

36. The table referred to above²⁷ illustrates that not only does *TIME Canada* not provide content directed to the market for which it is produced, it does not need to rely on advertising revenues to underwrite the cost of editorial content. These costs have been covered by the higher priced magazine sold in the much larger home market. As a result of being able to rely on the pre-paid editorial content of its parent *TIME*, the advertising income that *TIME Canada* siphons from the Canadian market appears to be pure revenue unmatched with the editorial expenses usually incurred in producing a magazine for a particular market. The diversion of advertising revenues from a market without the provision of any corollary editorial benefit to the market is exactly the practice that the *Excise Tax Act* provisions are designed to discourage.

37. The *Excise Tax Act* is carefully designed to deal with a particular combination of circumstances. What it targets, very simply put, is the combination of recycled editorial content plus Canadian advertisements. This combination, because the crucial input of content comes with minimal cost, is destructive of fair competition in the market place. Split-run editions of magazines compete unfairly for advertising revenues with regular magazines, since their editorial costs are largely paid for in their original market. Canadian magazines derive approximately 60 per cent of their revenues from advertising and such an unfair competitive practice would have a deleterious effect on the production of editorial material created for the Canadian market.

38. It is not Canadian public policy to restrict either the importation or the circulation of foreign magazines. The *Excise Tax Act* does not have that effect. It is based upon a public policy purpose that has nothing to do with trade protectionism.²⁸

4. The principle of national treatment does not apply to the commercial postal rates charged by Canada Post

39. As explained in Canada's First Submission, Canada Post Corporation's commercial publication rates are set on the basis of generally accepted commercial and marketing considerations that exist in a competitive environment. They are not influenced by government policy. Canada Post does not have a monopoly over the delivery of publications. Foreign and domestic customers are free to use competing delivery channels. As in all open and competitive markets, all customers have the ability to negotiate rates in a manner reflecting their purchasing power.²⁹

²⁷ *Supra* note 16.

²⁸ In response to Question 8 of the Panel, Canada adds that the effect of the *Excise Tax Act* is not to direct advertising revenue to Canadian magazines but to direct advertising revenue away from split-run publications. The split-run publications that the advertising revenue is directed away from are both Canadian and imported publications without distinction.

²⁹ Canada's First Submission, paras. 104-113.