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Birdsville act 'a bad deal for consumers'

Matthew Franklin, Chief political correspondent | *September 04, 2008*

THE consumer watchdog has warned of perverse outcomes for consumers under a Trade Practices Act provision requiring it to prosecute small business operators who cut costs to compete with much larger competitors.

The Australian Competition and Consumer Commission has strongly backed a Rudd Government push to abolish the so-called Birdsville Amendment to the law, which is expected to be rejected in the Senate as early as today.

ACCC chairman Graeme Samuel has told the Government the Howard government amendment could dampen legitimate competitive behaviour that would benefit consumers. His comment came in a letter to Small Business Minister Craig Emerson, who last night said the advice was evidence that the Coalition's economic credibility was "in tatters".

The Birdsville Amendment was drafted by Queensland Nationals senator Barnaby Joyce in a pub in Birdsville as a means to protect small business from predatory pricing by big companies. It changed the Trade Practices Act to equate market power with market share -- a new concept in predatory pricing laws.

According to Mr Samuel's letter to Dr Emerson, obtained by The Australian, the amendment risks hurting the businesses Senator Joyce was trying to protect.

Mr Samuel wrote that the amendment had created confusion because market power and market share were "fundamentally different" concepts, and the latter was not always an accurate indication of the former.

Under the Birdsville Amendment, the smaller business could be prosecuted if it sold products at below cost to compete aggressively with its larger competitor.

Dr Emerson said Mr Samuel's advice confirmed that retaining the Birdsville Amendment would put small businesses in the firing line if they engaged in sustained price discounting.

"The Liberals are acting against the interests of consumers and small businesses, just to keep Barnaby Joyce from crossing the floor," Dr Emerson said.

Coalition finance spokesman Peter Dutton said the Opposition would reject the attempt to repeal the amendment in the Senate.

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