparable and ignoring the overall context of other measures to develop the television and cinema industry, such as national aid for cinema and television or the rules on mergers and concentrations.

This is why the Commission is carrying out other, parallel studies taking account of the situation as a whole and the nature of the various existing instruments.

The Commission would point out that the two Community provisions concerning the broadcasting of European and independent works are an integral part of the "European audiovisual area" which is an aim of the Treaty and is materialized in the Directive. In the table concerning the transposal into domestic legislation of the statistical base (see point B. above), mention is made of any provisions to encourage the broadcasting of programmes made in a given language or produced "locally". Without some minimum coordination at Community level, as at present provided for in Articles 4 and 5, such measures would be likely to constitute obstacles to the free movement of television services and thus contravene Article 59 of the Treaty.

In view of the development of television broadcasting and of the single market itself, the Commission would stress the importance of reconciling the two objectives of increasing the supply offered by European television channels and developing Europe's television and cinema production, by establishing a regulatory framework which is sufficiently certain and sufficiently flexible.

## **E. CONCLUSION**

### **(a) Reporting of figures**

The Commission considers that the Member States have made significant efforts, in comparison with the previous exercise, to supply all the statistics required, in particular the figures for recent and independent productions. The few exceptions are isolated cases indeed. The Commission intends to ask the authorities concerned to make good the gaps.

### **(b) Explanations given and measures planned**

Again the Commission considers that a general effort has been made to supply it with explanations for any failure of channels to comply with the required proportions. It is on the other hand to be regretted that Member States have not always given fuller or more detailed accounts of measures adopted or considered to attain targets.

### **(c) Action**

In assessing how the proportions laid down have been complied with, the Commission will, where there is failure, take account of the specific situation of the broadcasters concerned, that is, whether compliance is practicable given the nature of the channels, progressivity, the average proportions for all a broadcaster's channels, and its level of investment in European works.

In that it shows it to be perfectly feasible to collect such figures at Union level, in a regular and organized manner for all channels, the Commission is satisfied with this second monitoring exercise as part of an ongoing process. However, it reserves the right to take steps against any Member States not fulfilling their obligations under Articles 4 and 5, as it has done in the past.

ADDENDUM

MULTICHOICE (NL)

E W		I W		R W	
1993	1994	1993	1994	1993	1994
29,6%	24%	51,4%	68%	75%	75%

## ANNEX 1

## SUGGESTED GUIDELINES FOR THE MONITORING OF THE TV WITHOUT FRONTIERS DIRECTIVE

### Introduction

The following guidelines have been prepared to assist Member States in their duty to monitor the application of Articles 4 and 5 of the Council Directive (89/552/EEC) on television without frontiers and to render transparent to all interested parties the manner in which this legislation will be implemented by the Commission.

Suggested definitions to be applied by Member States in their monitoring of Articles 4 and 5 of the Directive are given below.

#### 1. A television broadcaster

The definition of a television broadcaster includes each channel it operates.

Local television broadcasters not forming part of a national network are excluded from the monitoring aspects of the Directive.

#### 2. Jurisdiction over broadcasters

If a broadcaster is established in a Member State, then it falls under the jurisdiction of that Member State.

Establishment serves as a basis for defining both the origin of a broadcaster and of a programme. The place of establishment in the Community can be taken to mean that Member State where the broadcaster has fixed premises and a viable economic activity, for example, the place where the broadcaster's headquarters are based, assuming the management and a meaningful proportion of staff involved in both the preparation of programming schedules and commercial operations are located here.

#### 3. Relevant transmission time on which quotas are calculated

Programme transmission time, within the meaning of Article 4(1) is a channel's total transmission time, the test card excluded, less the time reserved for news, the retransmission of sports events, games, advertising and teletext services.

#### 4. European works

This is clearly defined in Article 6 of the Directive.

For the purposes of Article 6(2) a producer is considered established in a European State if the company is a going concern which has a permanent staff involved in both production and commercial operations at the European location.

With respect to Article 6(3) and (4) which refers to "works which are mainly made with authors and workers residing in one or more European states", and in order to cope with borderline co-production cases, the rule of thumb is that over 50% of both creative and management staff and other production staff must be European residents.

#### 5. Independence

Producers with broadcasting interests will only be considered as independent producers if their broadcasting interests do not represent their principal activity.

With reference to Article 5, it is suggested that a producer should be considered independent of a broadcaster, if:

- one broadcaster does not hold more than 25% of the producer's equity, or 50% in the case of several broadcasters. In this case, broadcasters mean the organization as a whole and not individual channels operated by the same broadcaster;
- a maximum of 90% of a producer's output over a three-year period is furnished to one broadcaster, except where the producer makes only one programme or series during the reference period.

The above criteria should also be applicable in reverse (as where a producer has a significant stake in a broadcasting company).

The industry is strongly urged to introduce an independent certification scheme for independent productions in order to facilitate the implementation of quotas and the monitoring process.

#### 6. Reporting period

Article 4(3) requires Member States to submit a monitoring report to the Commission on the implementation of Articles 4 and 5.

The second monitoring report should include data for 1993 and 1994 (January to December).

On the basis of these reports the Commission is required to present a report and an opinion to the Council and Parliament.

#### 7. Data collection

Statistics, expressed in hours and percentages, must cover the channels of all broadcasters under the jurisdiction of the Member State during the reporting period, irrespective of whether they are new or theme channels.

Member States must submit annual statistics for each channel separately and not for each broadcaster.

We suggest that the Member States use the definitions provided by the Commission in order to ensure the compatibility of national reports.

If Member States use definitions other than those given above, the monitoring report should include details of the definitions used and how they differ from those given above, and also, where possible, how they affect the resulting data.

Where broadcasters can code their programmes according to the abovementioned definitions, they should be advised to apply data recording systems in such a way that comprehensive statistics for the entire annual schedule can be collected.

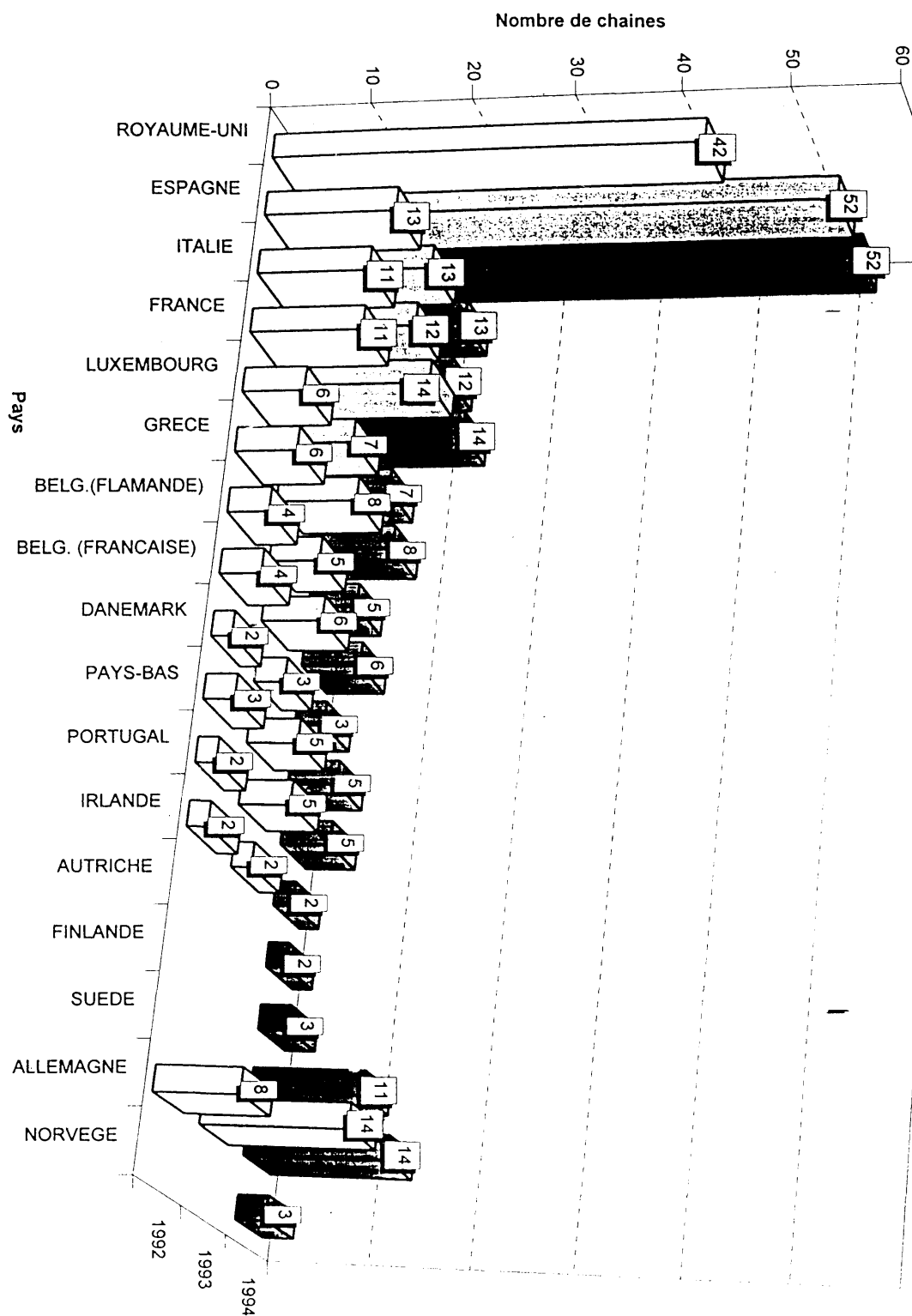
If the authorities are satisfied that a derogation from comprehensive reporting is justified in the reference period, then a detailed description of the broadcaster's sampling procedure and basis of estimates should be submitted for consideration to the Commission. Samples should consist of at least one week (chosen at random) per quarter of the reporting period.

## ANNEX 2

## PART 1

### EVOLUTION OF NUMBERS OF CHANNELS FOR THE PERIOD 1992/1994

Evolution du nombre de chaines sur la période 1992 - 1994

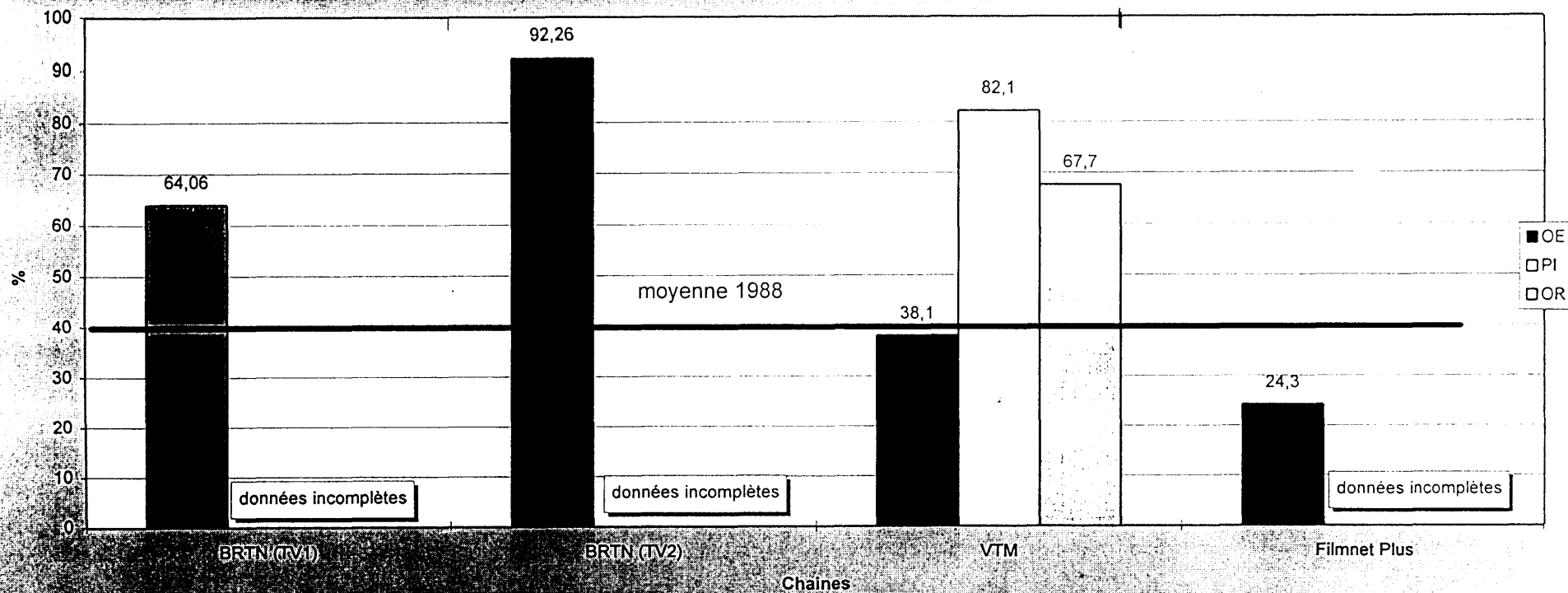


## PART 2

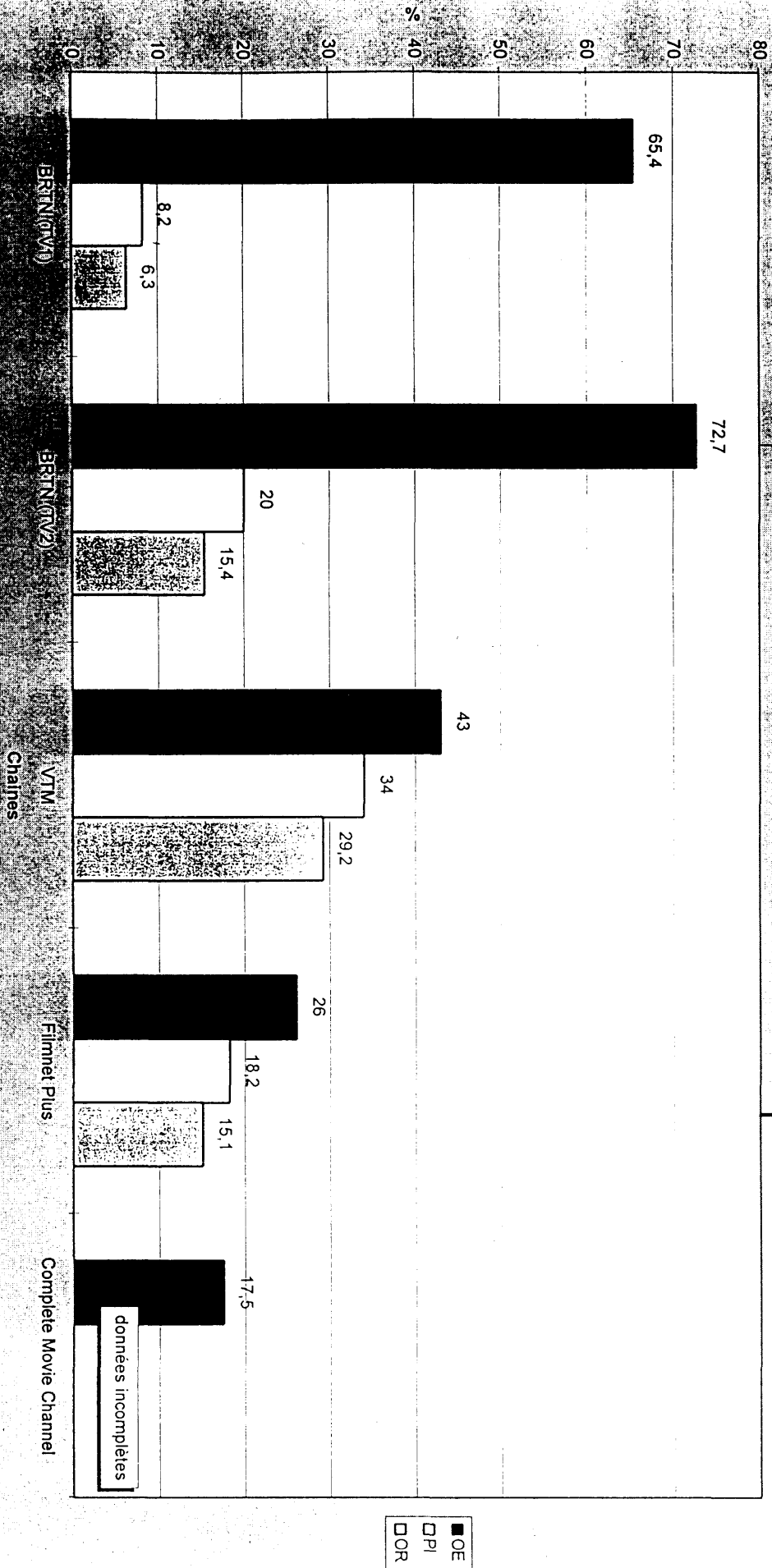
### ANNUAL NATIONAL TABLES 1992/1993/1994

- EUROPEAN WORKS (EW)
- INDEPENDENT PRODUCTIONS (IP)
- RECENT WORKS (RW)

BELGIQUE (COMMUNAUTE FLAMANDE)  
Période : 1er octobre 1991 au 31 décembre 1992

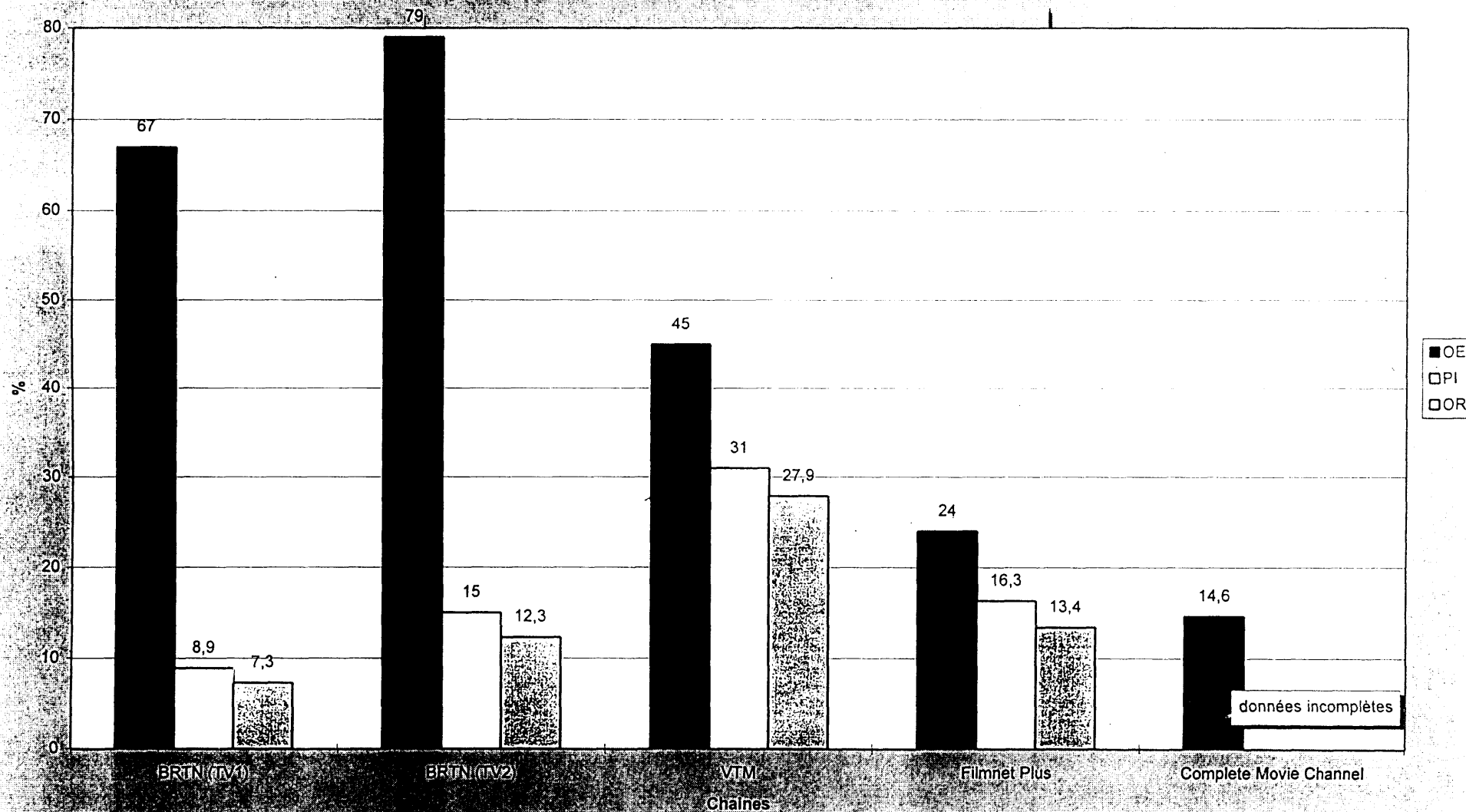


# BELGIQUE (COMMUNAUTE FLAMANDE) Periode : 1993

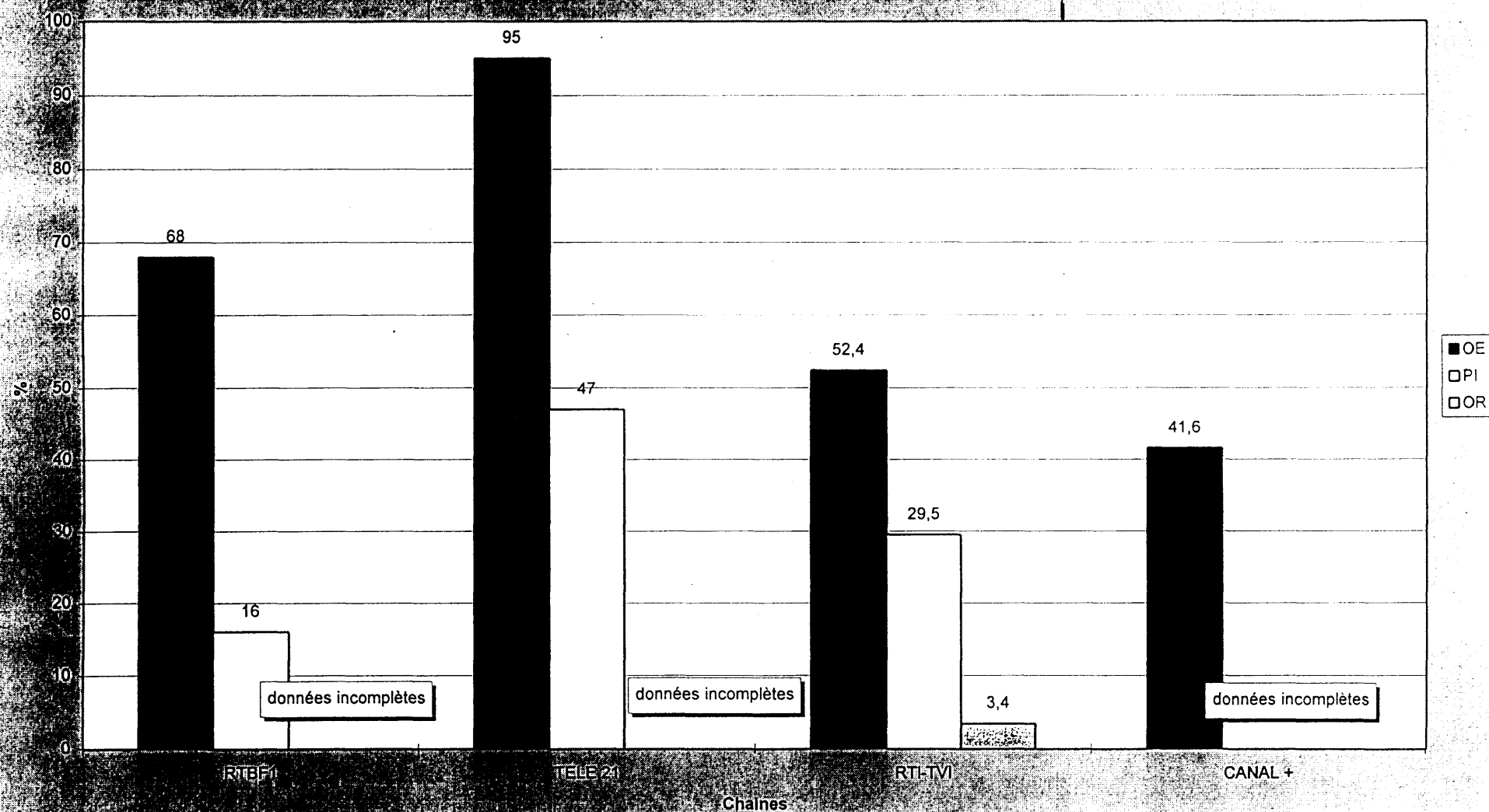


■ OE  
 □ PI  
 ▨ OR

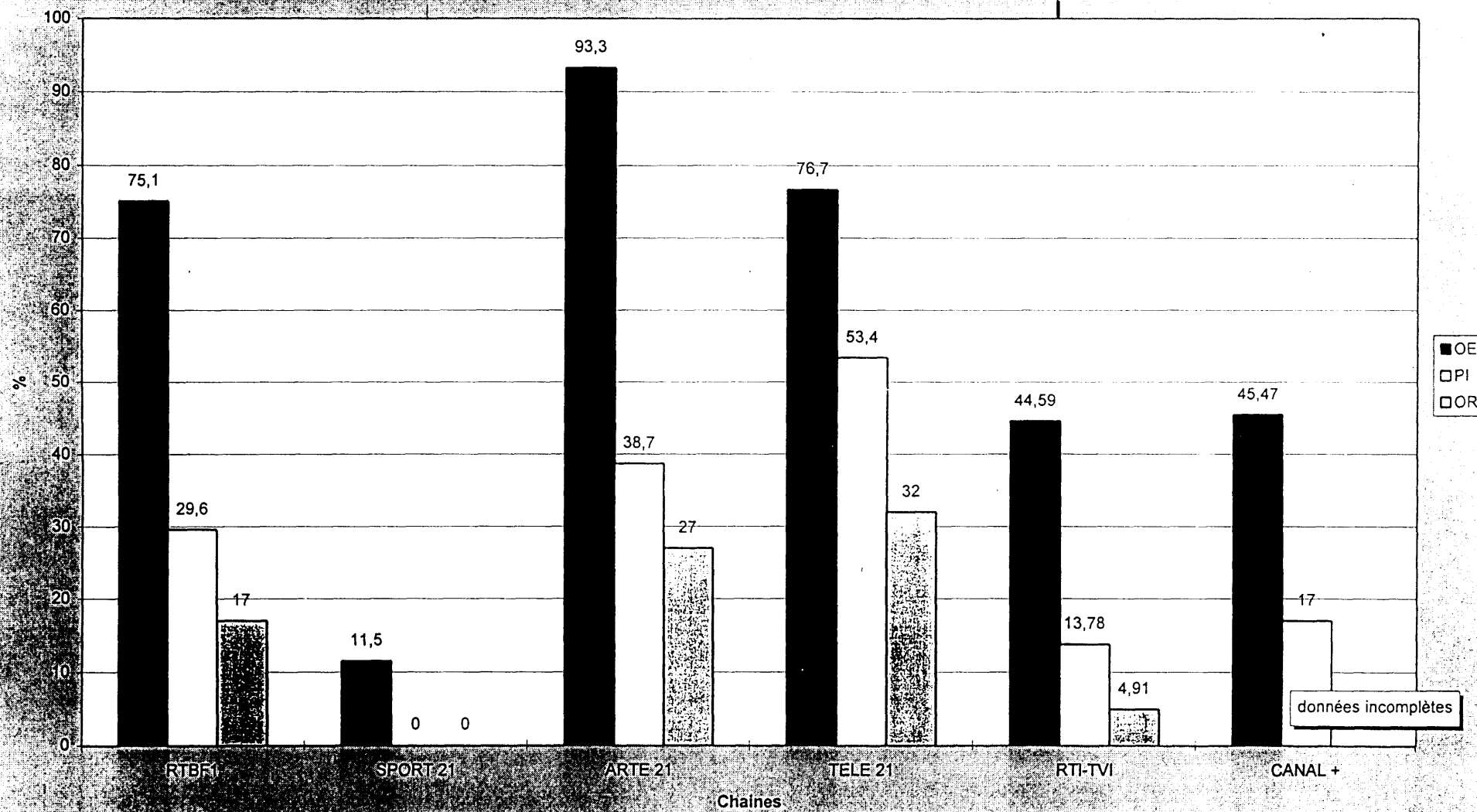
BELGIQUE (COMMUNAUTE FLAMANDE) Période : 1994



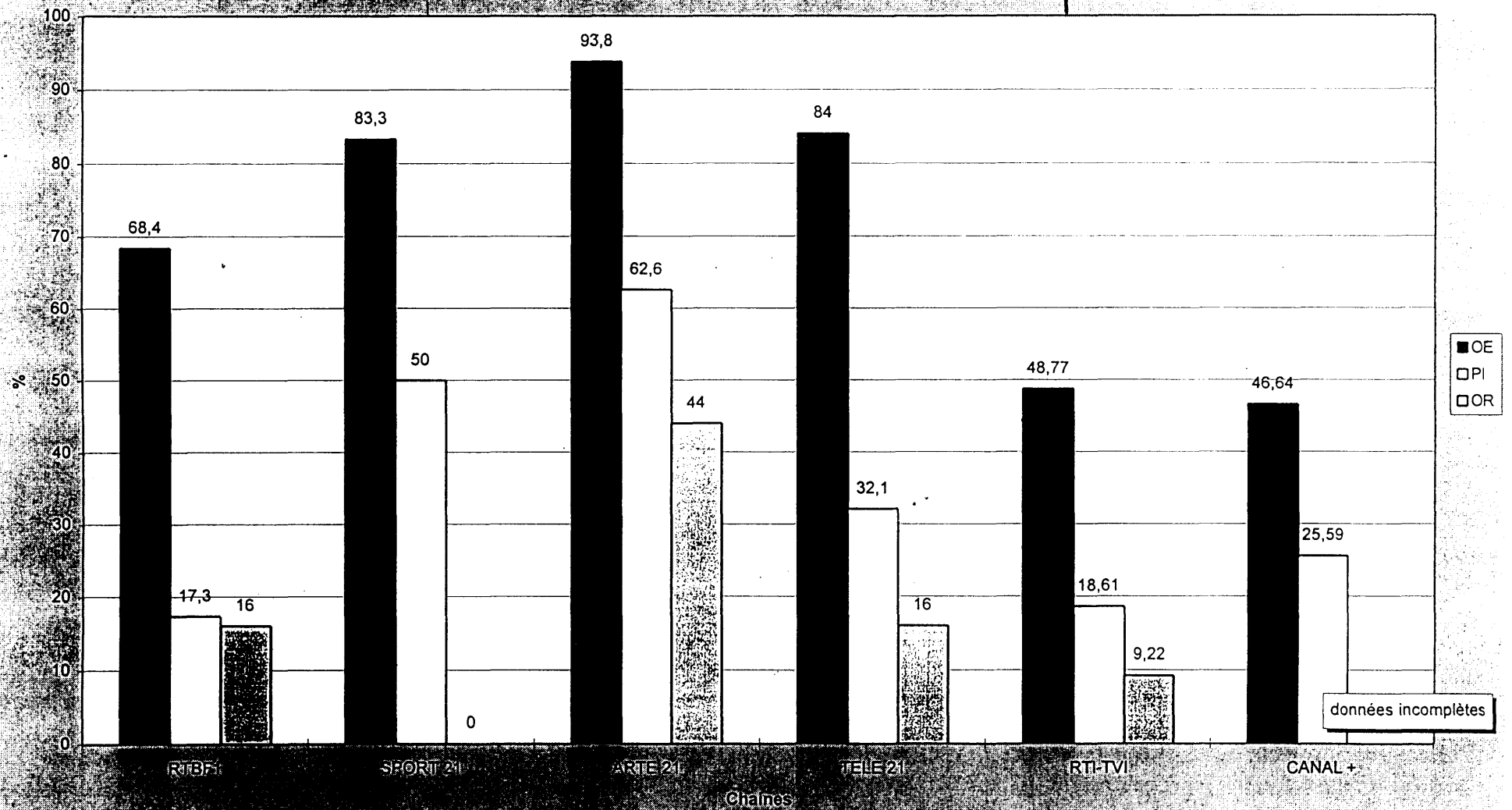
# BELGIQUE (COMMUNAUTE FRANCAISE) Période : 1992



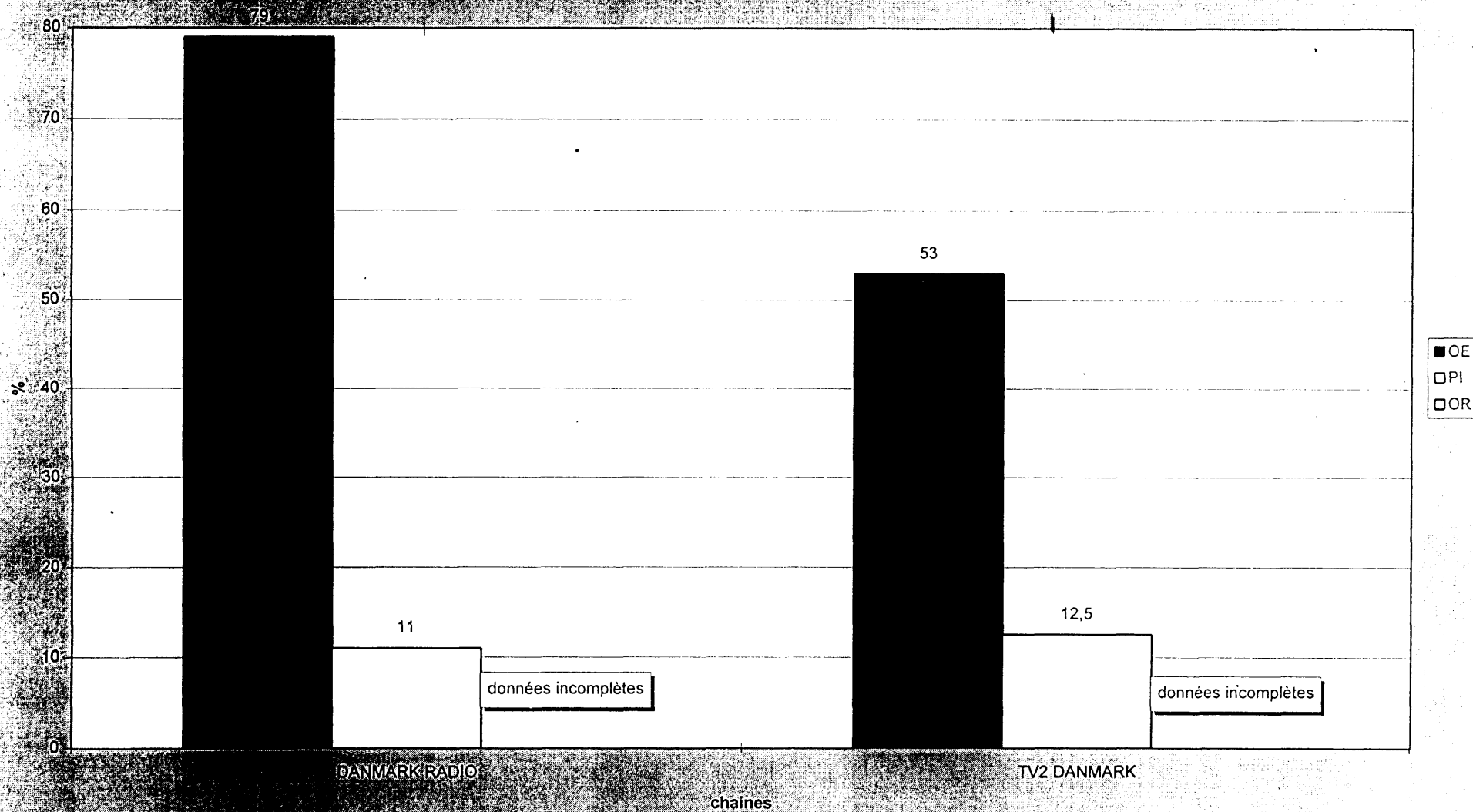
# BELGIQUE (COMMUNAUTE FRANCAISE) : Période 1993



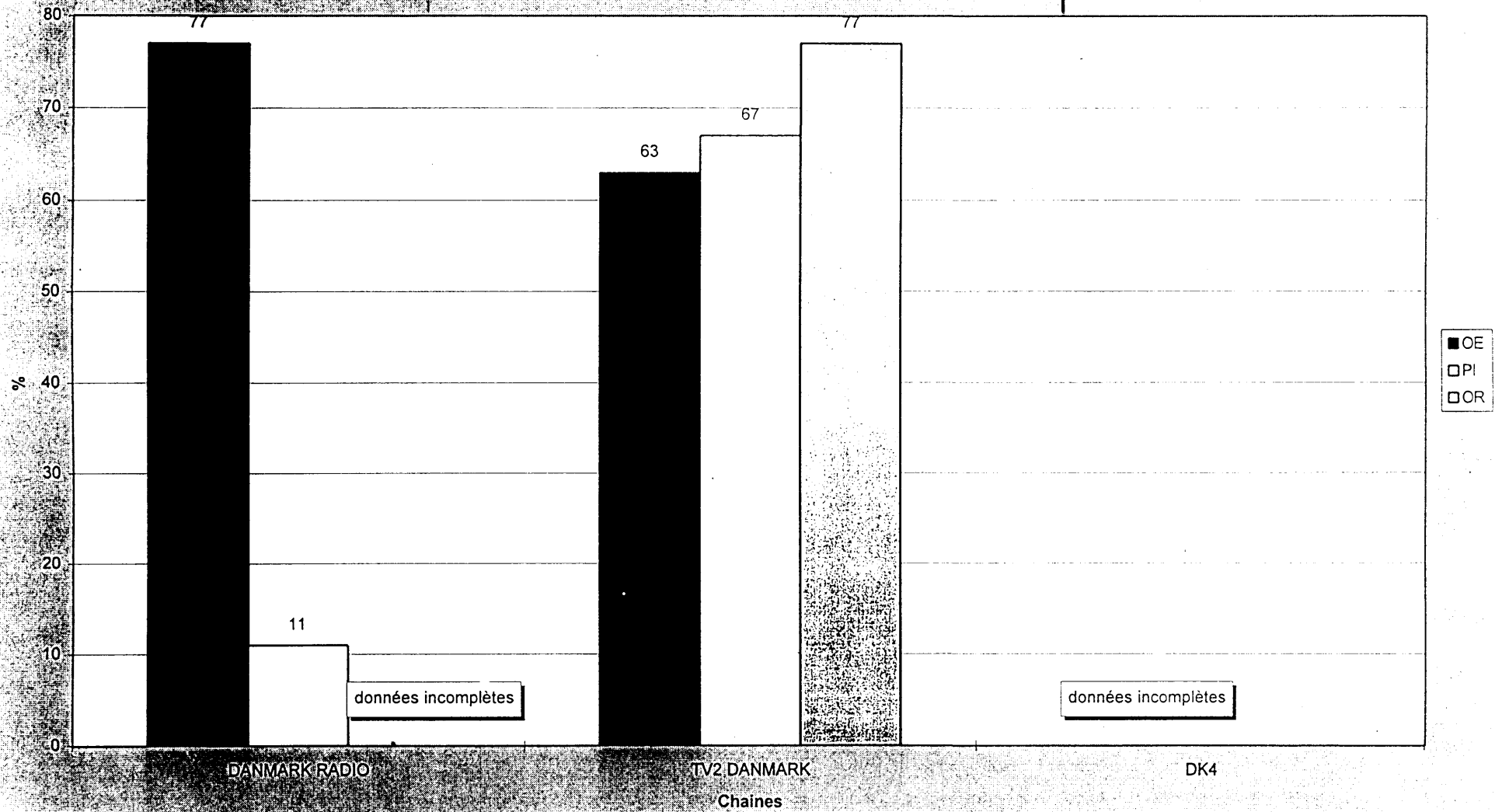
# BELGIQUE (COMMUNAUTE FRANCAISE) : Période 1994



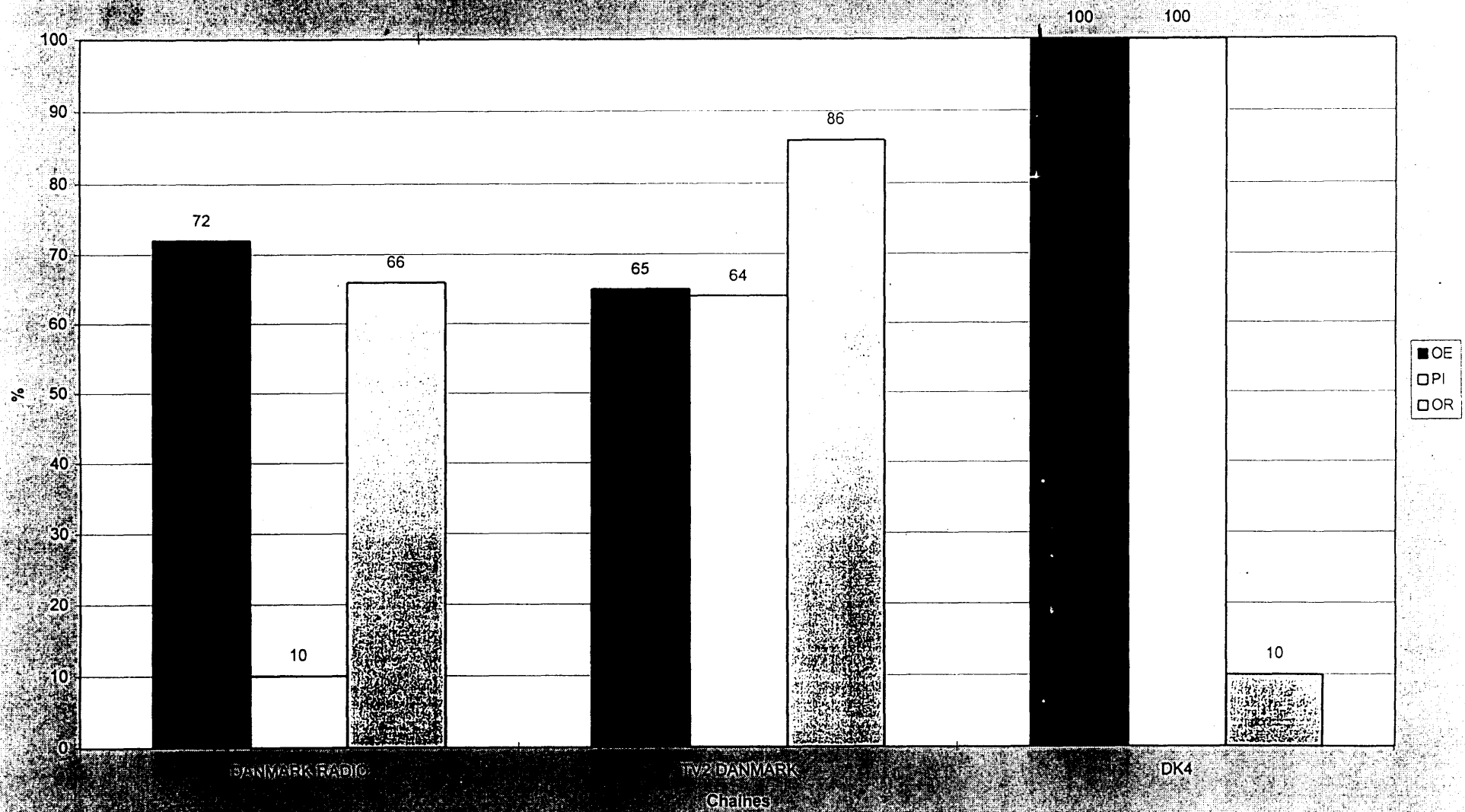
DANEMARK Période : 1992



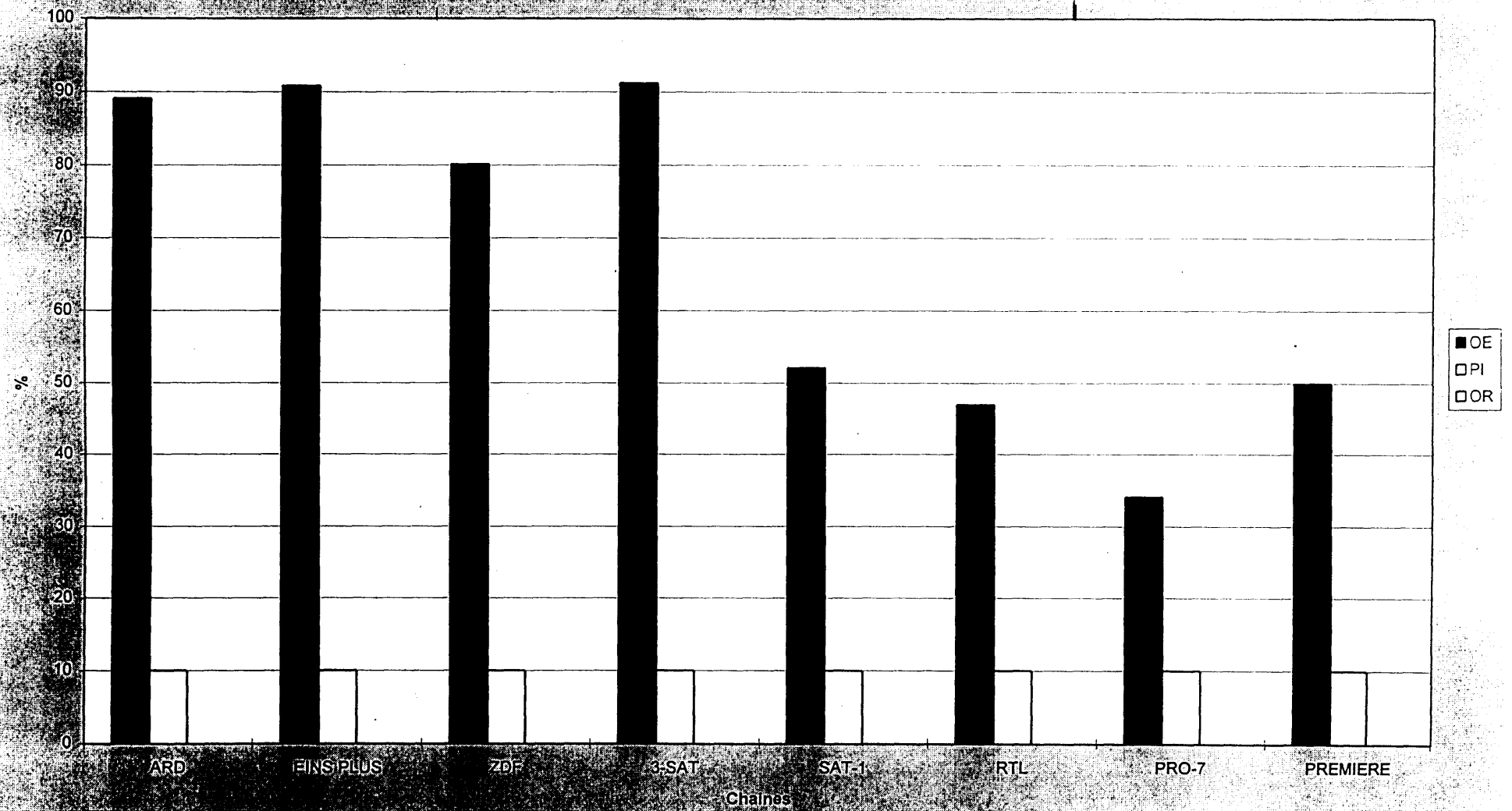
DANEMARK Période : 1993



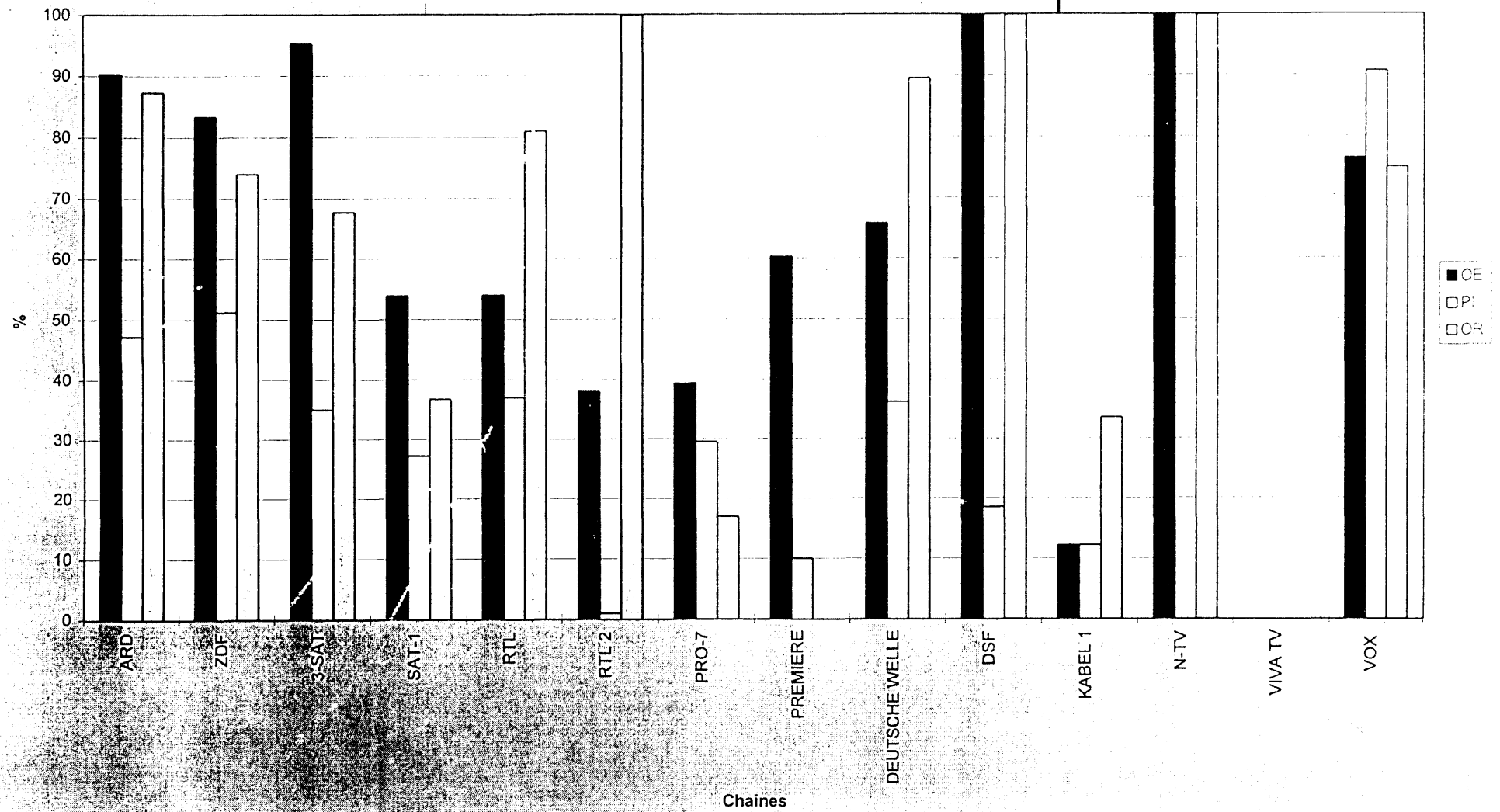
DANEMARK Période : 1994



# ALLEMAGNE Période : 1991 - 1992

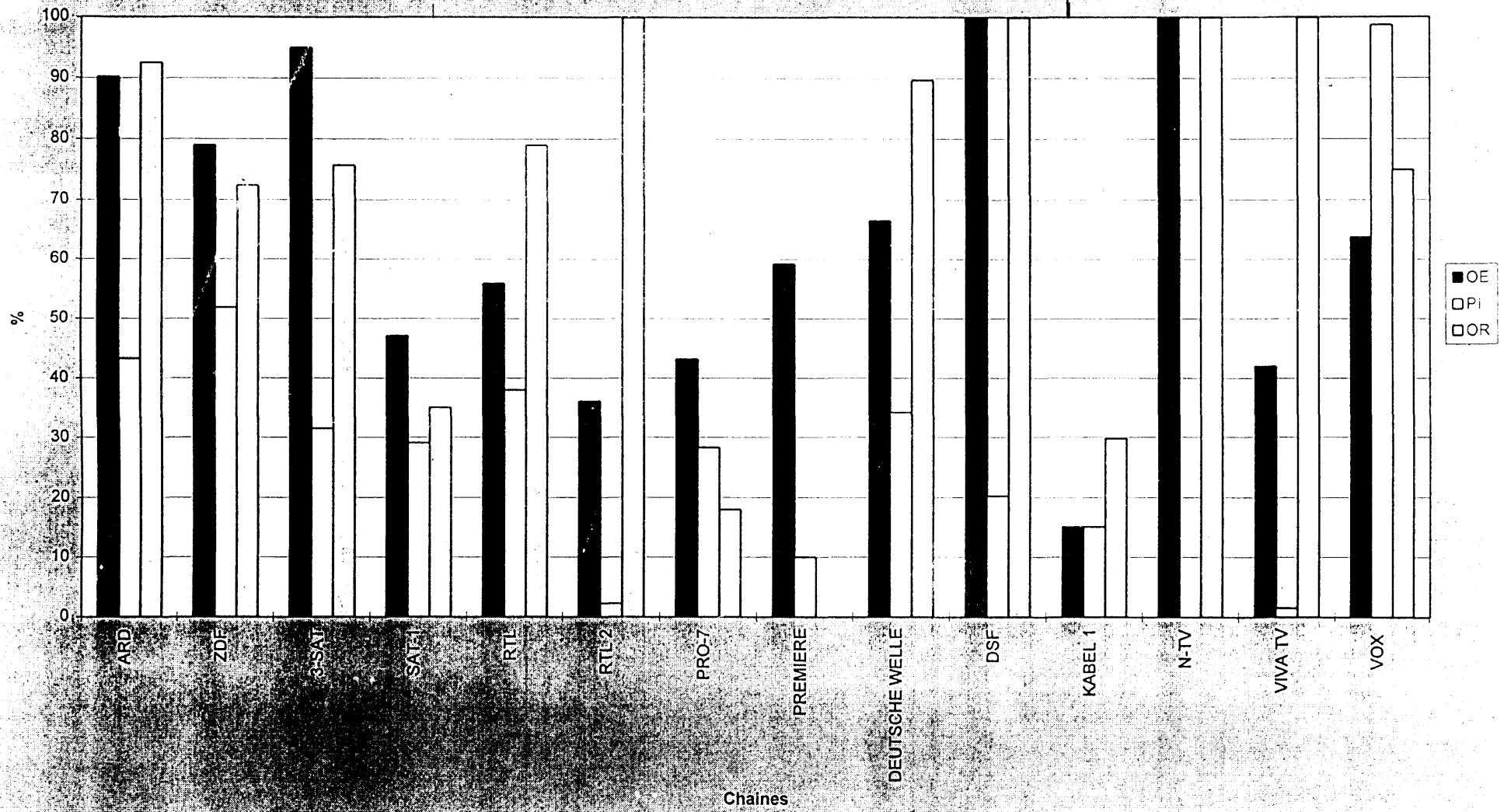


# ALLEMAGNE Période : 1993

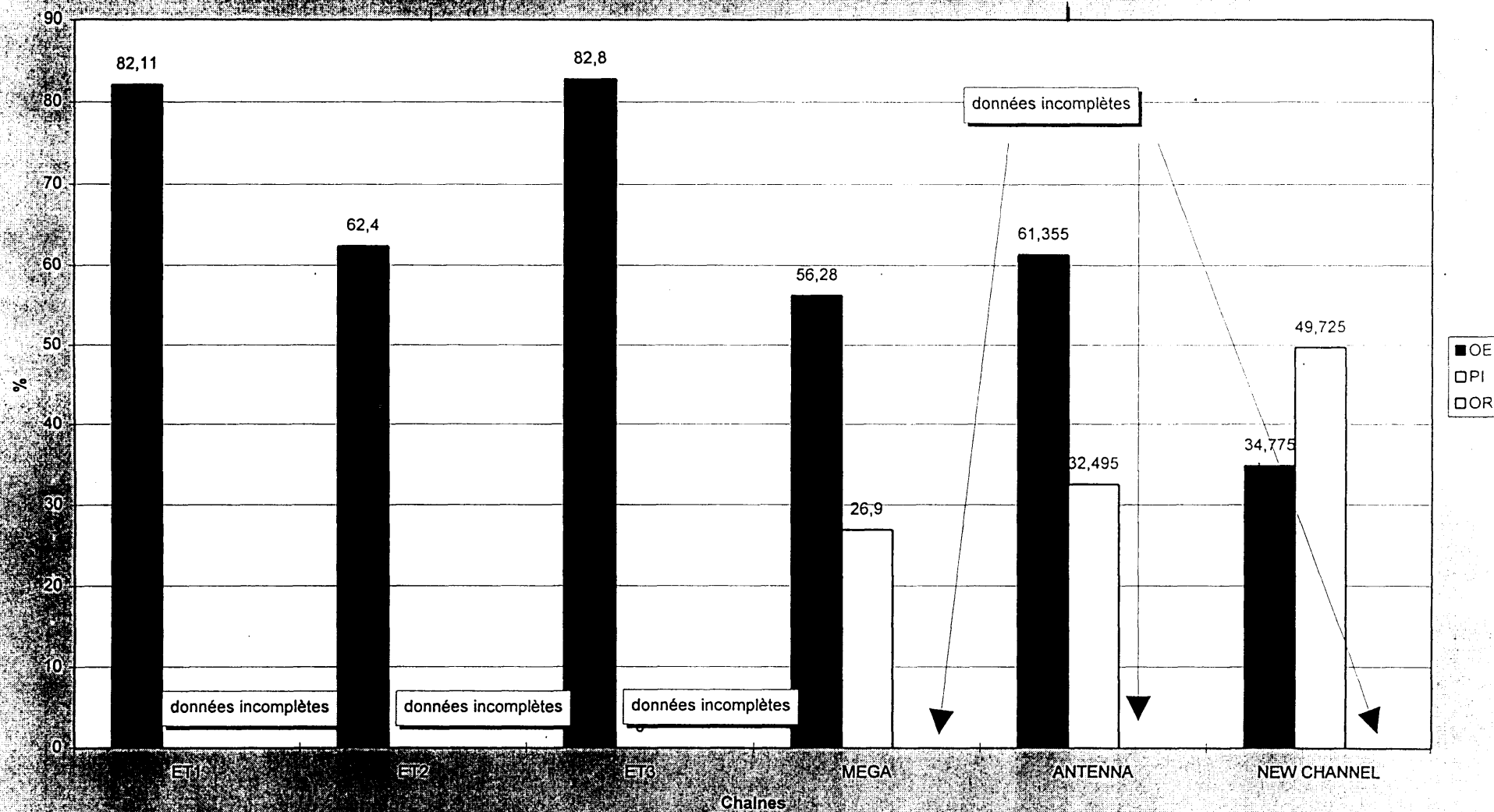


a)

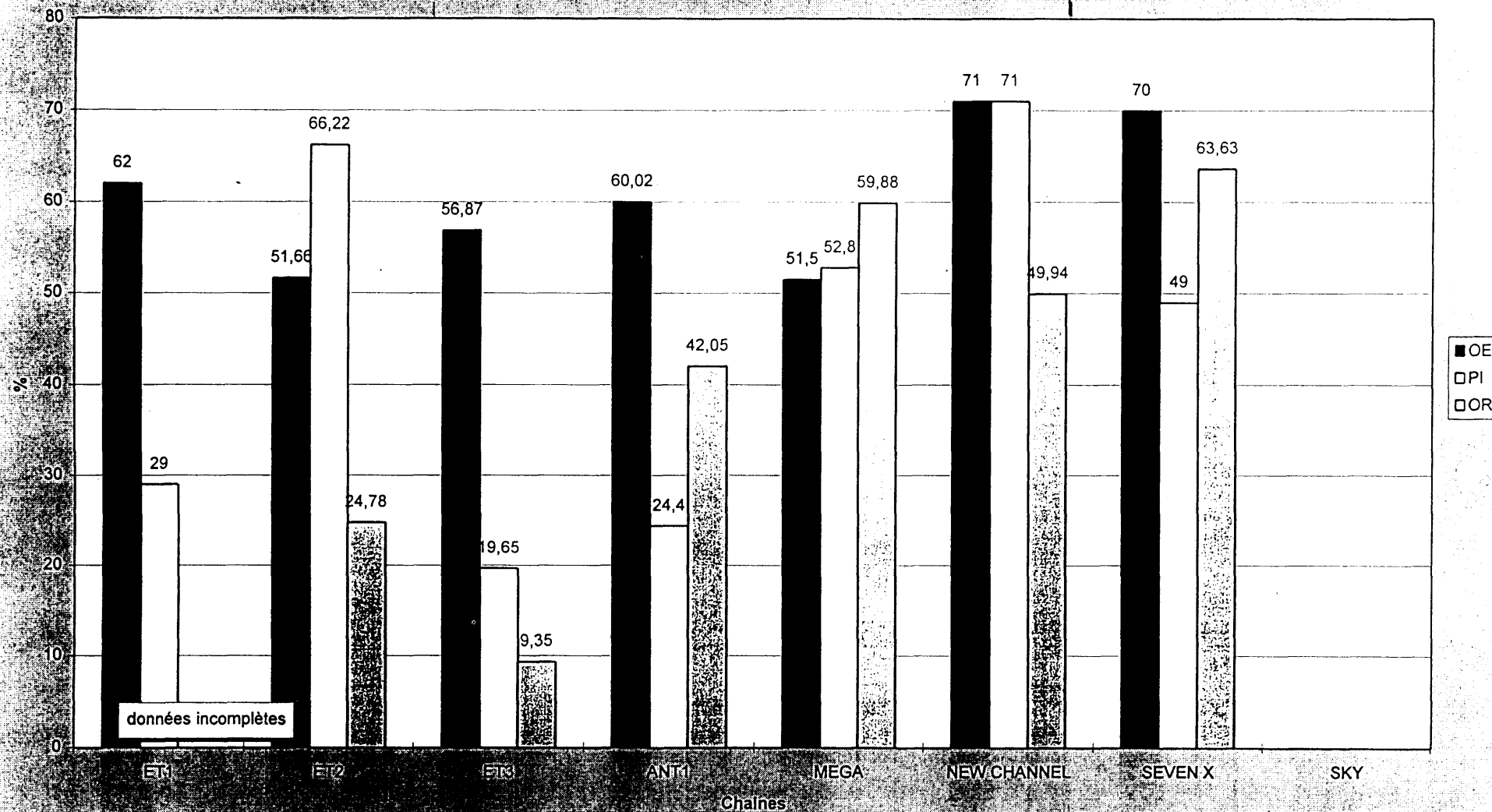
# ALLEMAGNE Période : 1994



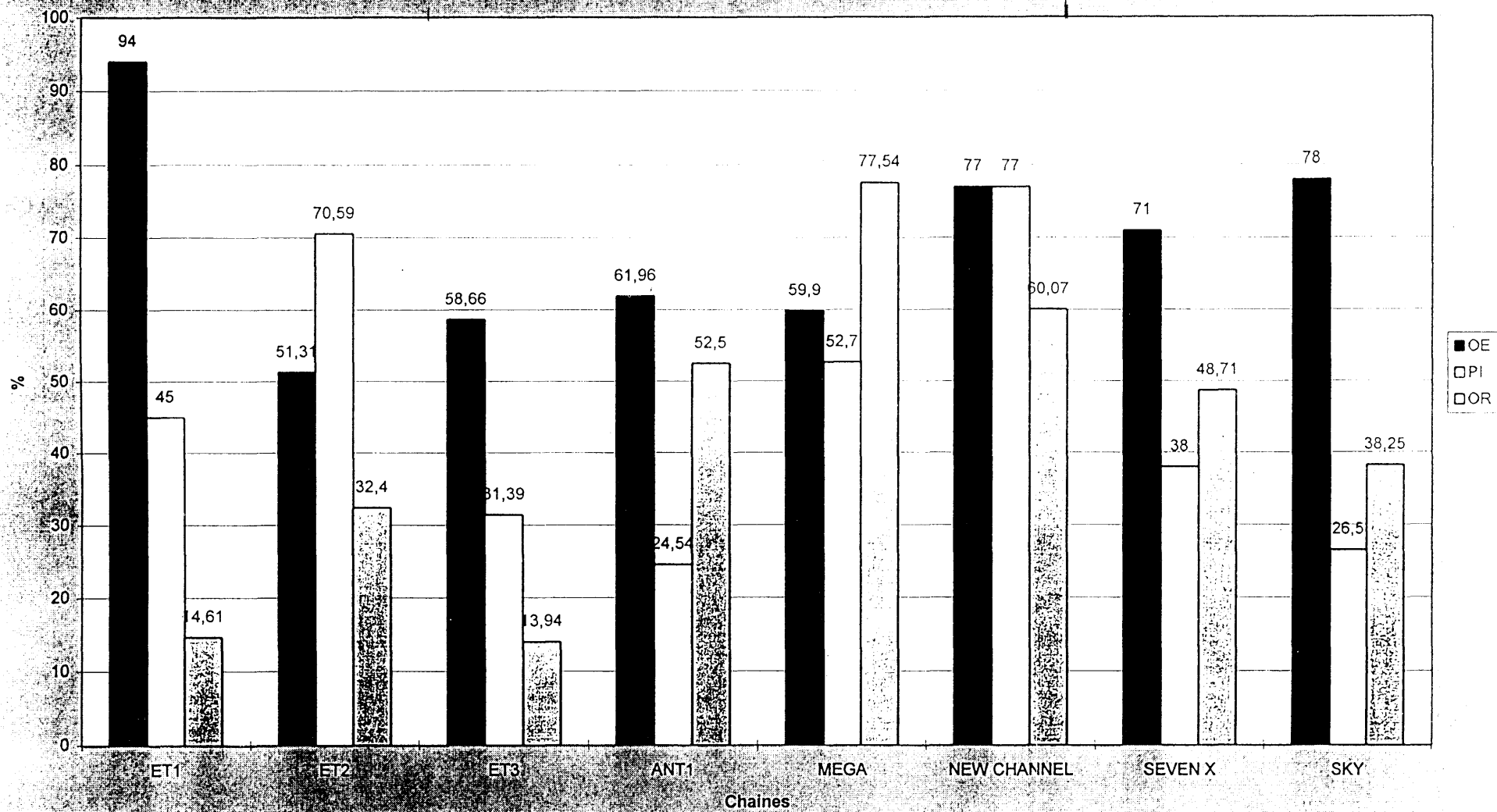
# GRECE Période : 1991 - 1992



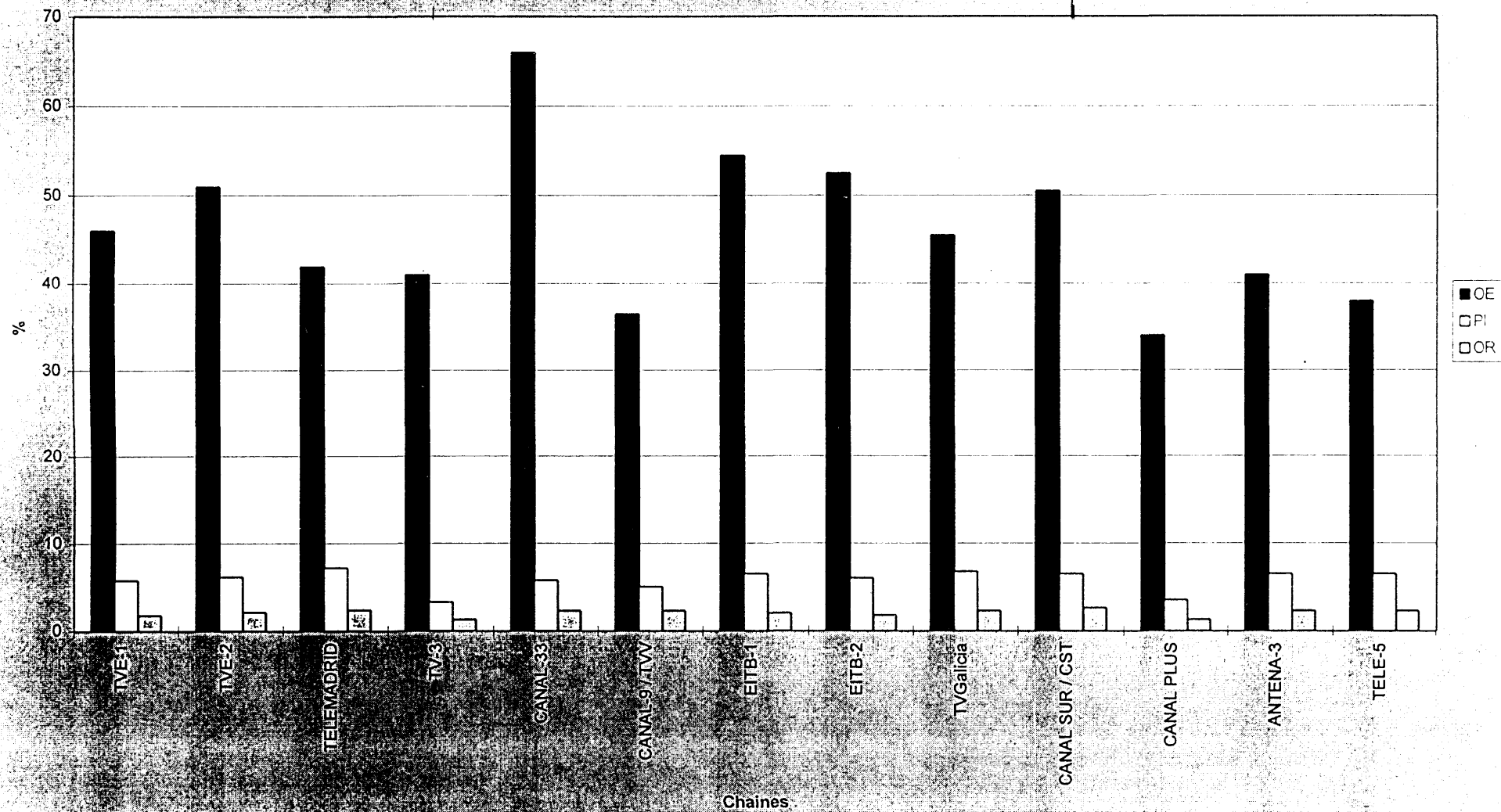
# GRECE Période : 1993



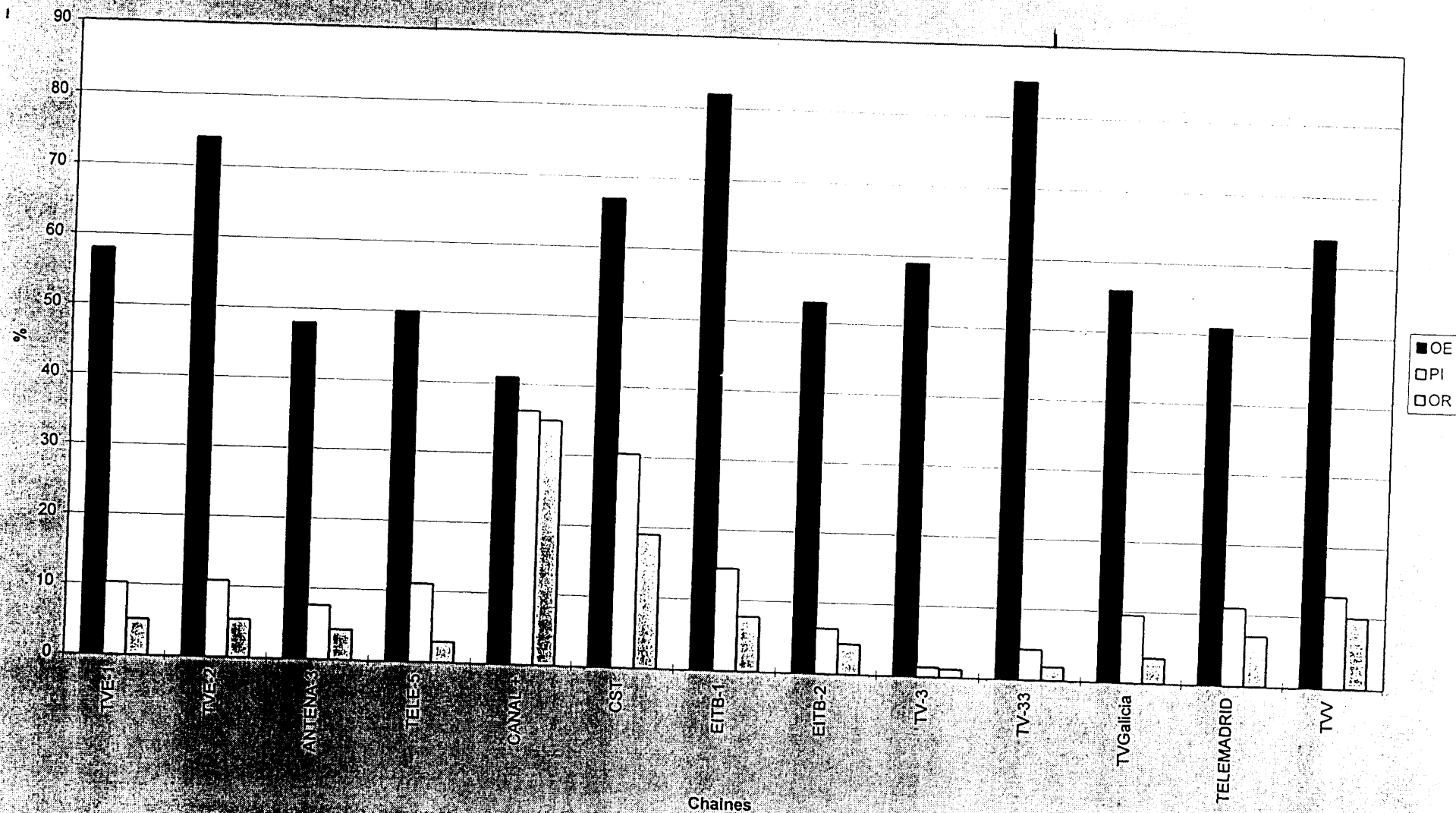
GRECE Période : 1994



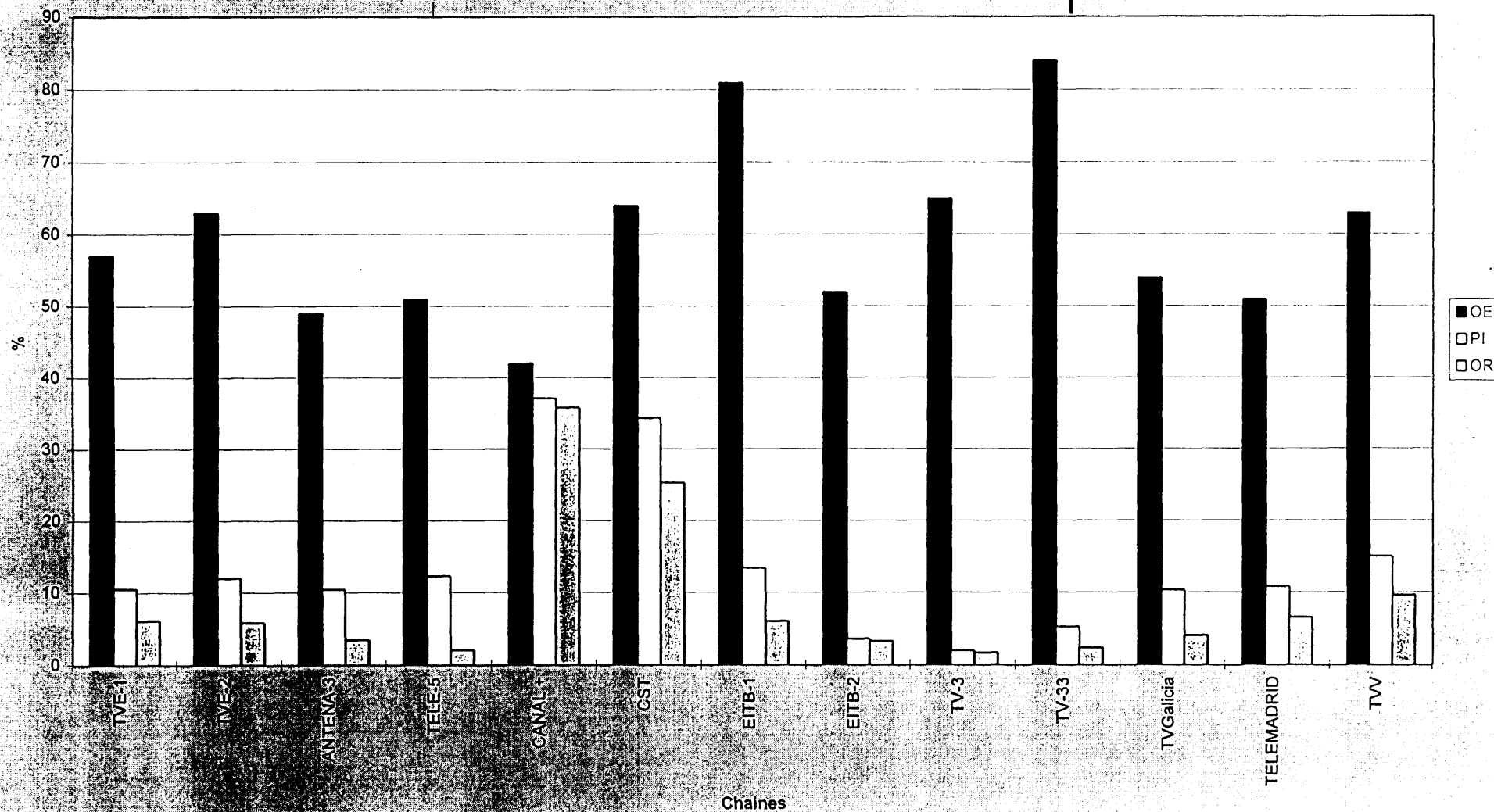
# ESPAGNE Période 1991 - 1992



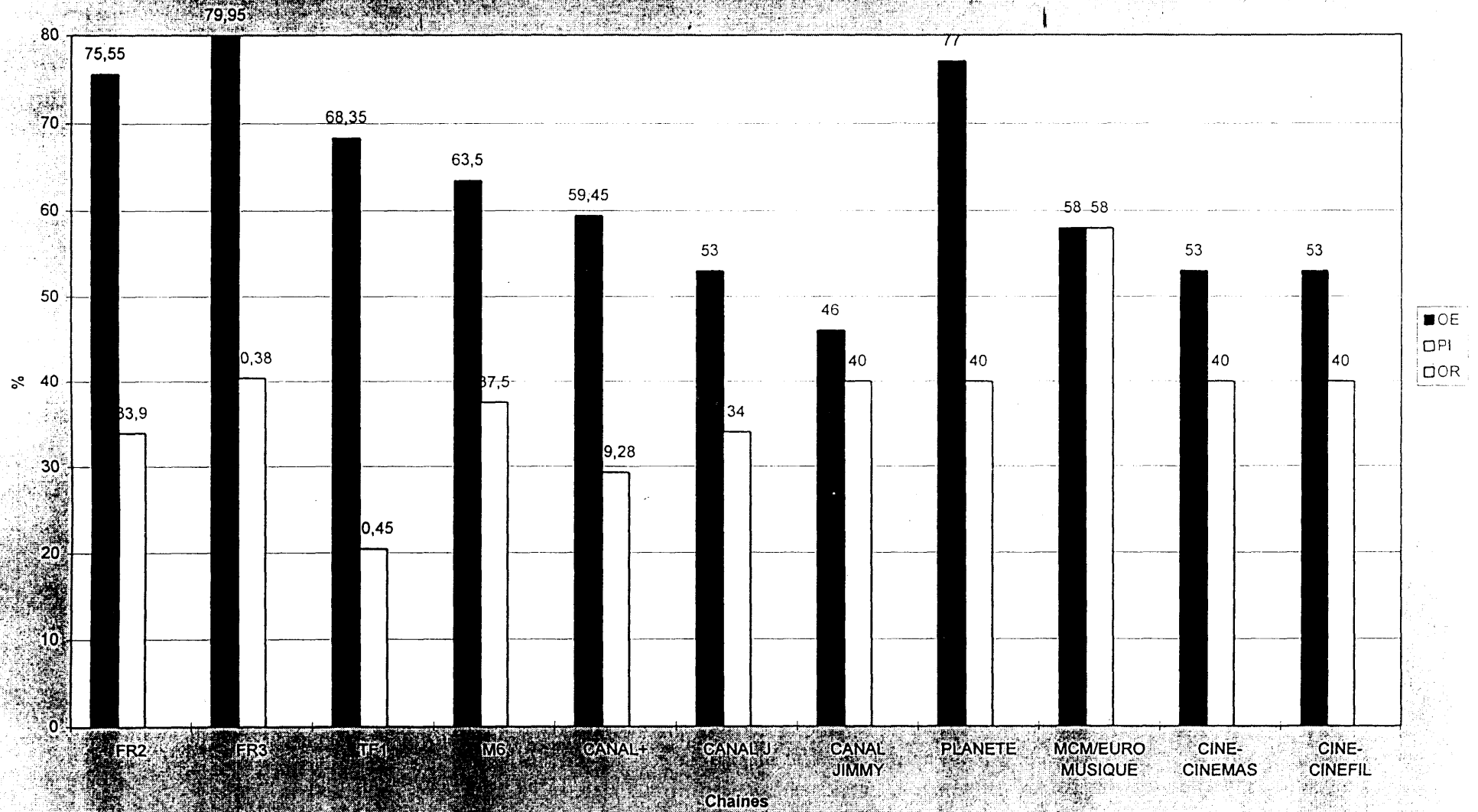
# ESPAGNE Période : 1993



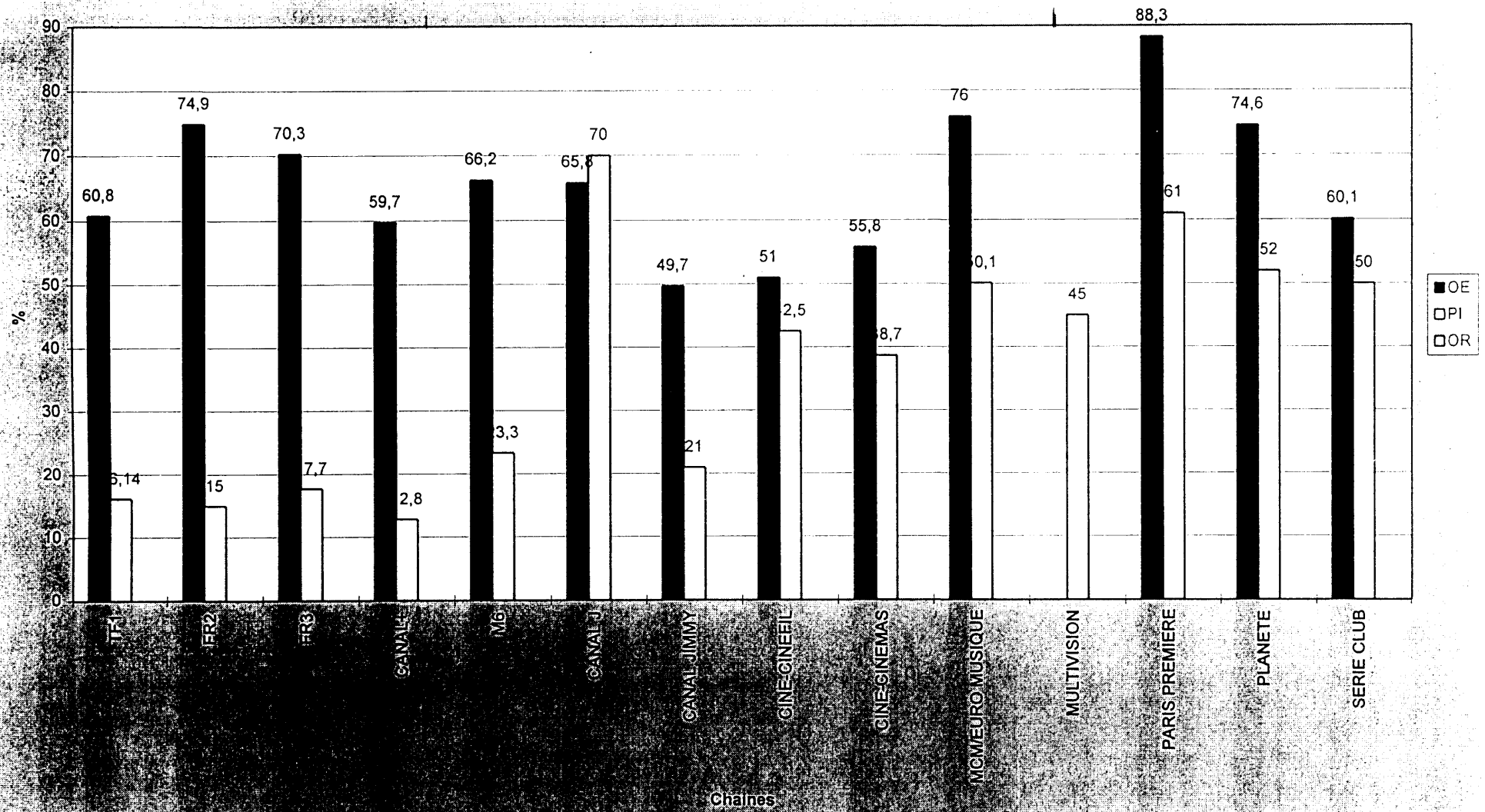
# ESPAGNE Période : 1994



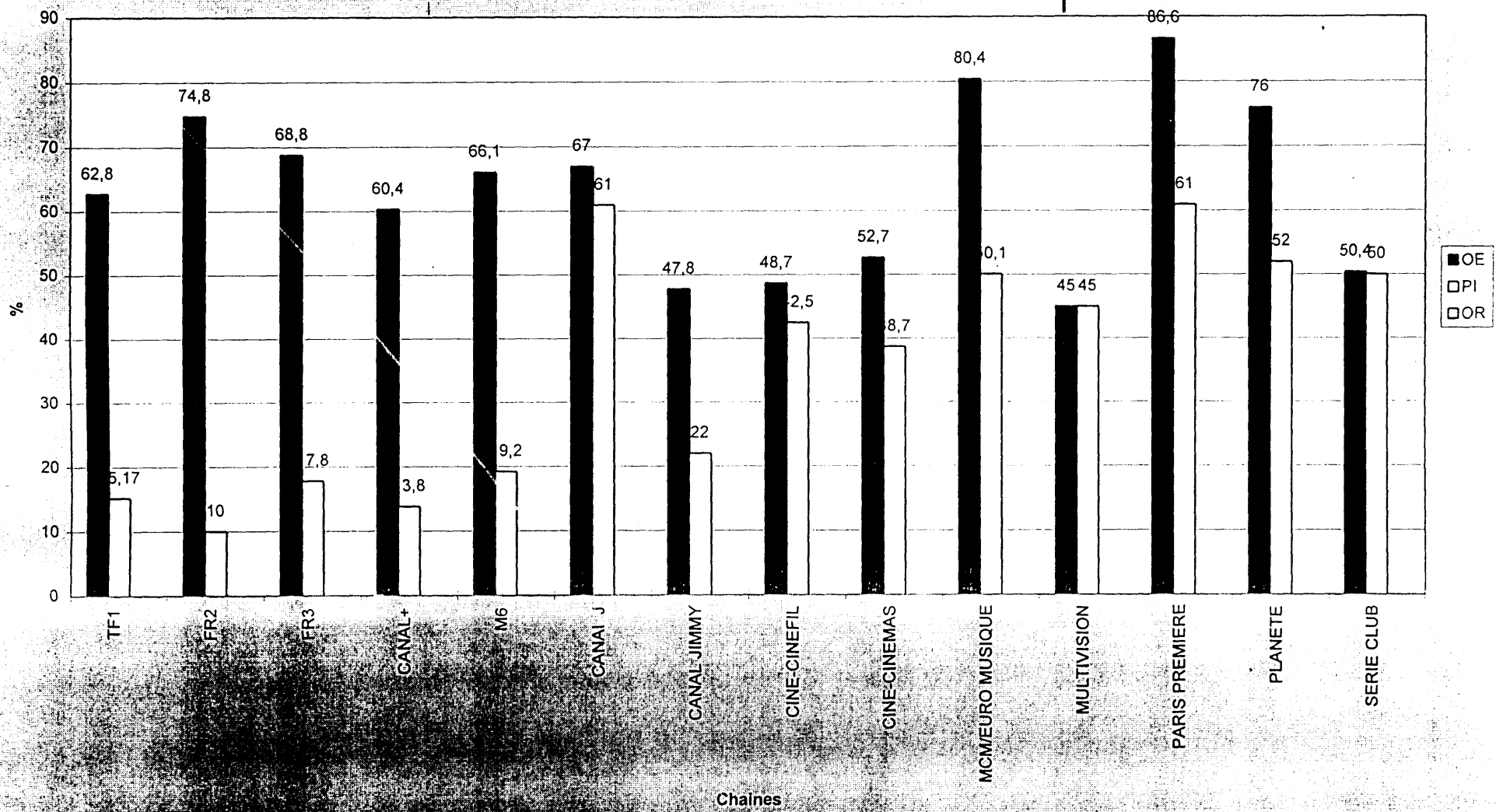
# FRANCE Période 1991 - 1992



# FRANCE Période : 1993

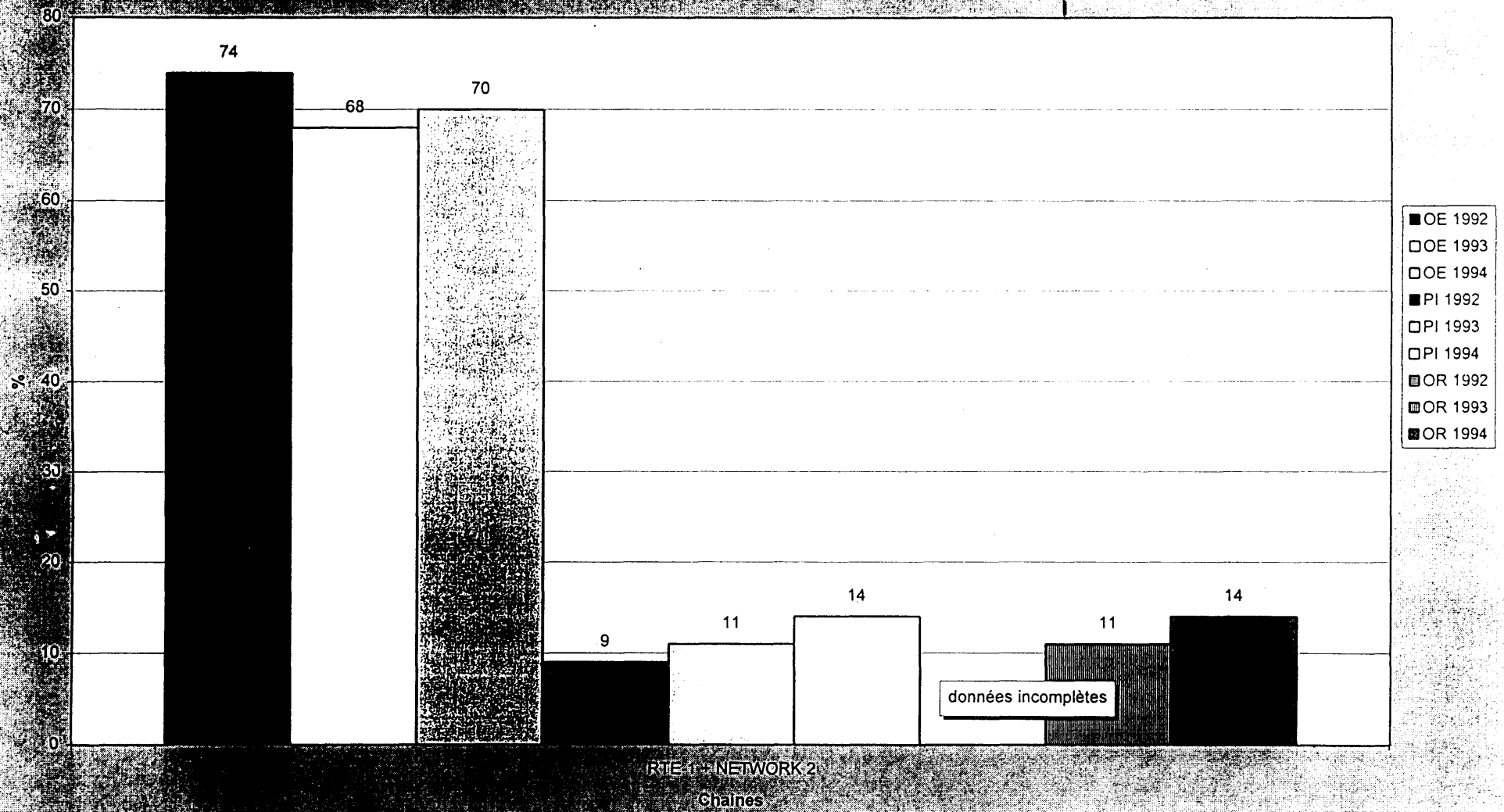


# FRANCE Période : 1994

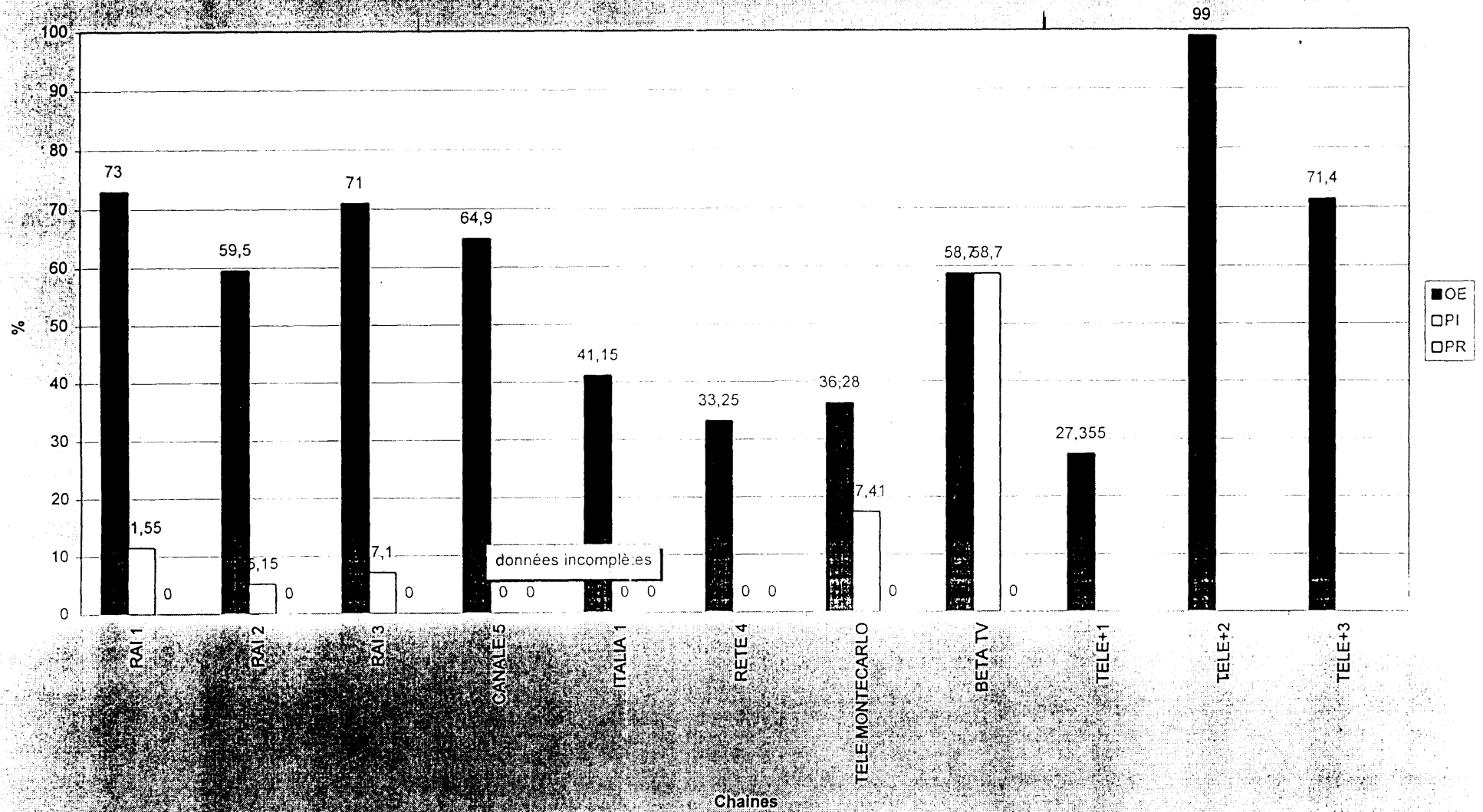


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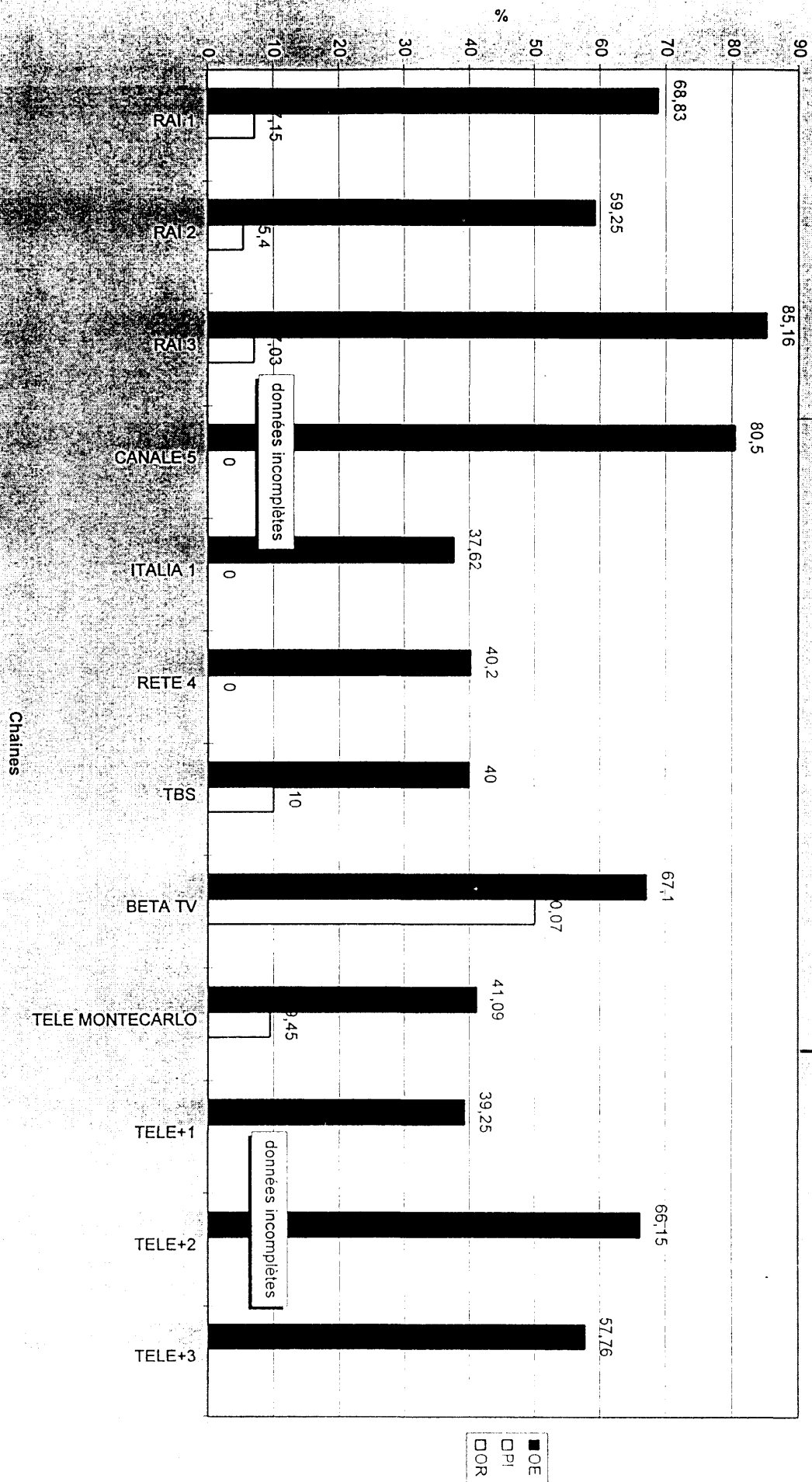
# IRLANDE Période : 1991 - 1994



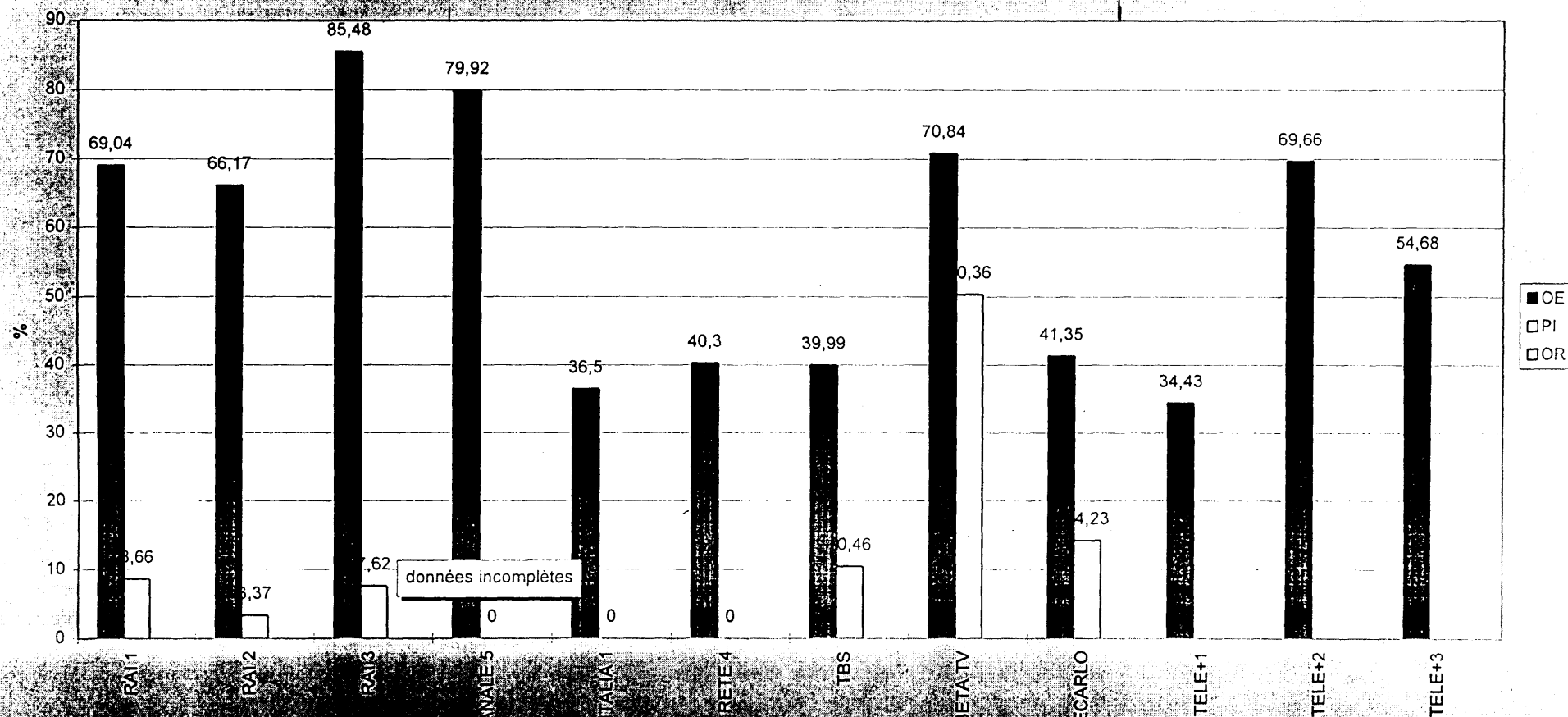
# ITALIE Période : 1991-1992



# ITALIE Période : 1993

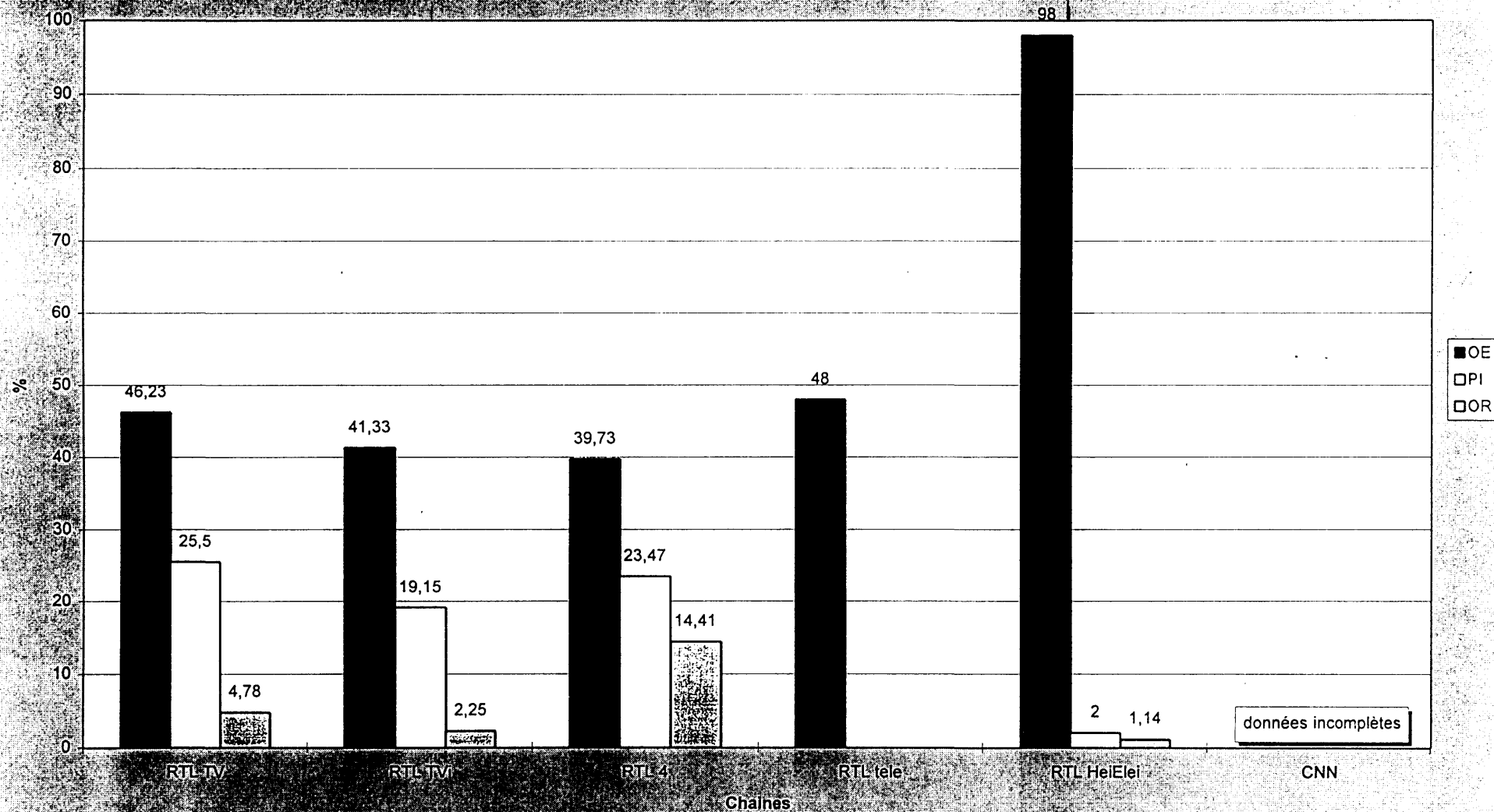


# ITALIE Période : 1994

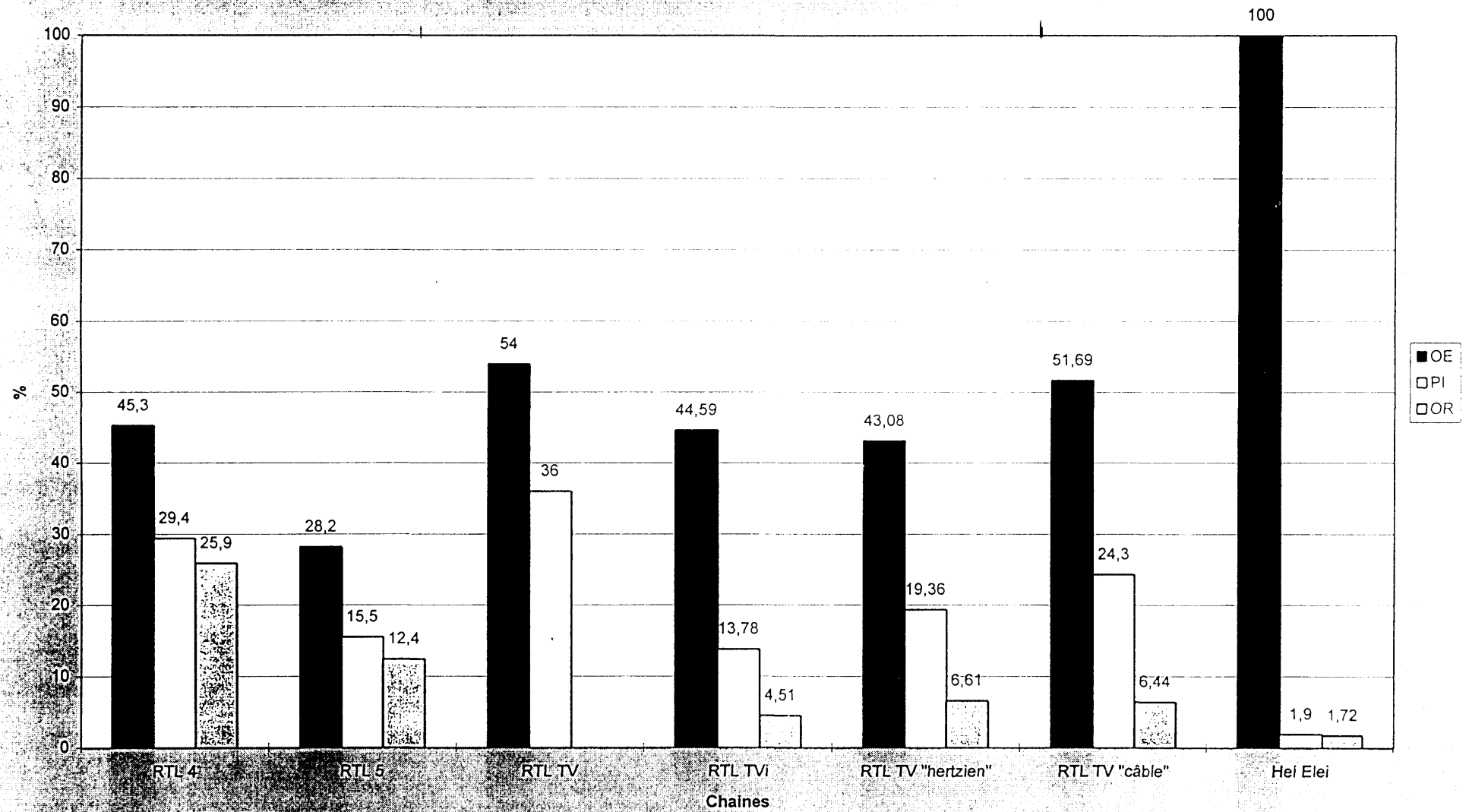


Chaines

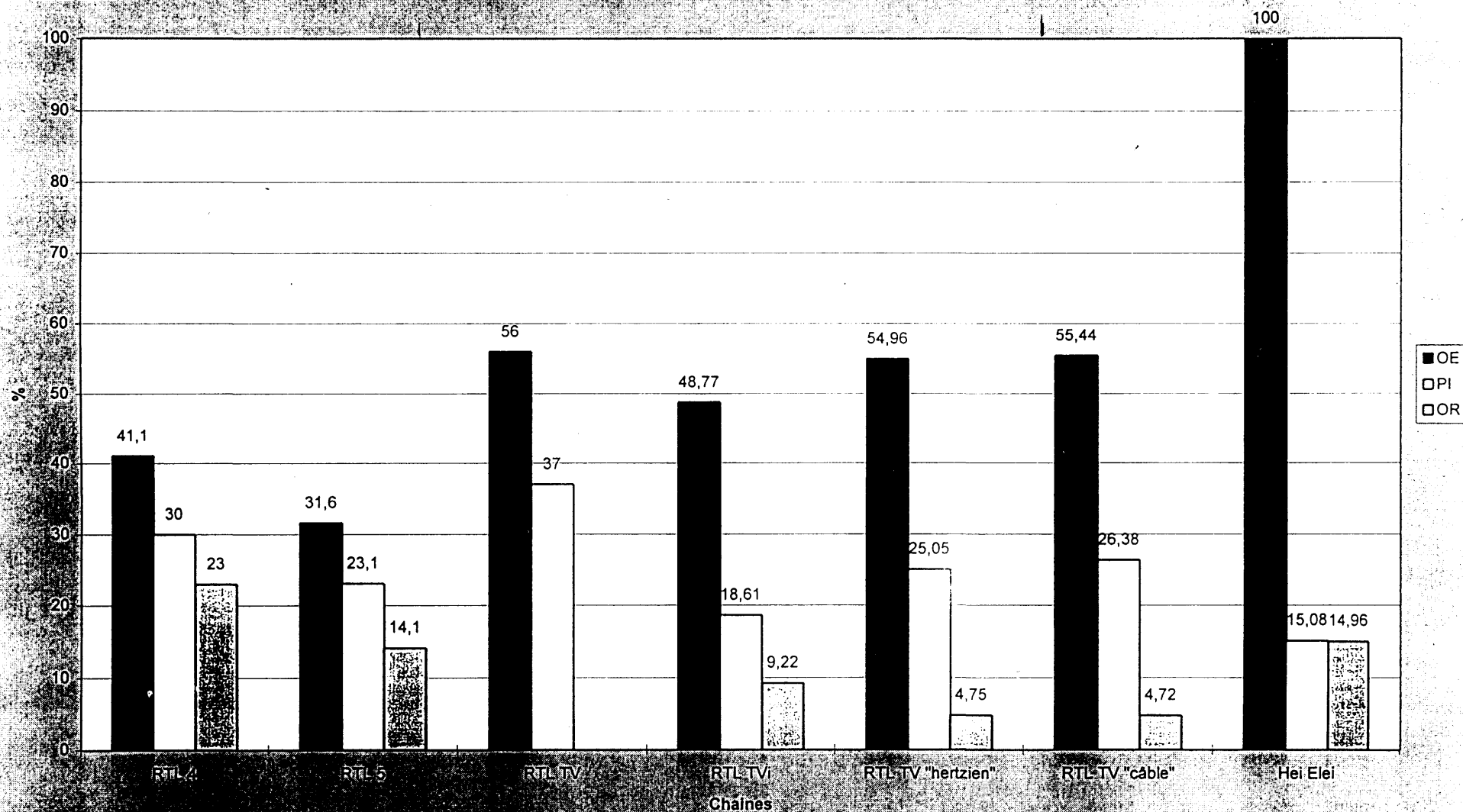
# LUXEMBOURG Période: 1992



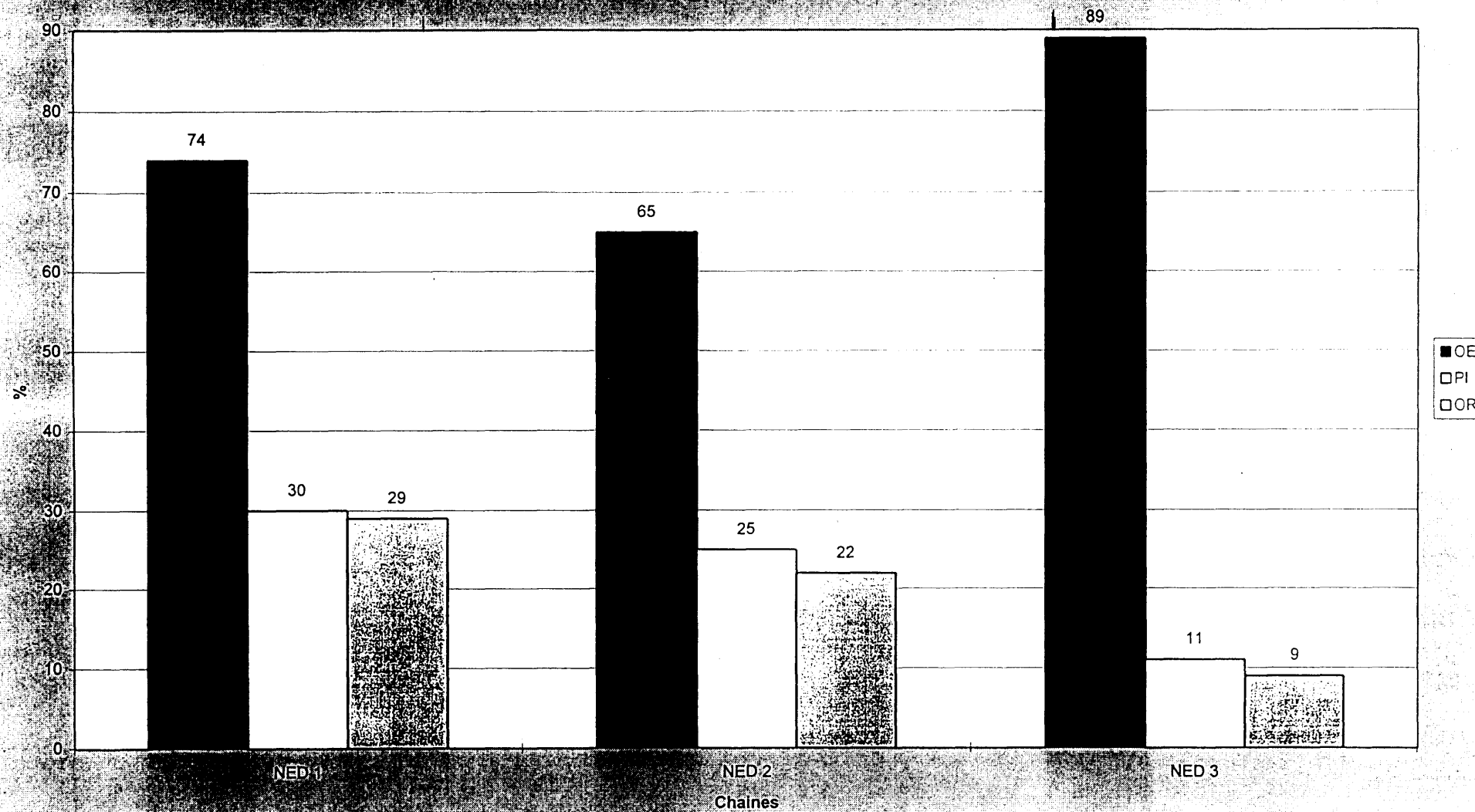
# LUXEMBOURG Période : 1993



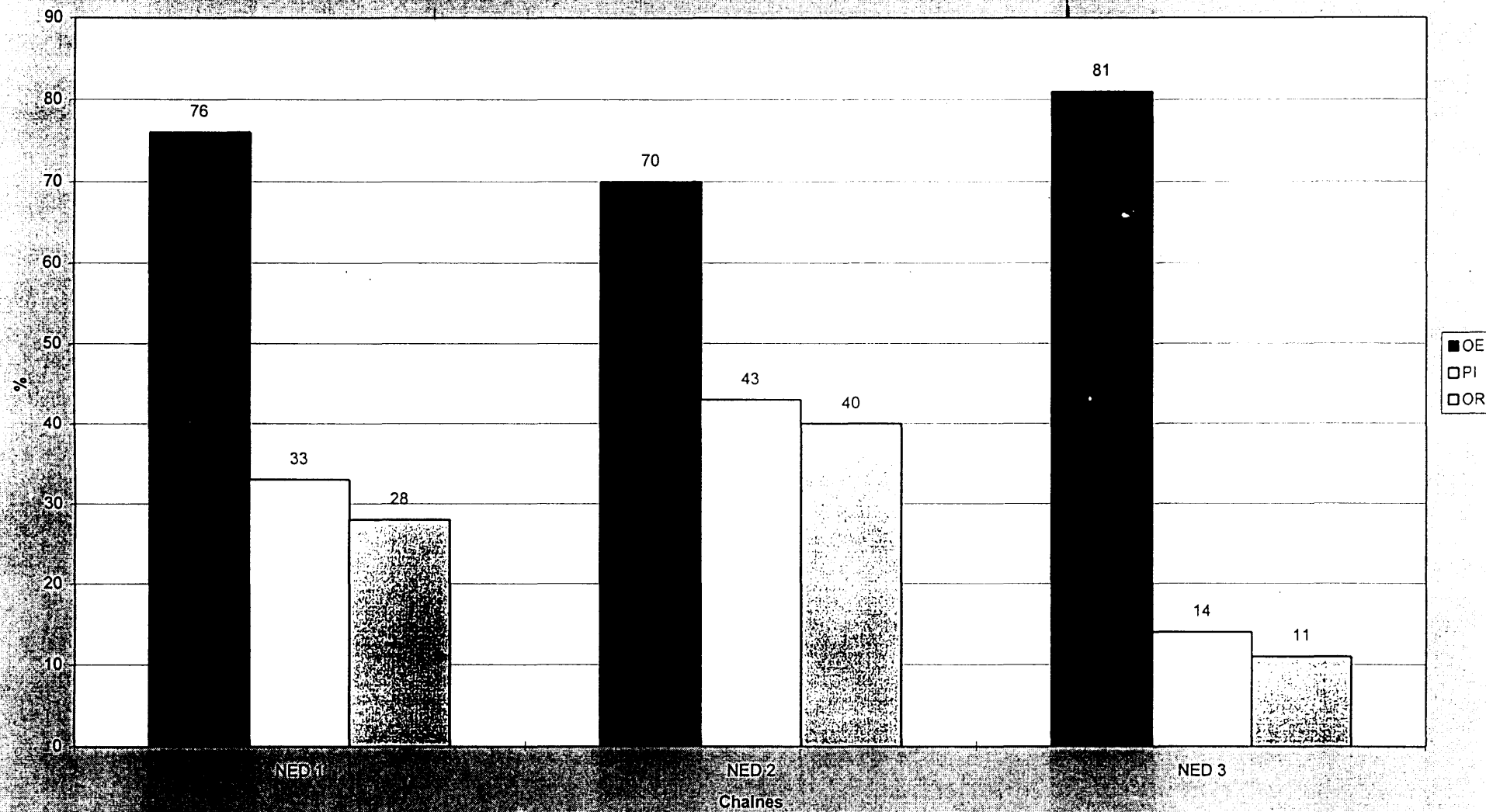
# LUXEMBOURG Période : 1994



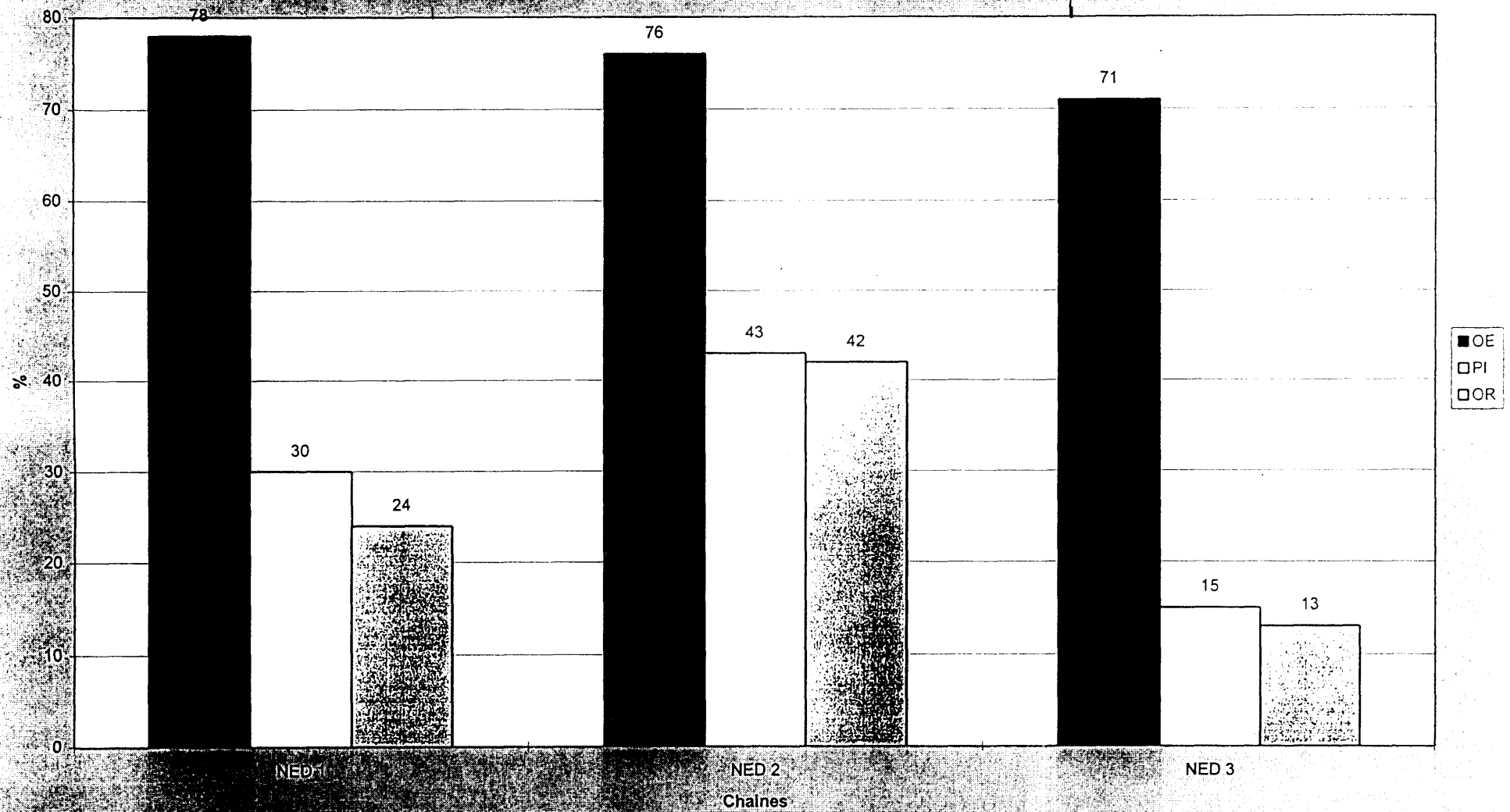
# PAYS-BAS Période 1992



# PAYS-BAS Période 1993

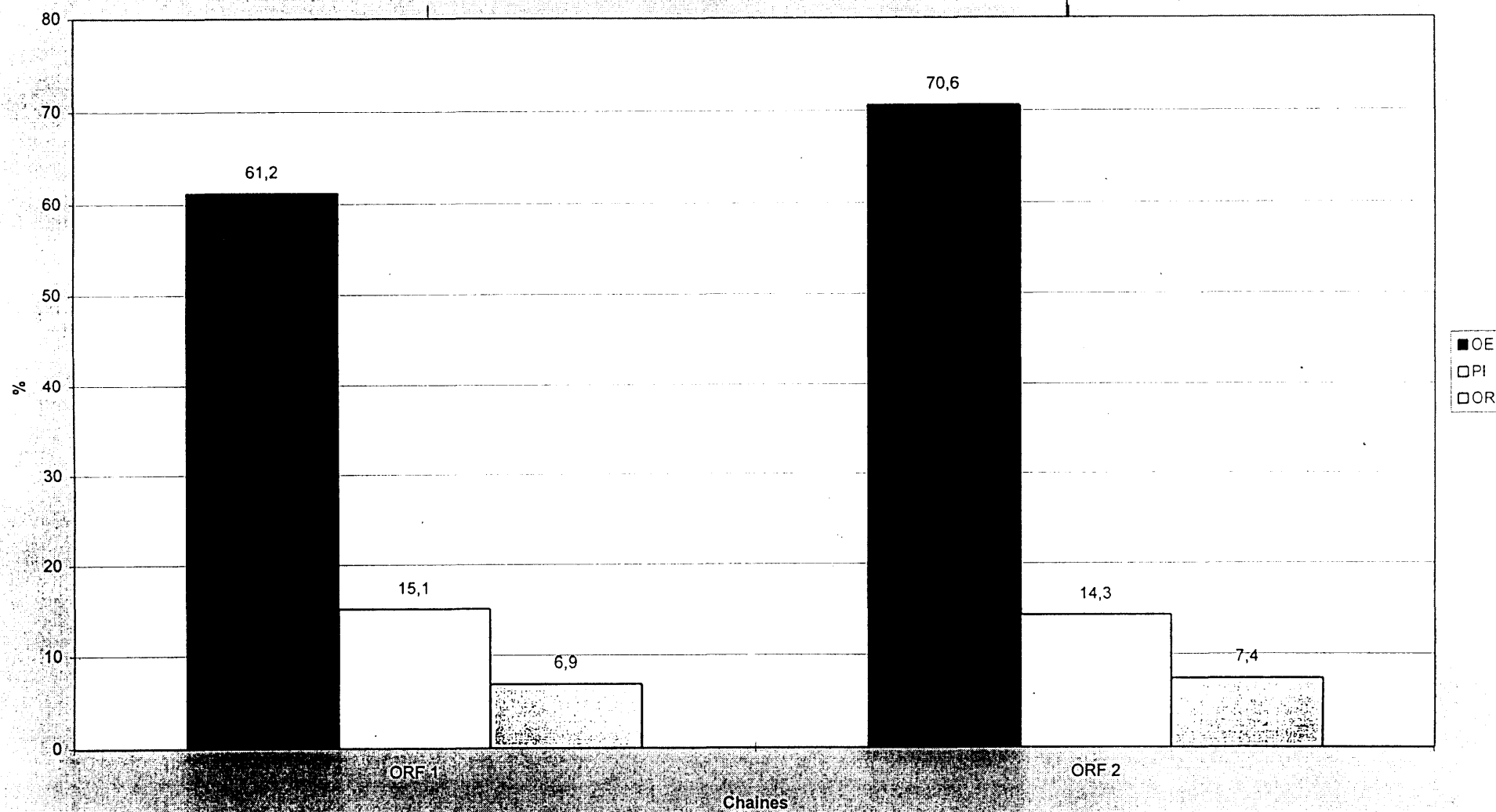


# PAYS-BAS Période 1994

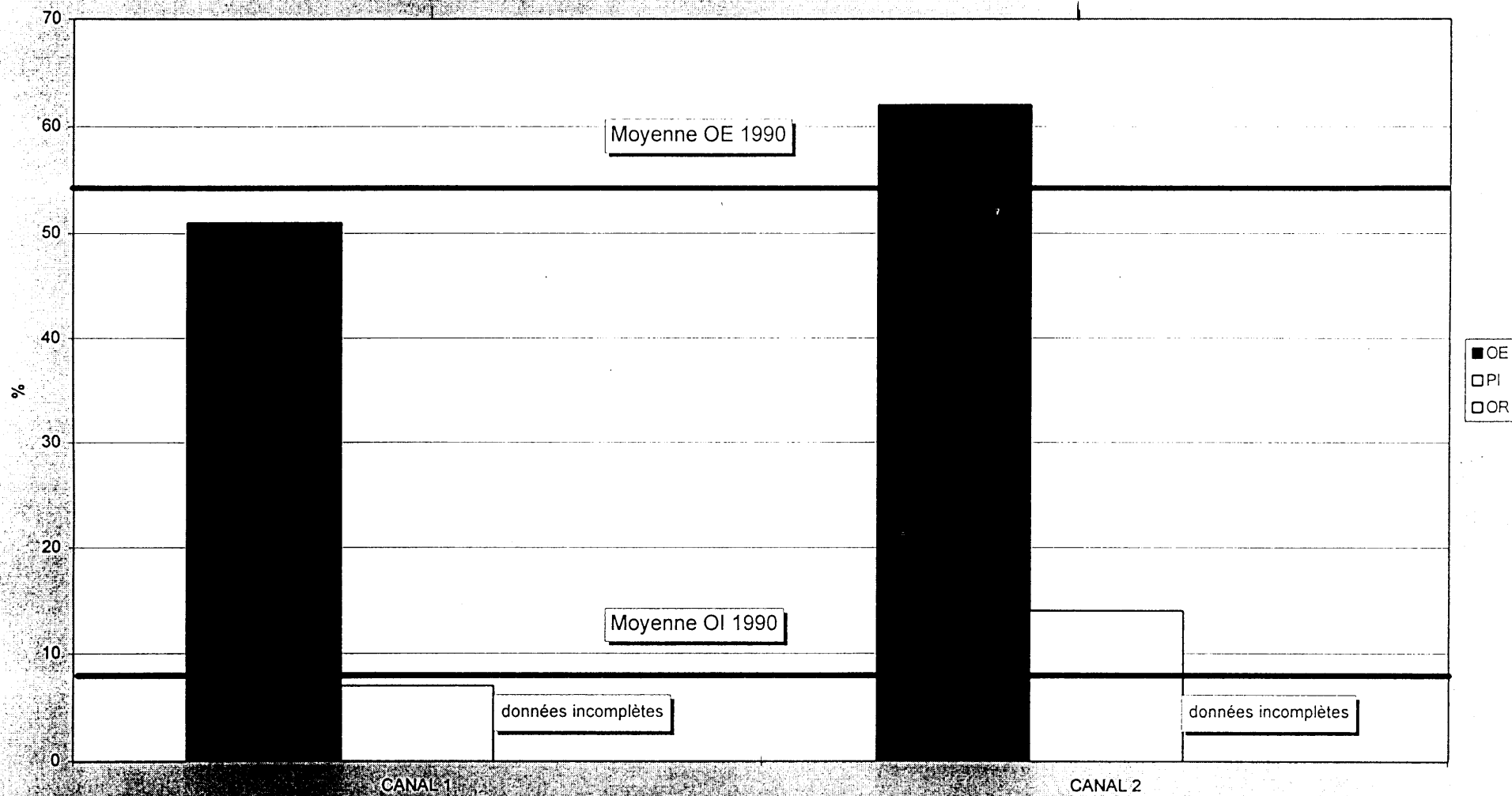


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AUTRICHE : Période 1994



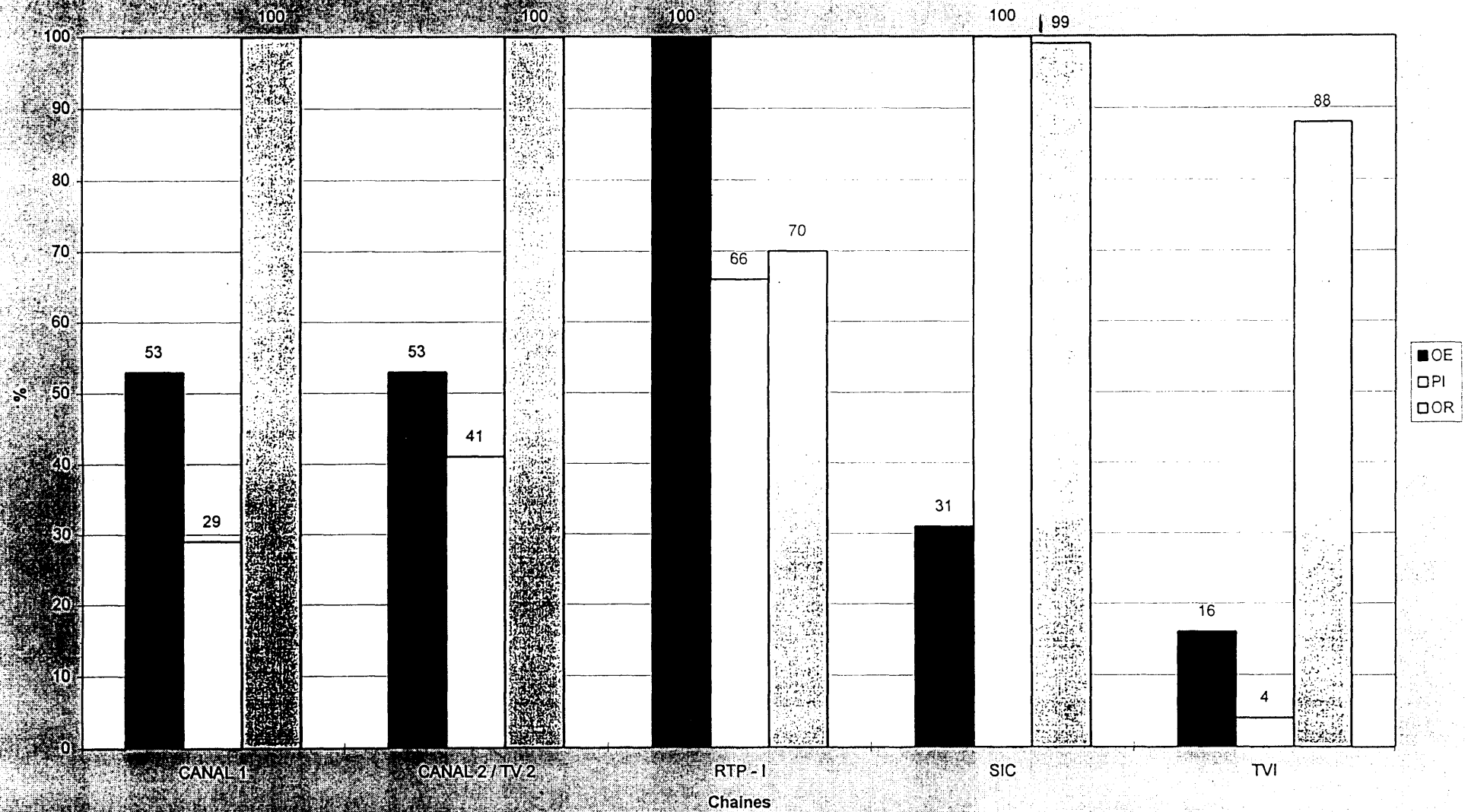
PORTUGAL : Période 1991 - 1992



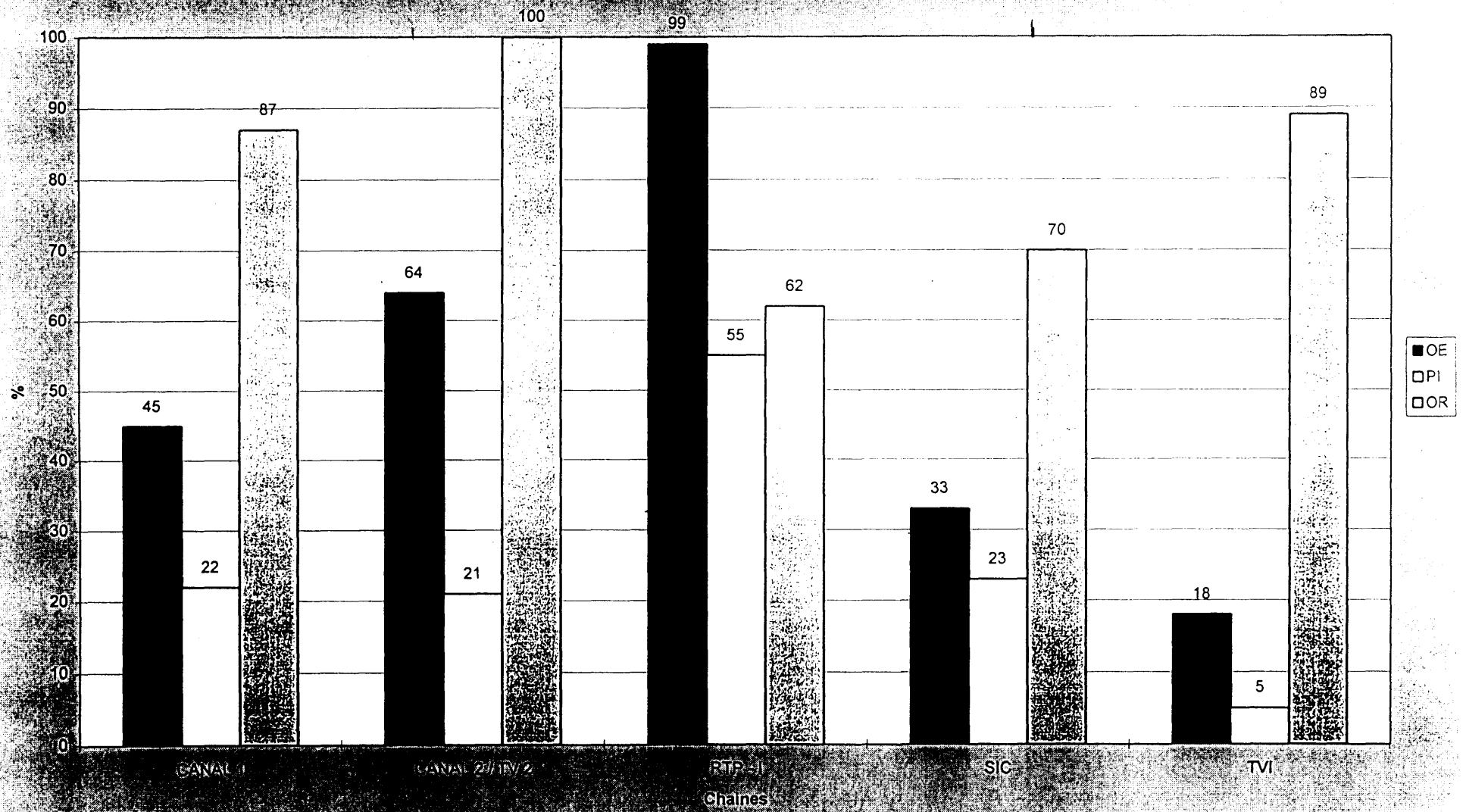
Chaines

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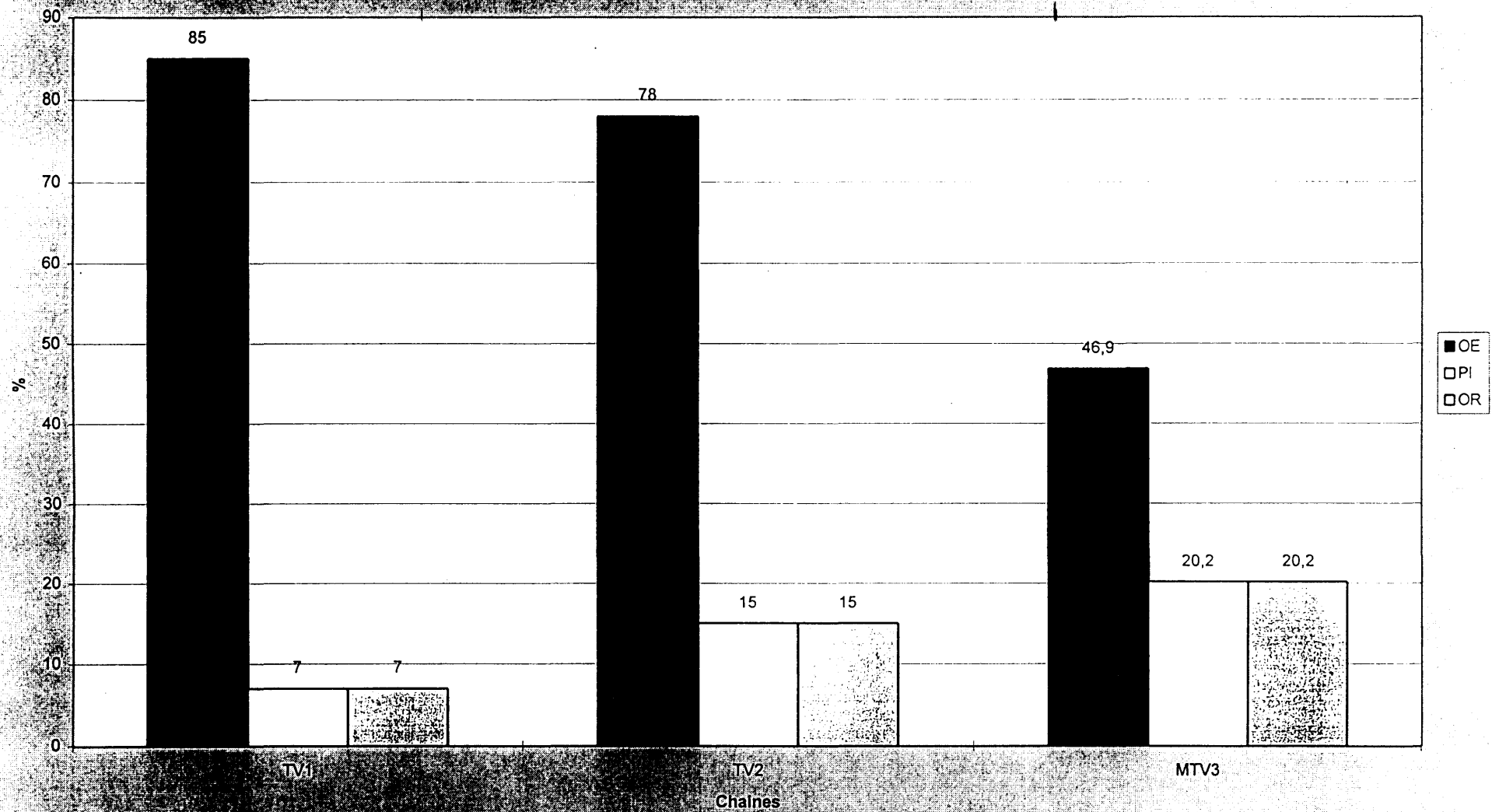
PORTUGAL Période : 1993



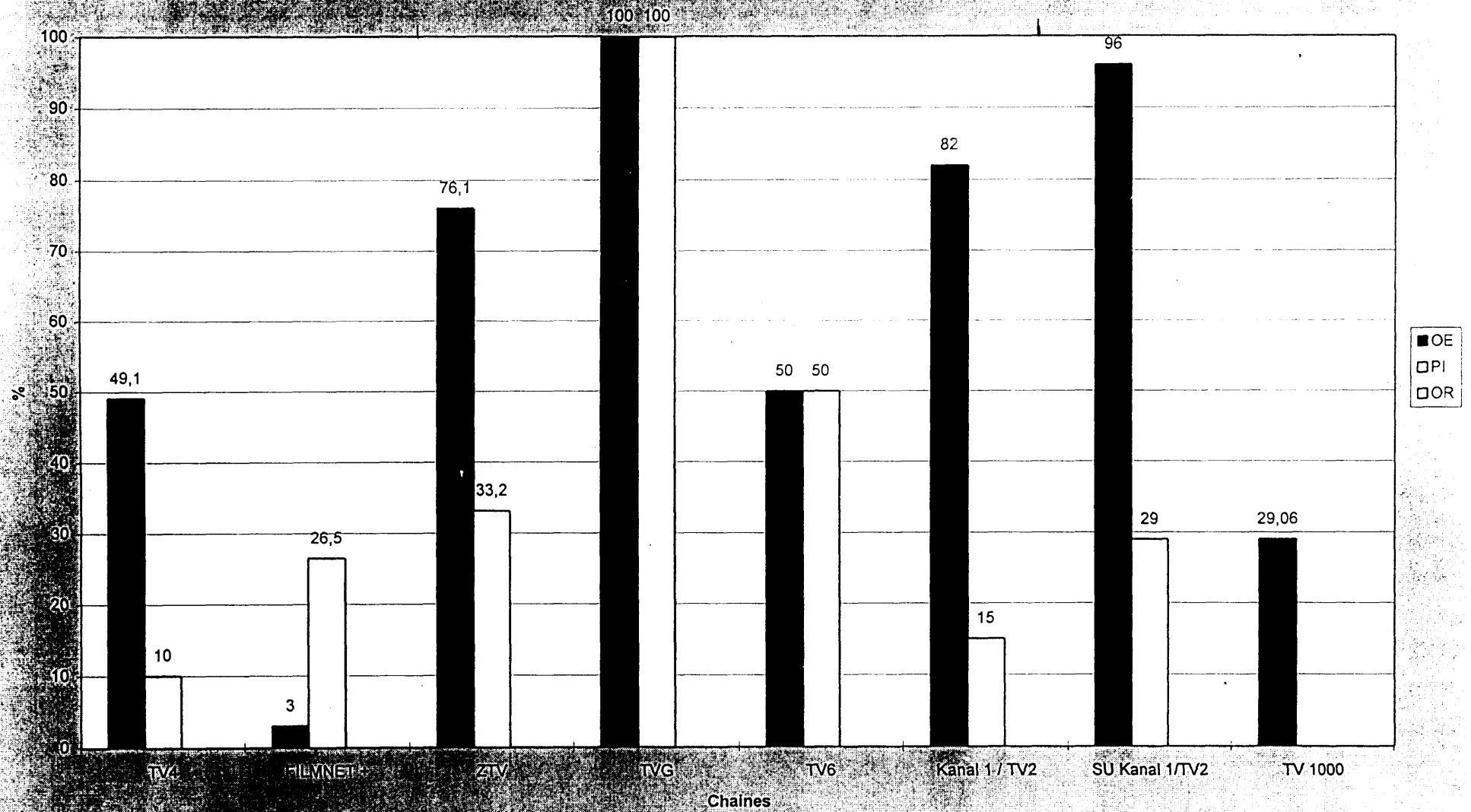
PORTUGAL Période : 1994

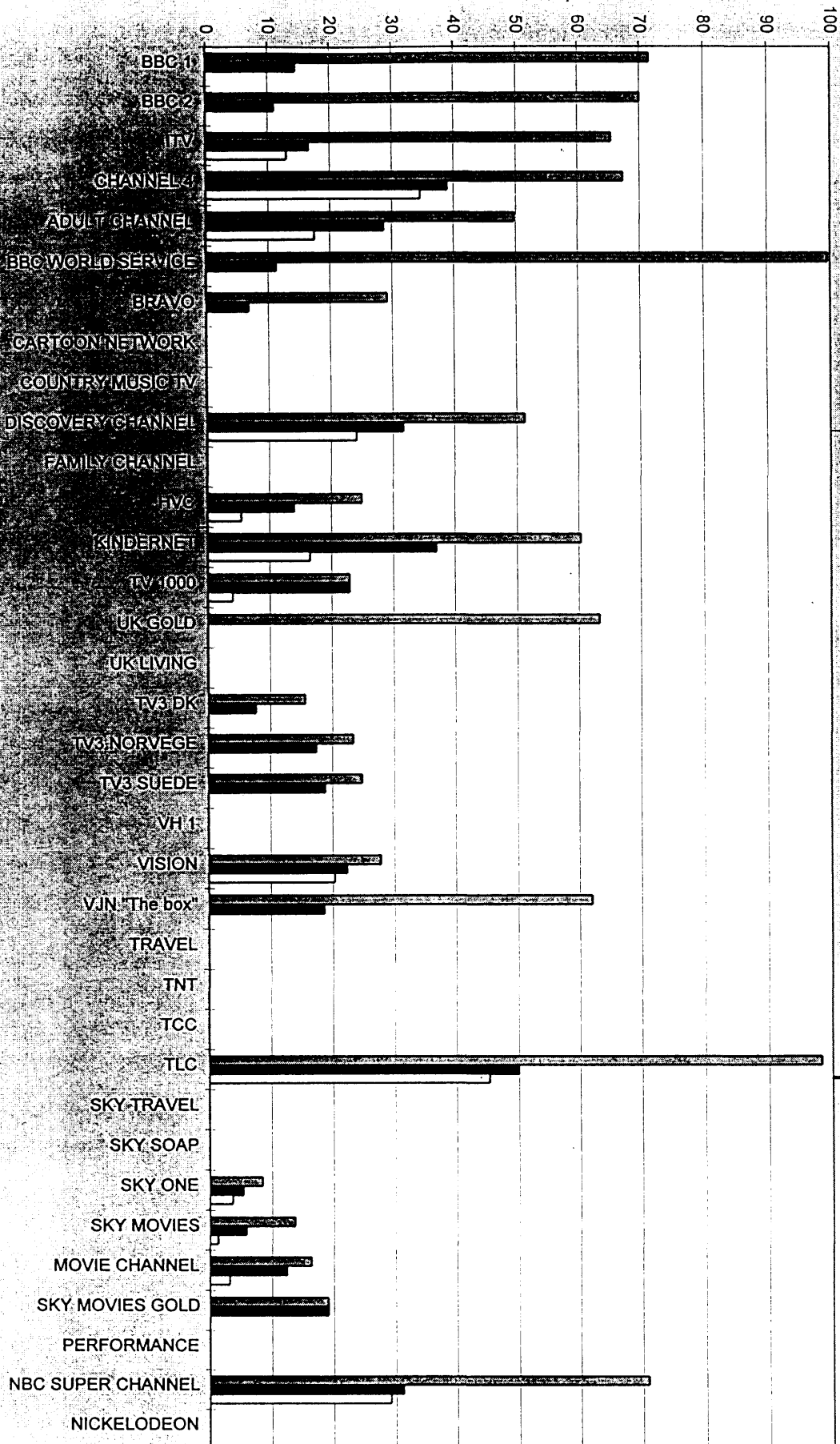


# FINLANDE : Période 1994



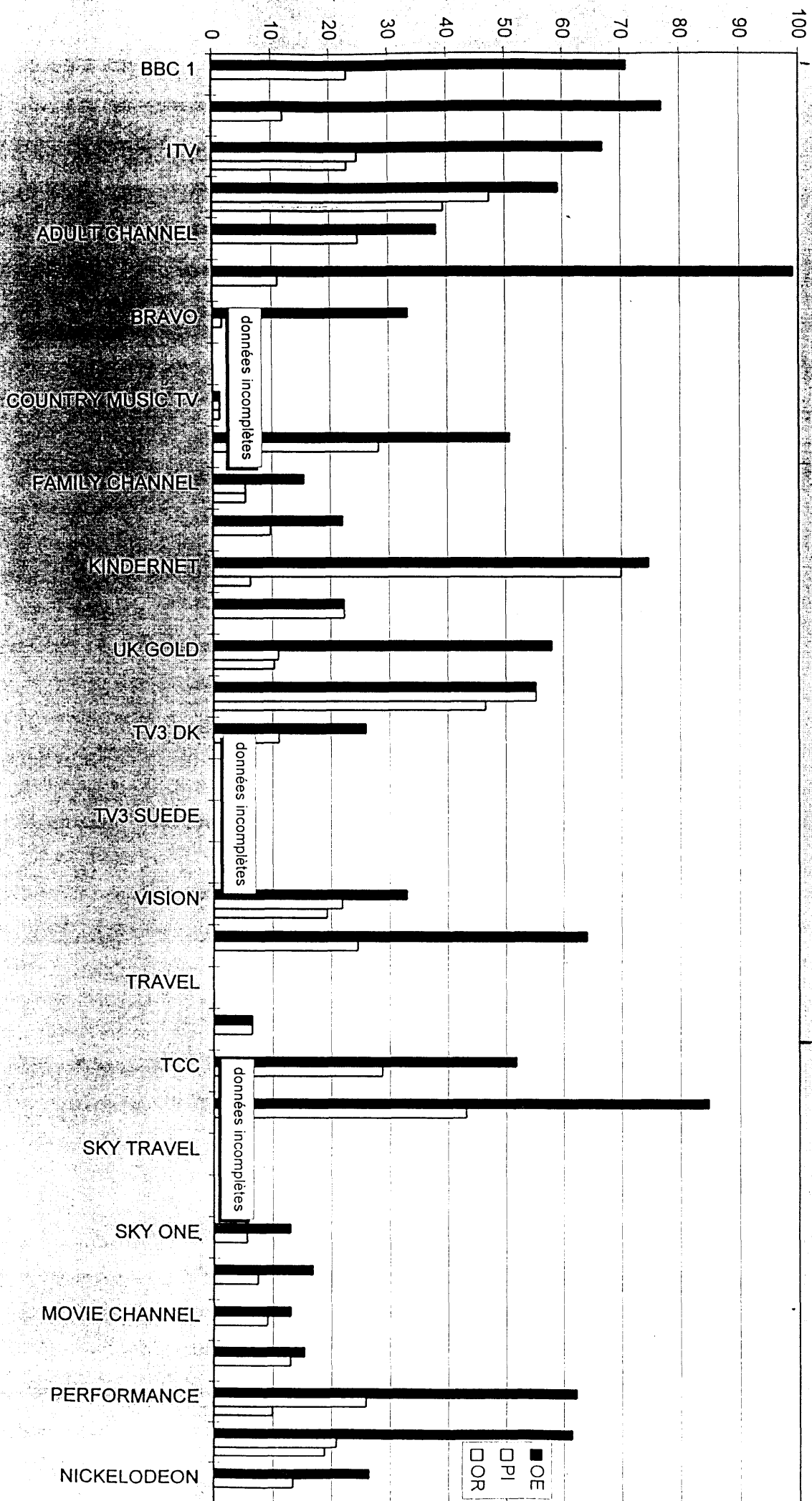
SUEDE Période : 1994

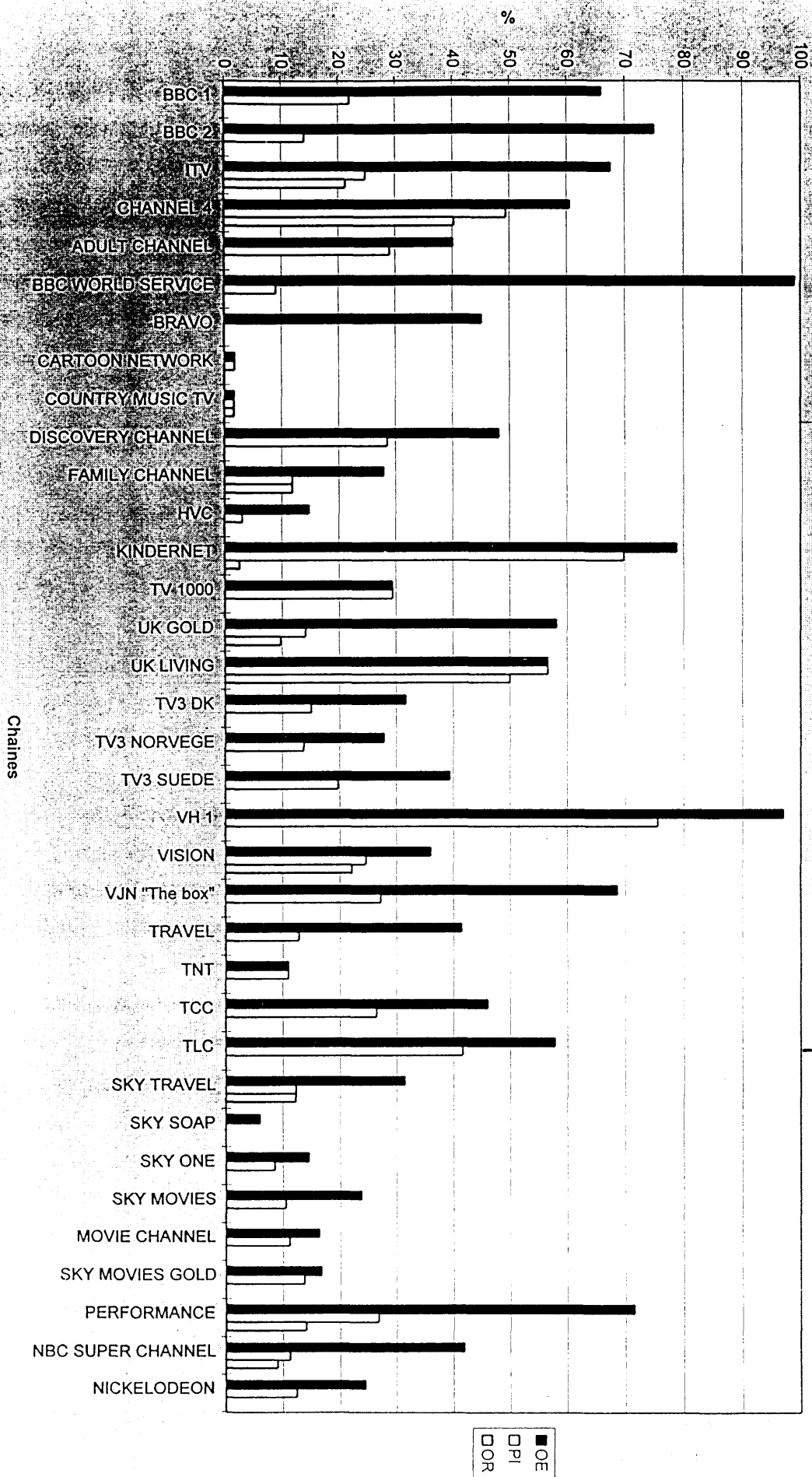




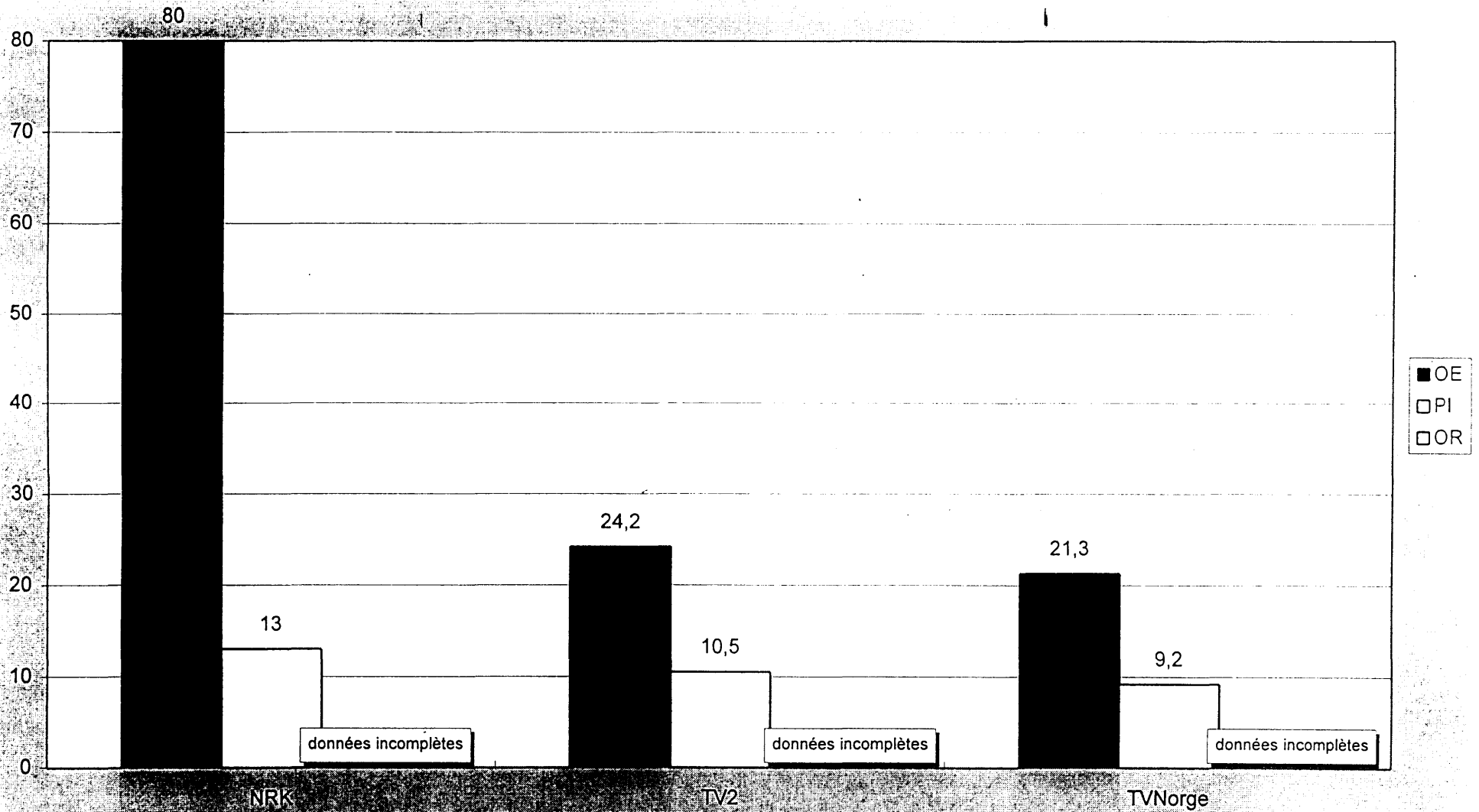
☐ DOR  
☒ P  
☐ E

**ROYAUME-UNI**Période : 1993





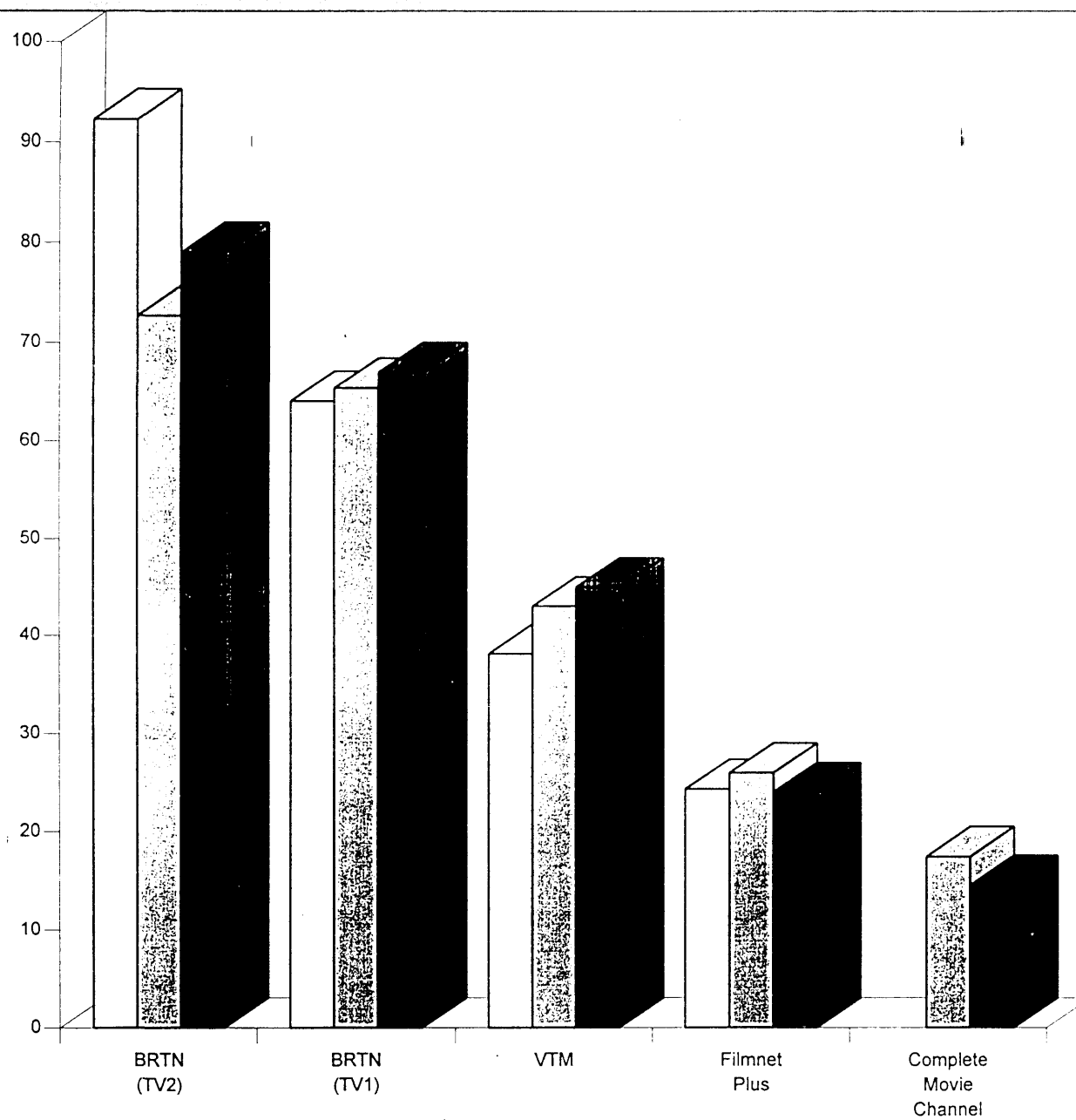
# NORVEGE Période : 1994



## PART 3

### BROADCASTING OF EUROPEAN WORKS (EW) FOR THE PERIOD 1992/1994

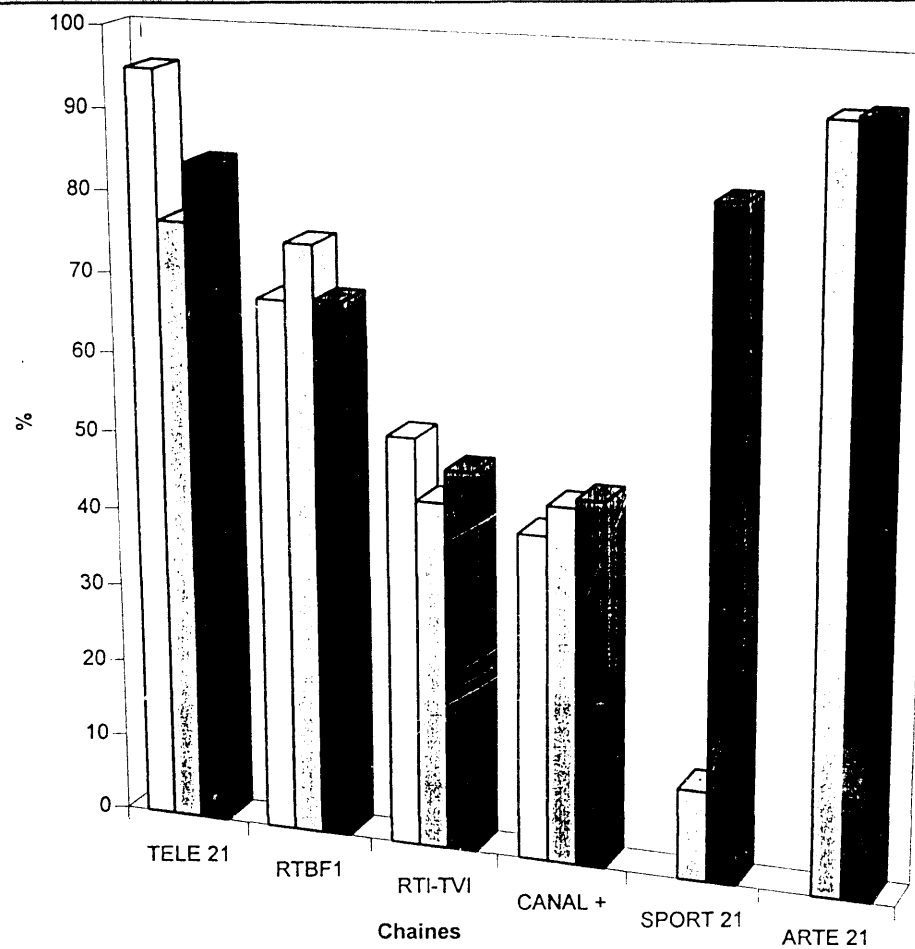
# BELGIQUE (COMMUNAUTE FLAMANDE) : OE 1992 - 1994



□ OE 1992  
 □ OE 1993  
 ■ OE 1994

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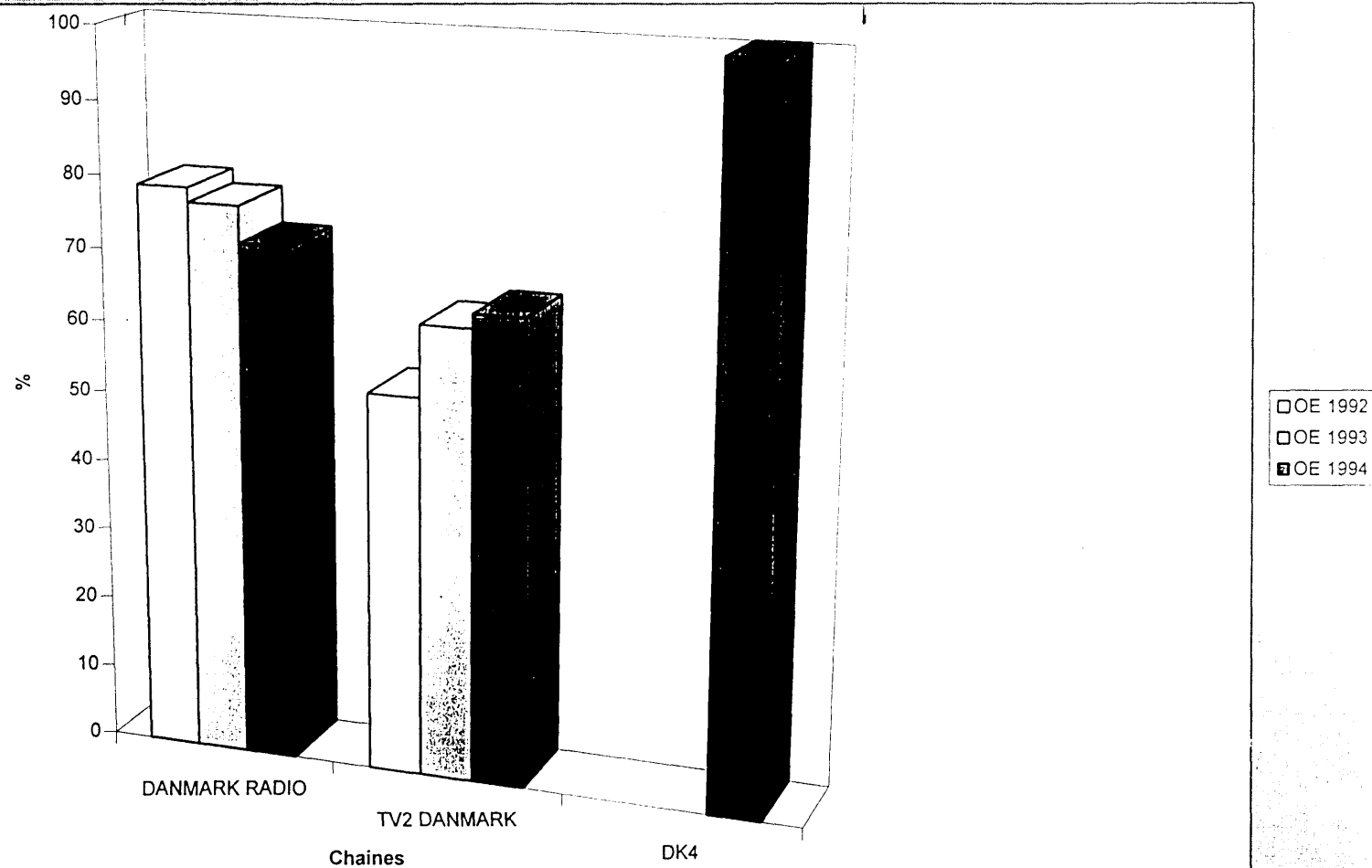
# BELGIQUE (COMMUNAUTE FRANCAISE) : OE 1992 - 1994



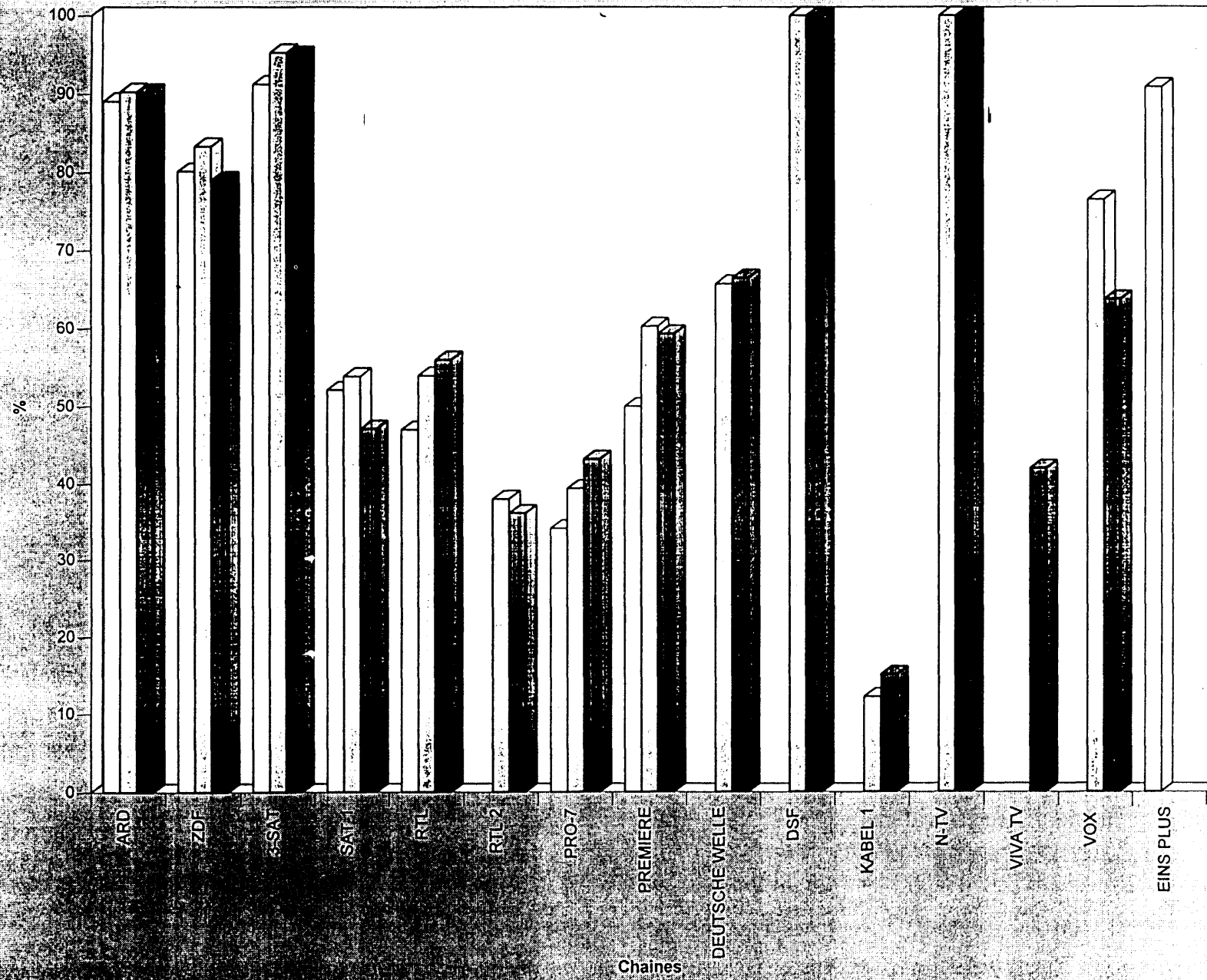
□ OE 1992  
 □ OE 1993  
 ■ OE 1994

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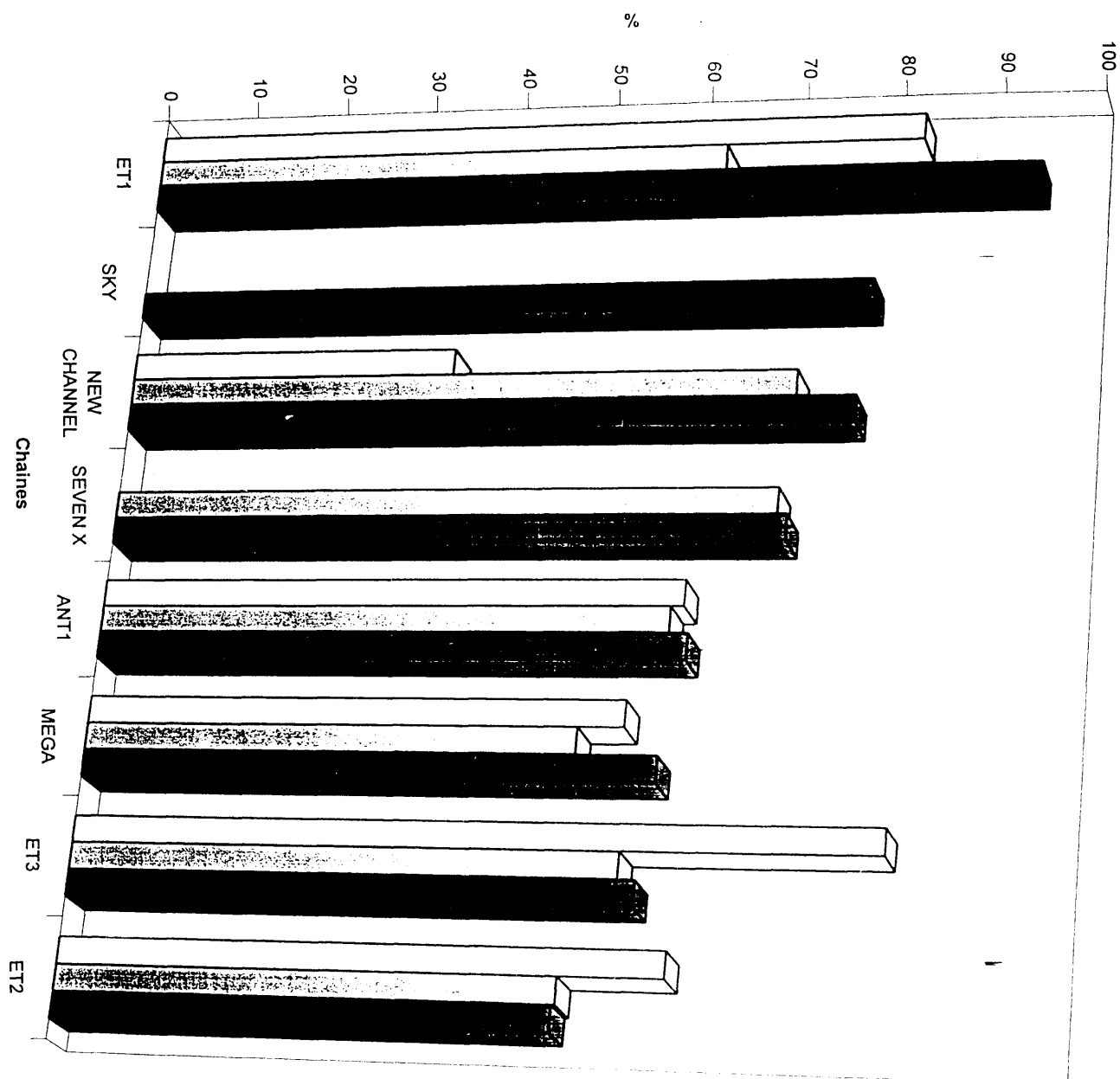
# DANEMARK : OE 1992 - 1994

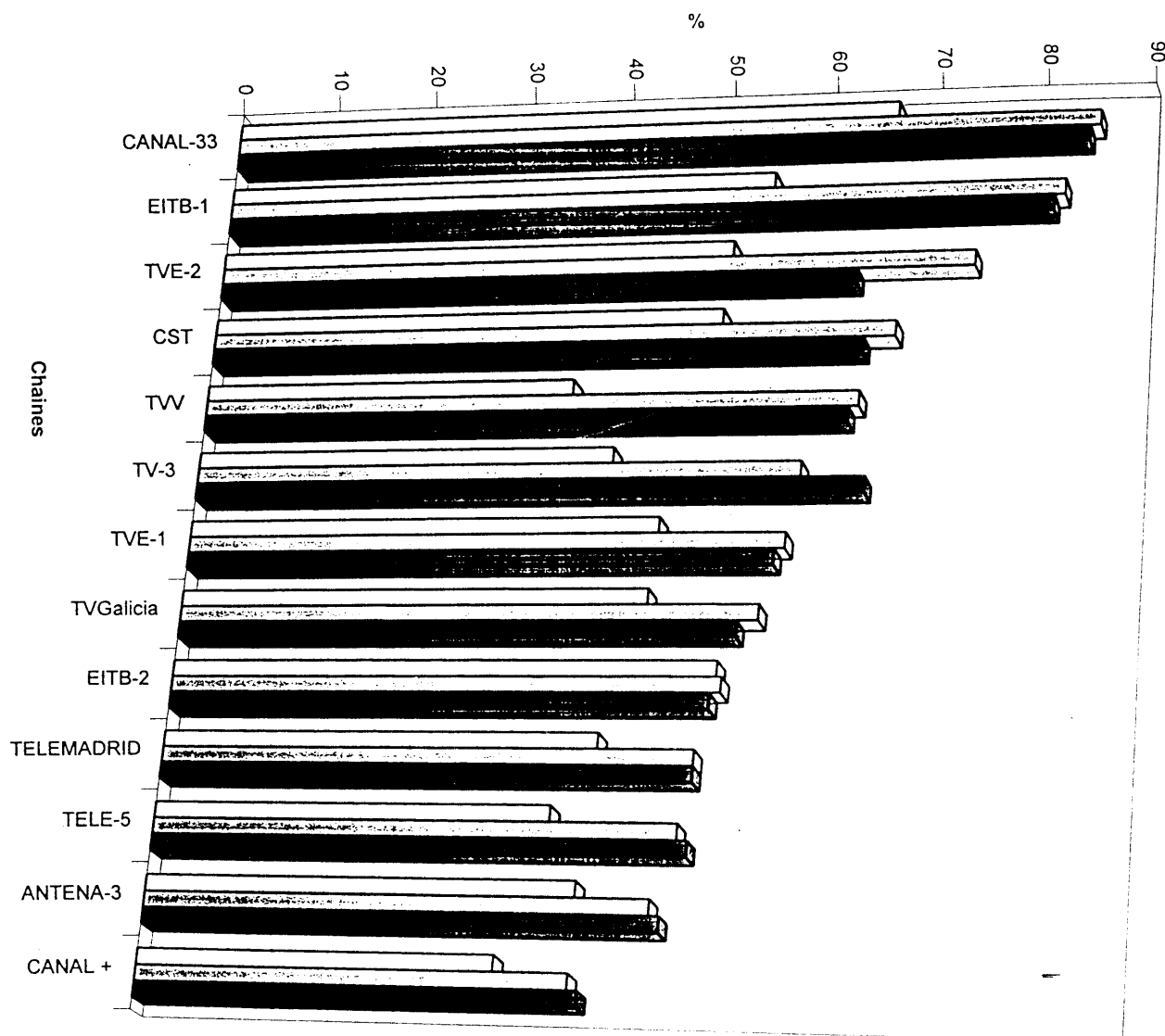


ALLEMAGNE : OE 1992 - 1994

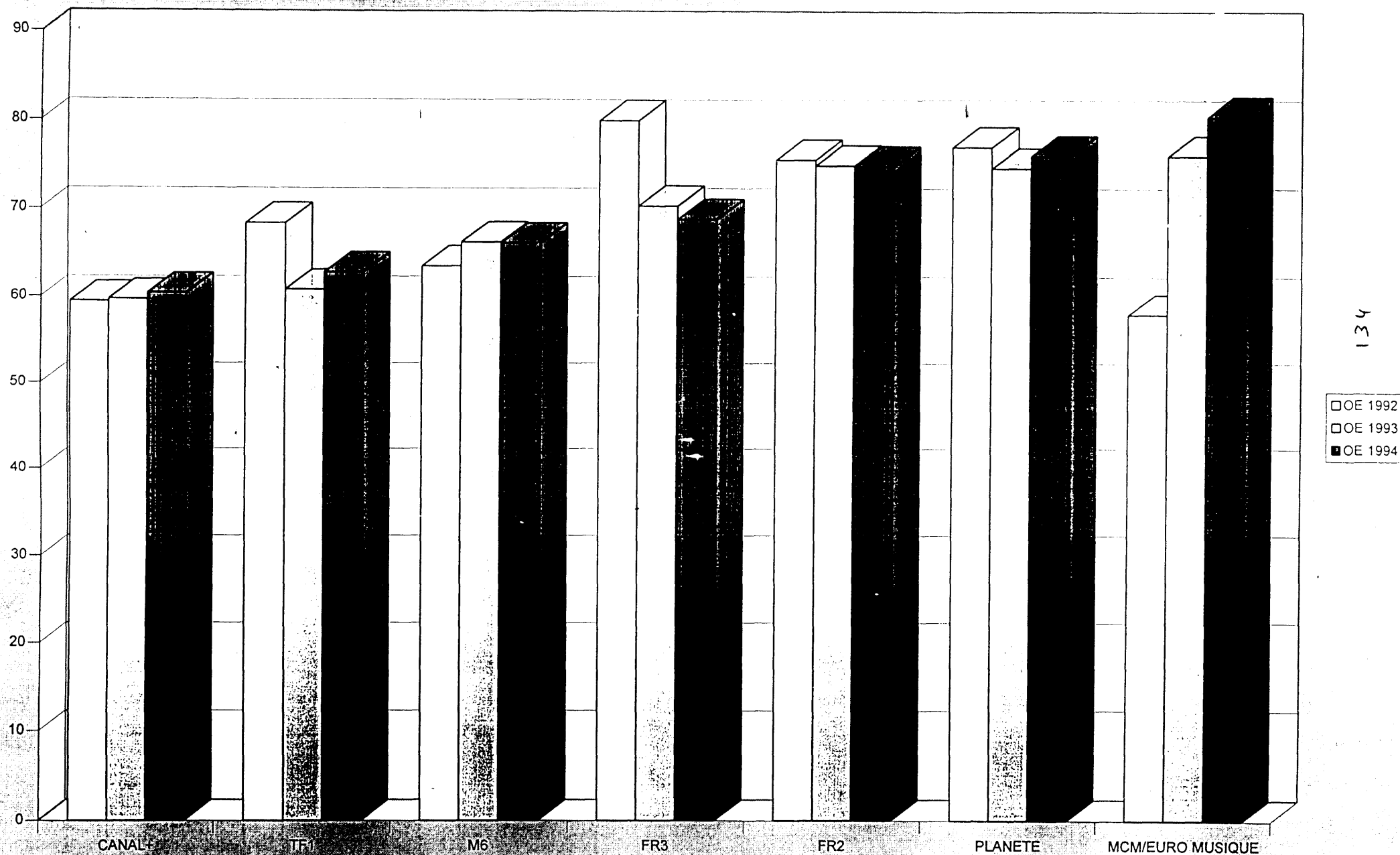


□ OE 1991 - 1992  
 □ OE 1993  
 ■ OE 1994

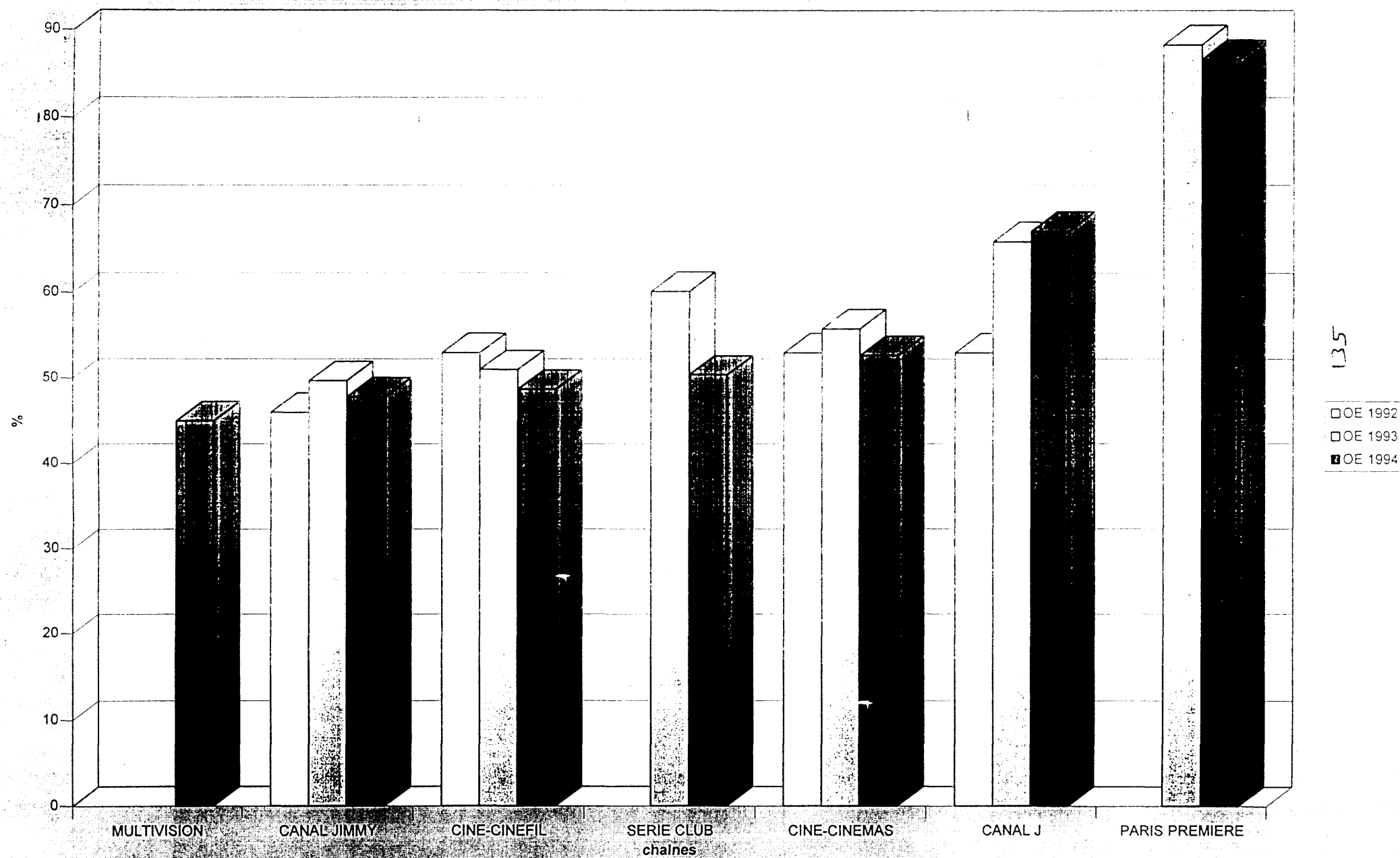




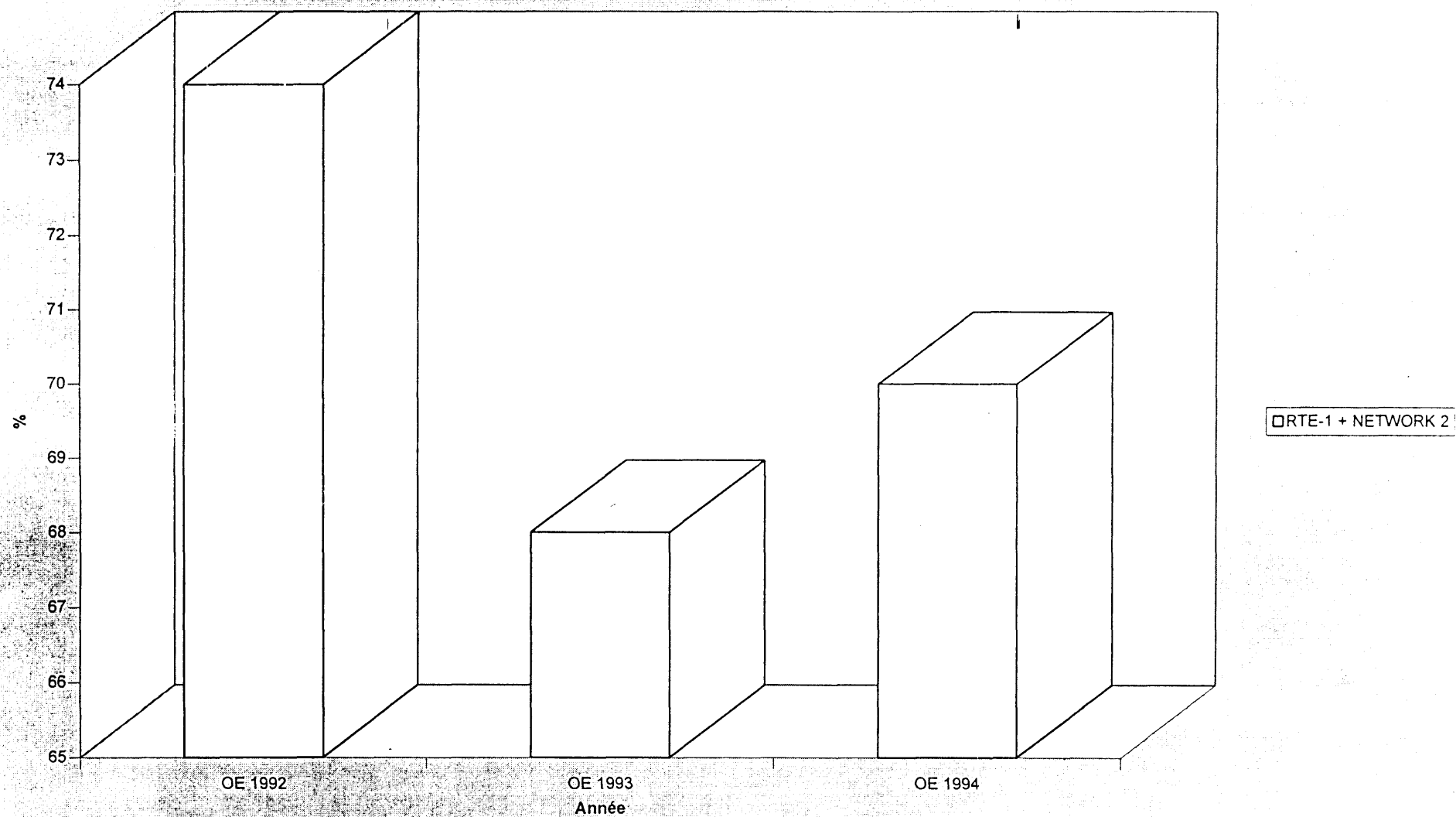
# FRANCE OE Période : 1992-1994 (partie I)

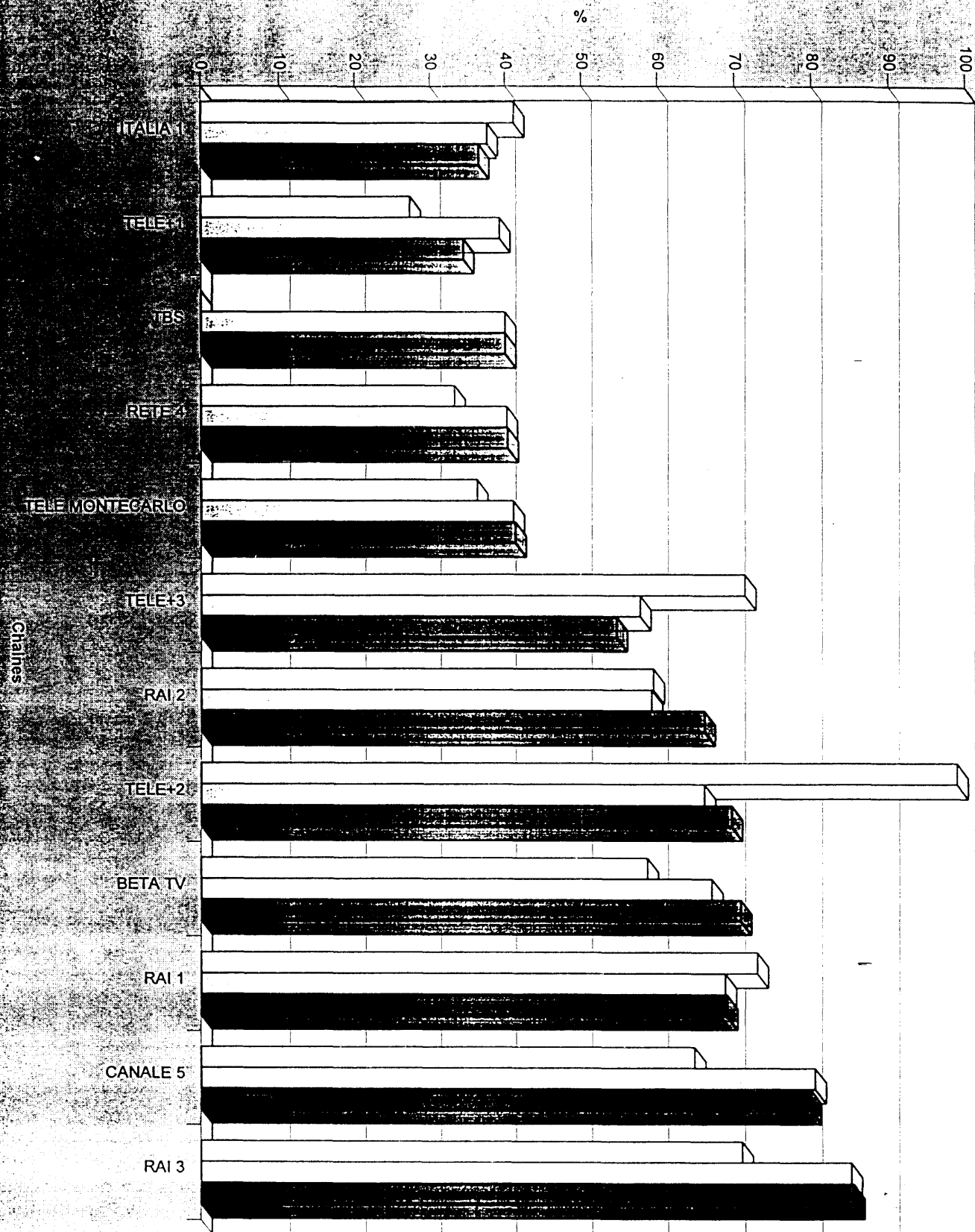


FRANCE OE Période : 1992-1994 (partie II)

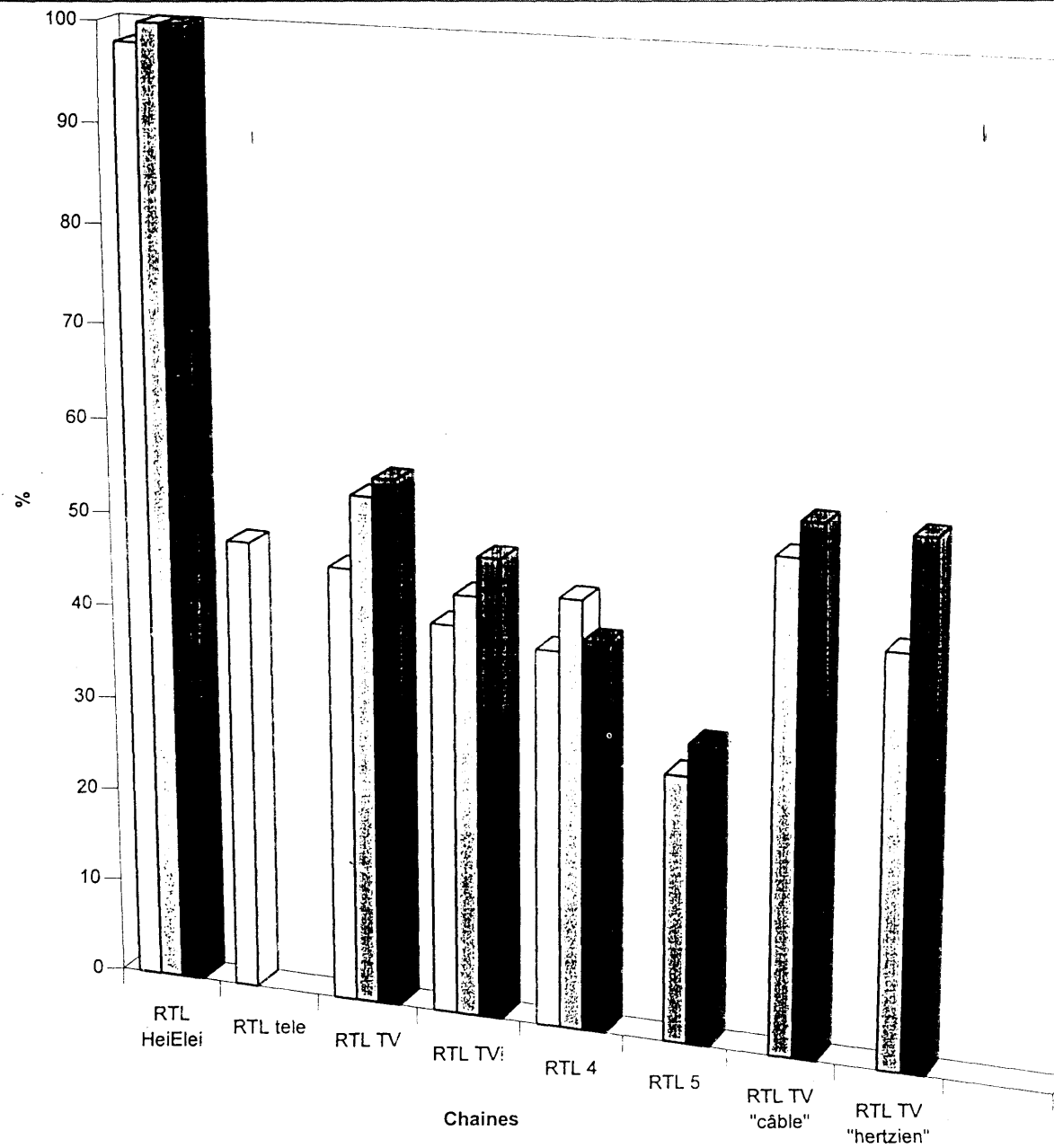


IRLANDE OE Période : 1992-1994



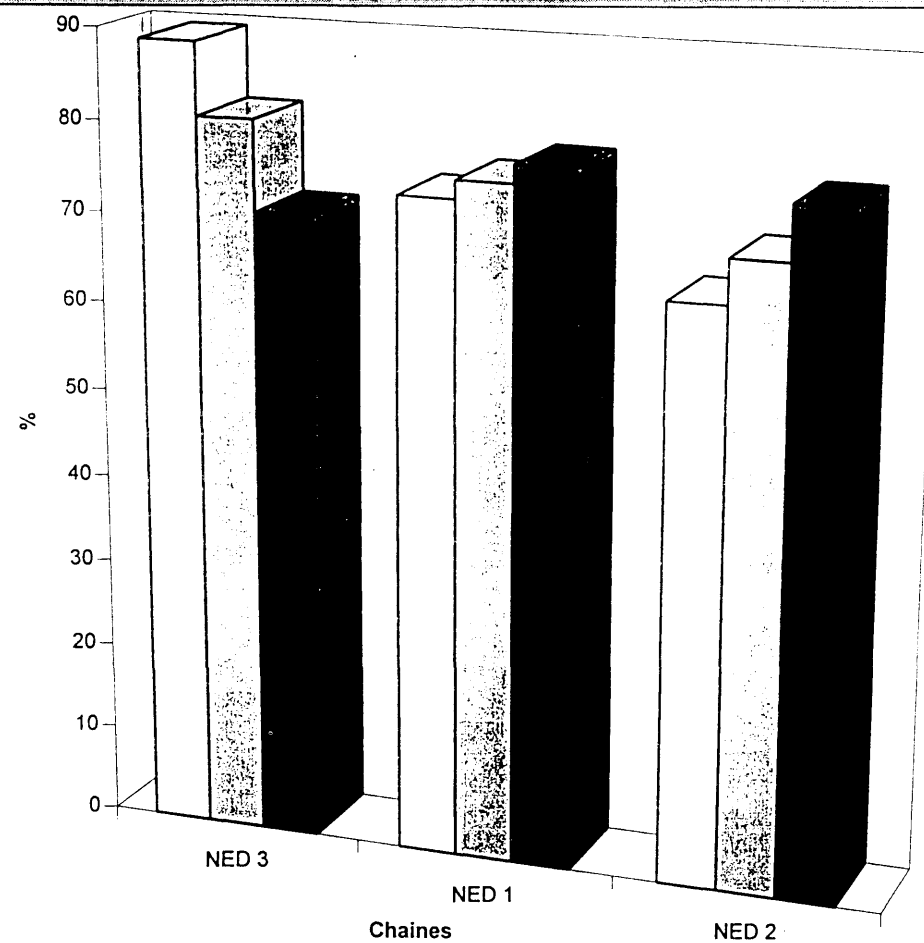


# LUXEMBOURG : OE 1992 - 1994



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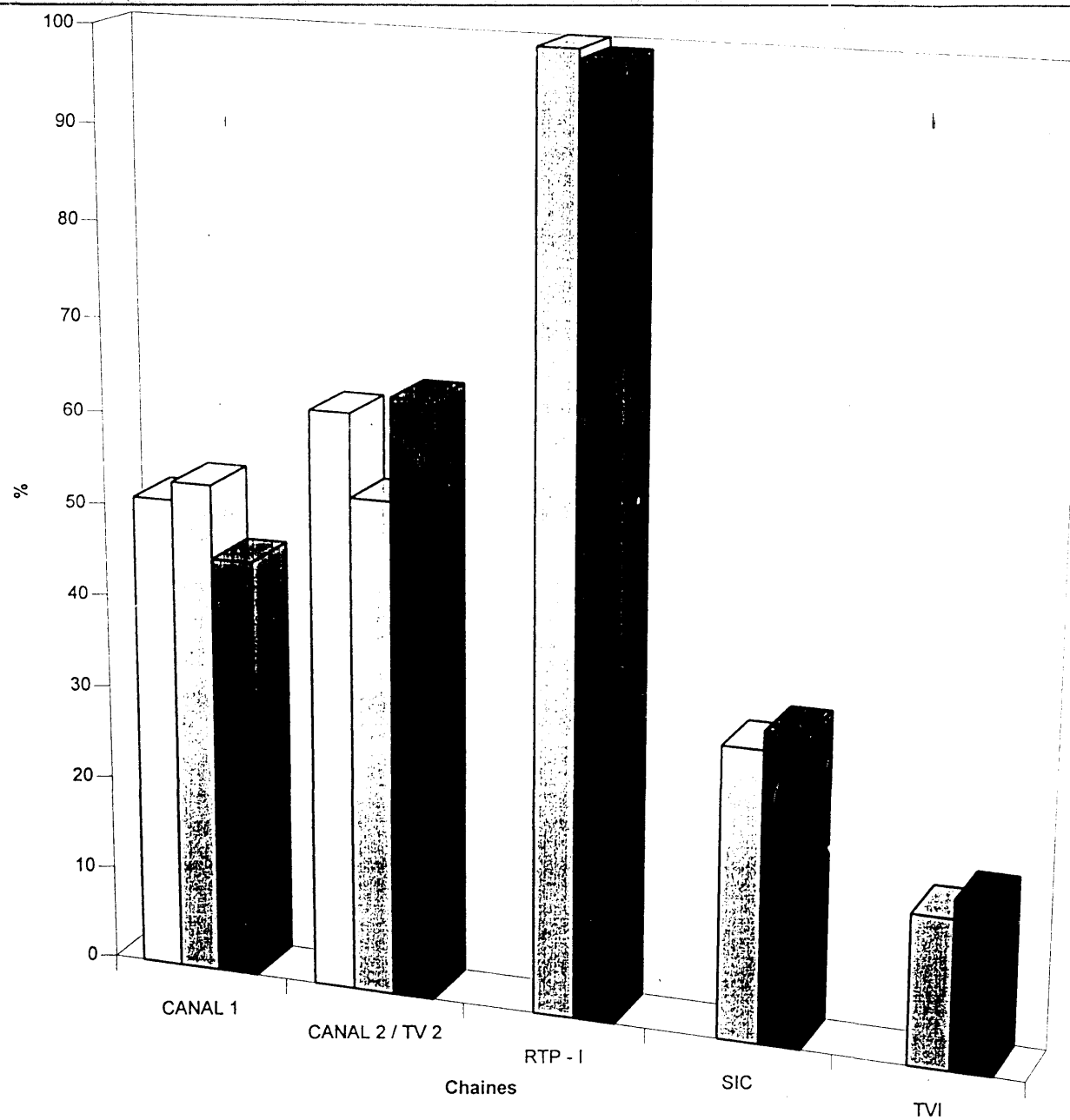
PAYS-BAS: OE 1992 - 1994



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□ OE 1992  
□ OE 1993  
■ OE 1994

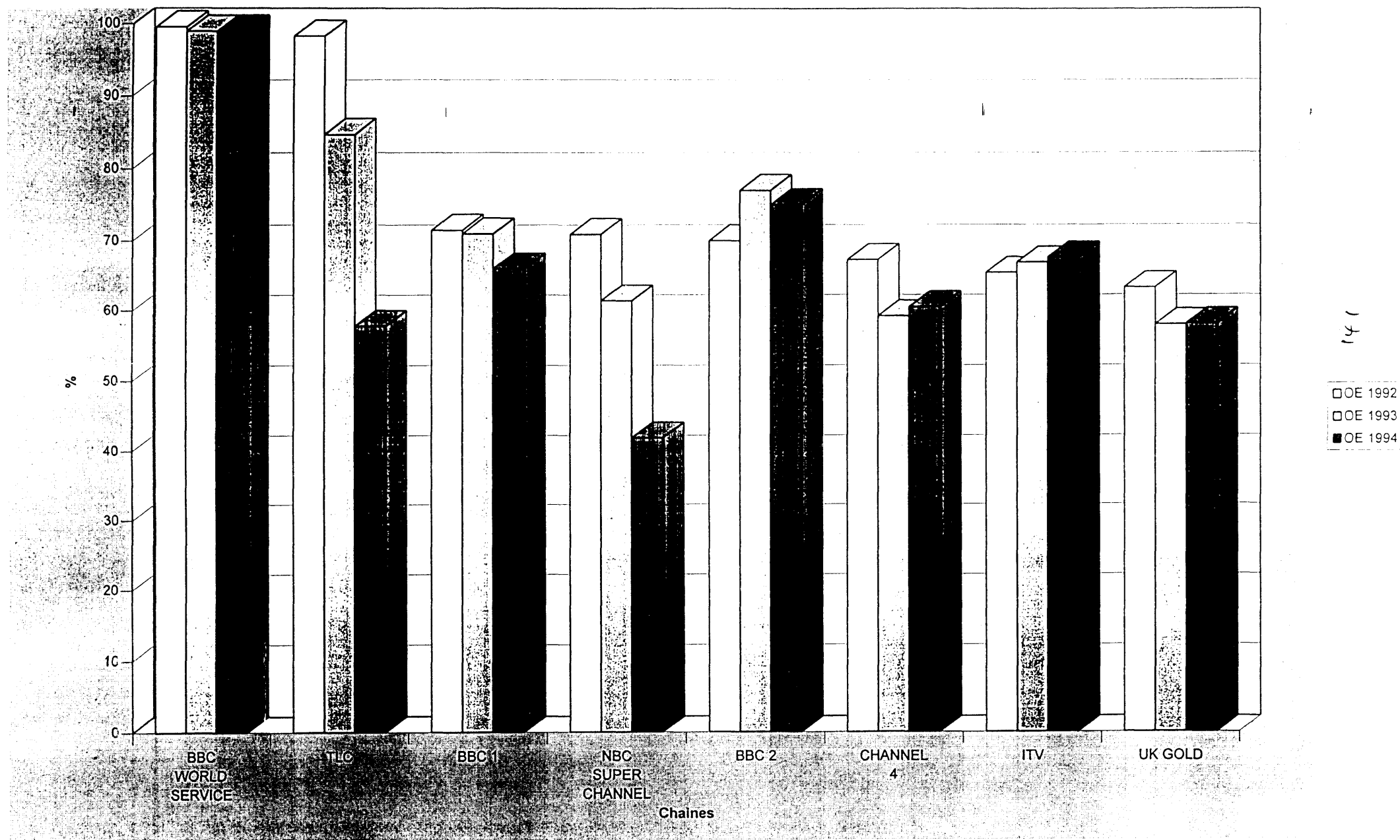
# PORTUGAL : OE Période 1991 - 1994



□ OE 1992  
 □ OE 1993  
 ■ OE 1994

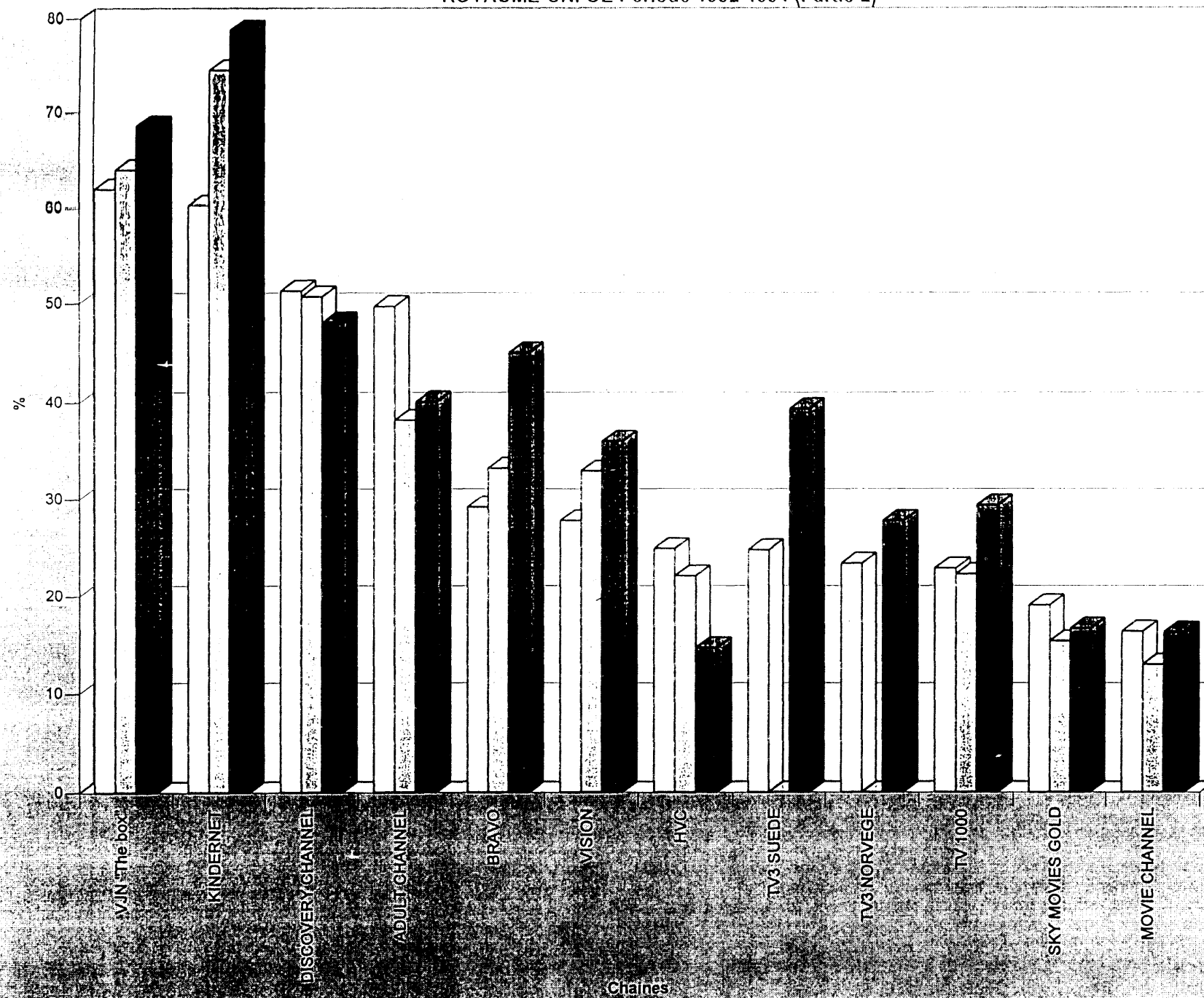
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# ROYAUME-UNI OE Période 1992-1994 (Partie 1)



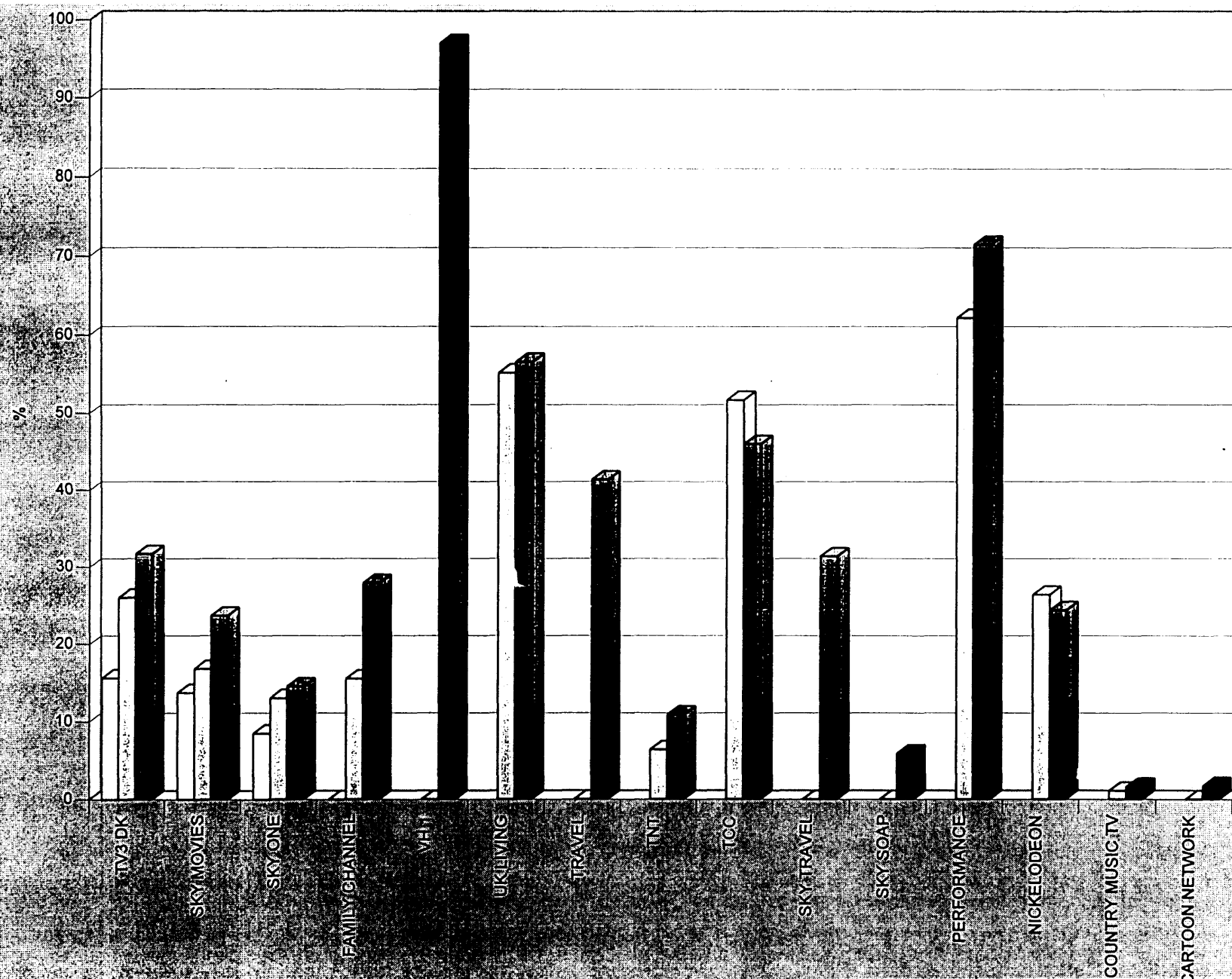
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ROYAUME-UNI OE Période 1992-1994 (Partie 2)



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# ROYAUME-UNI OE Période 1993-1994 (Partie 3)



□ OE 1992  
 □ OE 1993  
 ■ OE 1994

## **ANNEX 3**

**LIST OF CHANNELS NOT ACHIEVING  
A MAJORITY OF EUROPEAN WORKS**

Percentage by which 51% not achieved.

Abbreviations

C = in compliance

A = figures absent

(bas) = channel which is part of a basic service for a cable network or satellite service.

Country	Channel	Ownership	Average shortfall		Programming
			93	94	
Belgium (French Cty)	RTL-TVi	private	6.4	2.2	general
	Canal+	private/paying	5.5	4.3	general
Belgium (Flemish Cty)	VTM	private	8	6	general
	Filmnet Plus	private/paying	25	27	thematic/films
	The Complete Movie Channel	private/paying	33.5	36.4	thematic/films
Spain	Canal+	private/paying	10	9	general
	ANT-3	private	3	2	general
France	Canal Jimmy	private/(bas)	1.3	3.2	thematic
	Multivision	private/PPV	-	6	
	Ciné-cinéfil	private/paying	C	2.3	thematic/films
Portugal	Canal 1	public	C	6	general
	SIC	private	20	18	general
	TVI	private	35	33	general

Sweden	TV4	private	-	2	general
	TV1000	private/paying	-	22	thematic/films
	Filmnet/The Complete Movie Channel	private/paying	-	48	thematic/films
Finland	MTV 3	private	-	4.1	general
Norway	TV2	private	-	26.8	general
	TV Norge	private	-	29.7	general
Italy	Italia 1	private	13.3	14.5	general
	Rete 4	private	10.8	10.7	general
	TBS		11	11.1	
	TeleMontecarlo	private	10	9.1	general
	Telepiu 1	private/paying	11.8	16.6	thematic/films
Luxembourg	RTL4	private	5.7	9.9	general
	RTL5	private	22.8	19.4	general
	RTL TVi	private	6.41	2.23	general
	RTL TV (H)	private	7.92	C	general
Netherlands	Multichoice NL	private	A	A	thematic/films
Germany	KABEL 1	private	38.8	35.9	thematic
	PRO 7	private	11.6	7.8	thematic/films
	RTL 2	private	13	14.9	general
	SAT 1	private	C	3.9	general
	VIVA TV	private	-	9	thematic

United Kingdom	The Adult Channel	private/paying	12.8	10.9	thematic
	Bravo	private/paying	17.8	5.9	thematic/films
	The Cartoon Network	private/(bas)	-	49.3	thematic
	The Discovery Channel	private/(bas)	C	2.9	thematic
	The Family Channel	private/(bas)	35.5	23.1	thematic
	HVC	private	28.9	36.3	thematic
	TV 1000	private/paying	28.7	21.6	thematic/films
	TV 3 DK	private	25	19.3	general
	TV 3 N	private	-	23.2	general
	TV 3 S	private	-	11.6	general
	Vision	private	18.1	15	thematic
	Travel	private	-	9.6	thematic
	TNT	private/(bas)	44.6	40.1	thematic/films
	TCC	private/paying	C	5	thematic
	Sky Travel	private/(bas)	-	19.6	thematic
	Sky Soap	private/(bas)	-	45.1	thematic
	Sky One	private/(bas)	38	36.5	general
	Sky Movies	private/paying	34.2	27.3	thematic/films
	The Movie Channel	private/paying	38	34.7	thematic/films
	Sky Movies Gold	private/paying	35.6	34.3	thematic/films
	NBC Super Channel	private	C	9.1	general
	Nickelodeon	private/paying	24.6	26.6	thematic

## **ANNEX 4**

# CHANNELS NOT ACHIEVING THE TARGET FOR INDEPENDENT PRODUCTIONS

Percentage by which 10% not achieved.

## Abbreviations

C. = in compliance

A = figures absent

(bas) = channel which is part of a basic service for a cable network or satellite service.

Country	Channel	Ownership	Average shortfall		Programming
			93	94	
Belgium (Flemish Cty)	TV 1	public	1.8	1.1	general
	The Complete Movie Channel	private	A	A	thematic/films
Germany	RTL 2	private	9	7.8	general
	VIVA TV	private	-	8.5	thematic
Spain	ANT-3	private	2.4	C	general
	ETB-2	public	3.7	6.5	general
	TV-3	public	8.66	8.07	general
	TV-33	public	5.8	4.8	general
	TVG	public	0.5	C	general

Italy	RAI 1	public	2.85	1.34	general
	RAI 2	public	4.6	6.63	general
	RAI 3	public	2.97	2.38	general
	Canale 5	private	10	10	general
	Italia 1	private	10	10	general
	Rete 4	private	10	10	general
	TeleMonteCarlo	private	0.55	C	general
	Telepiu 1	private/paying	A	A	thematic/films
	Telepiu 2	private/paying	A	A	thematic
	Telepiu 3	private/paying	A	A	thematic
Luxembourg	Hei Elei	private	8.1	C	general
Netherlands	Multichoice NL	private/paying	A	A	thematic/films
Portugal	TV1	private	6	5	general
United Kingdom	BBC World Service	public	C	1	general
	Bravo	private/paying	8.5	A	thematic/films
	The Cartoon Network	private/(bas)	-	8.3	thematic
	The Family Channel	private/(bas)	4.6	C	thematic
	HVC	private	0.3	7	thematic
	TNT	private	3.6	C	thematic
	Sky Soap	private/(bas)	-	A	thematic
	Sky One	private/(bas)	4.5	1.5	general
	Sky Movies	private/paying	2.6	C	thematic/films
	The Movie Channel	private/paying	1	C	thematic/films
Sweden	TV 1000	private/paying	-	A	thematic/films

Finland	TV 1	public	- 3	general
Norway	TV Norge	private	- 0.8	general

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