

# Welfare standard in antitrust

Lars Sørgaard, NHH and BECCLE

BECCLE, Wednesday 12.12.12



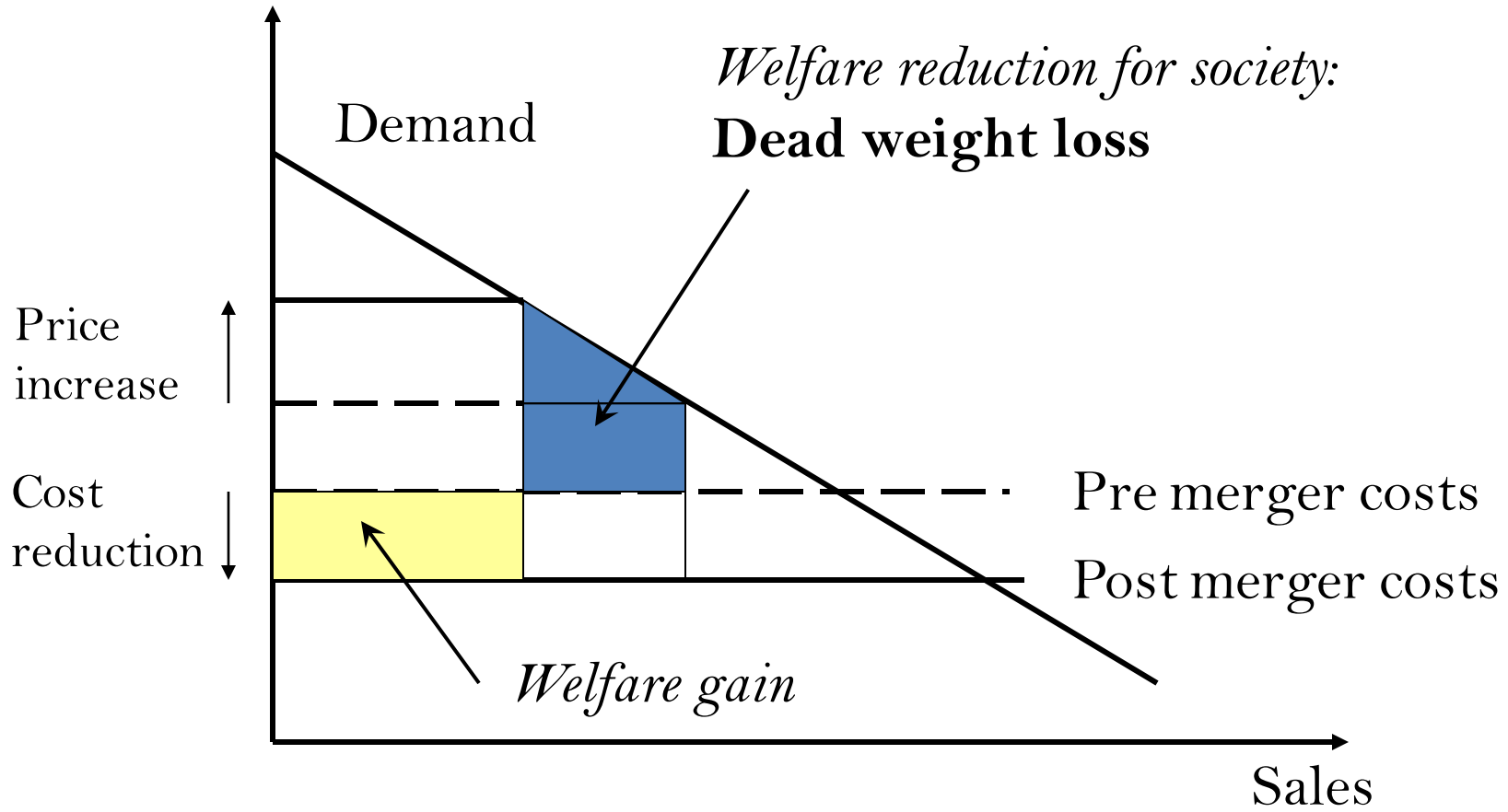
# Background

- Most countries use a consumer welfare standard
  - Harm for the consumers a necessary condition for intervention
- Norway is different, but only for merger control
  - We use a total welfare standard for merger control, but a consumer welfare standard for abuse and price fixing
- Konkurranselovutvalget proposed in February 2012 a consumer welfare standard also for merger control
- In public hearing many supported it, but not all
  - Some proposed no change (ex: Landbruks- og matdept.)
  - Konkurransetilsynet proposed a weighted welfare standard

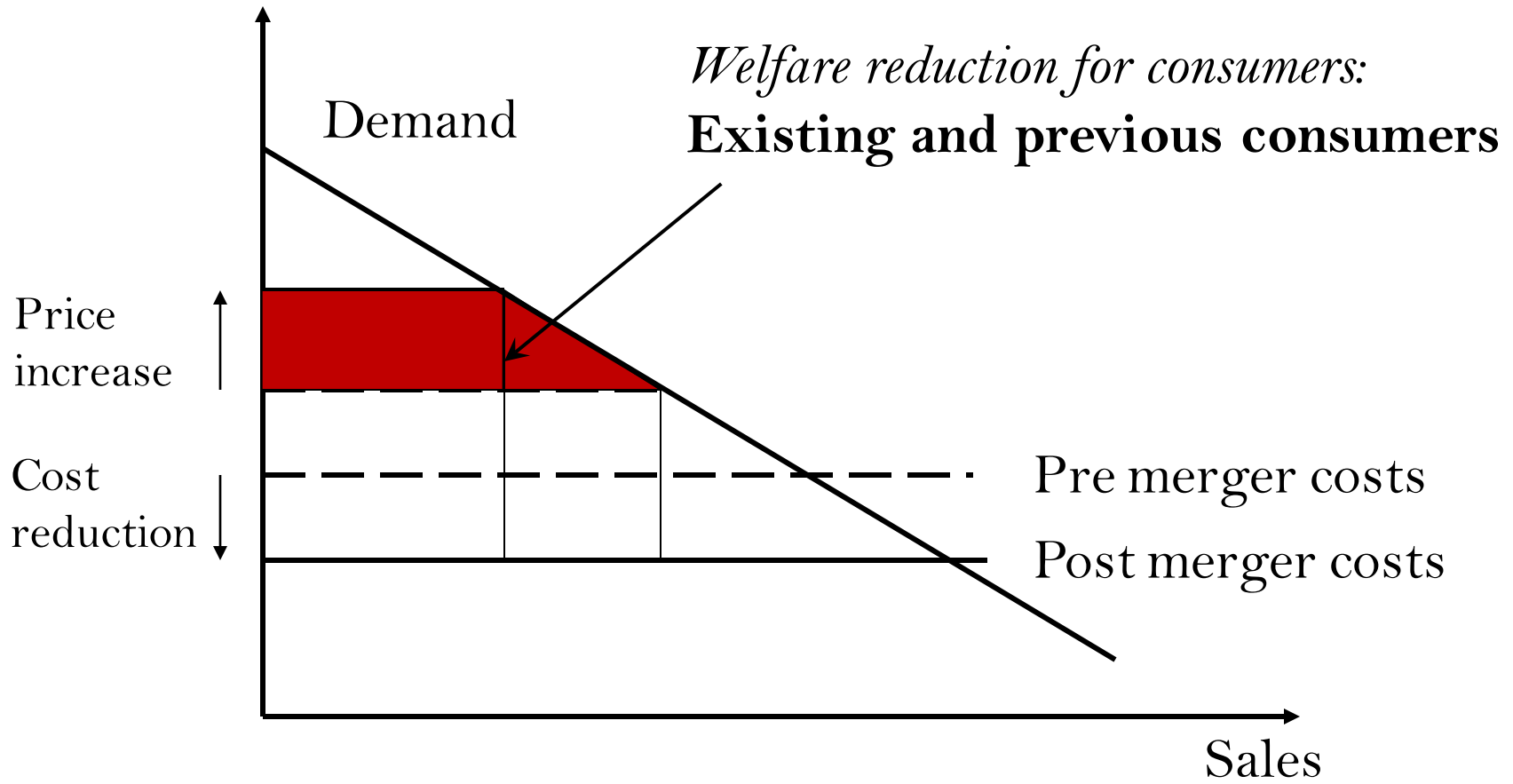
# The topic today

- Total versus consumer welfare standard
  - What is the main difference?
  - Total welfare as the overall goal?
- Pros and cons of a consumer welfare standard
  - Could such a welfare standard in specific cases help us to achieve highest possible total welfare?
  - What is the trade off?
  - Optimal with a weighted standard?

# Merger and total welfare

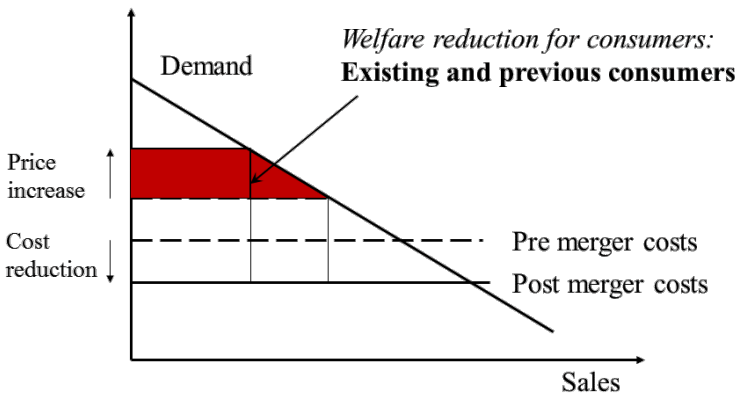
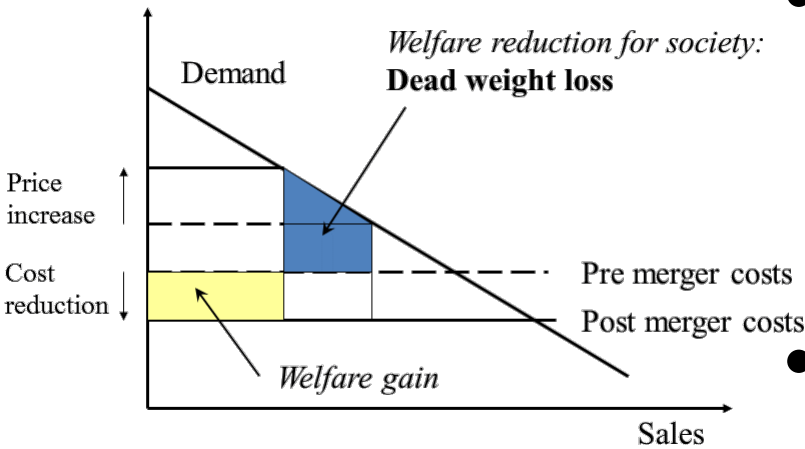


# Merger and consumer welfare



# A comparison – efficiency defence

- If no cost effect, in each merger case no qualitative difference:
  - Higher prices detrimental to total and consumer welfare
- But it matters for the efficiency defence :
  - Saving on fixed costs relevant (mostly?) with total welfare
  - Saving on marginal costs can play a role in both cases
    - Consumer welfare: Passed on to lower prices?



# Total welfare – overall goal?

- Public policy in general is about
  1. Making the cake as big as possible (for example, large gross national product)
  2. Split the cake in the ‘right ‘ way (income distribution)
- Some public policy measures will be targeted towards 1, and others towards 2
  - Ex.: Specific tax policy instruments targeted towards 2
- Competition policy could be targeted towards 1
  - Secure efficient markets; big cake in each market
- Then other public policy measures to target # 2
  - Ex.: Tax policy

# Total *and* consumer welfare?

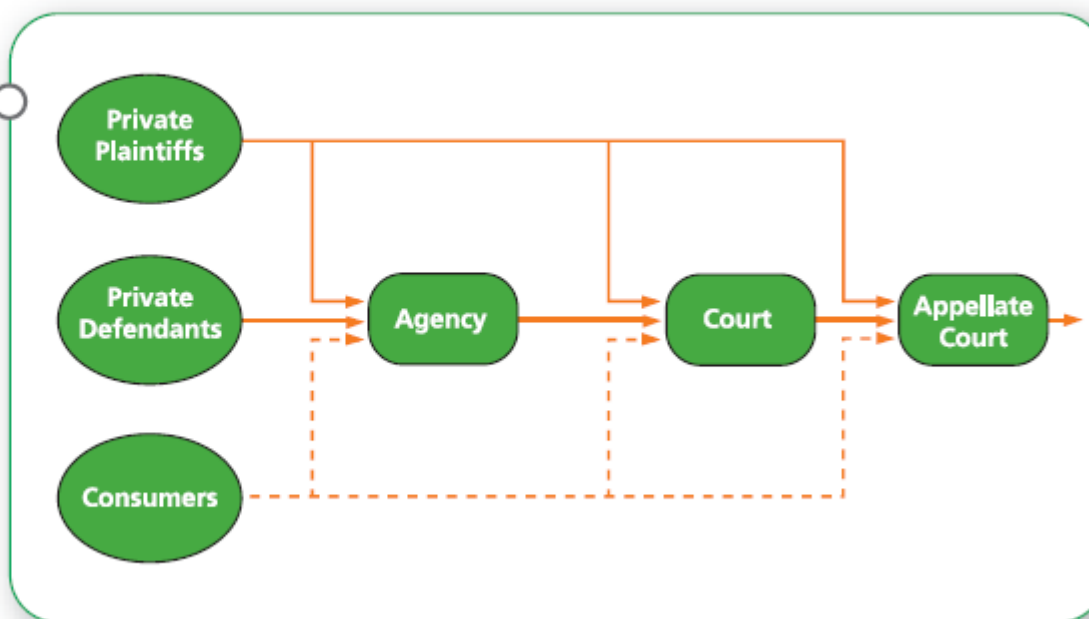
- Good arguments for total welfare as the overall goal
  - Competition policy targeted towards creating efficient markets, and other measures used to redistribute
- But even then, not so obvious that competition authorities should have total welfare as the goal
  - A different standard as a commitment, to change firms' and other players incentives and thereby behaviour?
- There are arguments for instructing competition authorities to be concerned about consumer welfare
  - Could improve total welfare by asking competition authorities to block mergers that harm consumers



# (1) An unequal balance of power?

**Figure 1**

An agency or court is one component of a complex system



- Final consumers less organized than special interest groups?
  - Consumer welfare standard corrects the imbalance?
  - Stop false negatives (clearance of harmful mergers)?

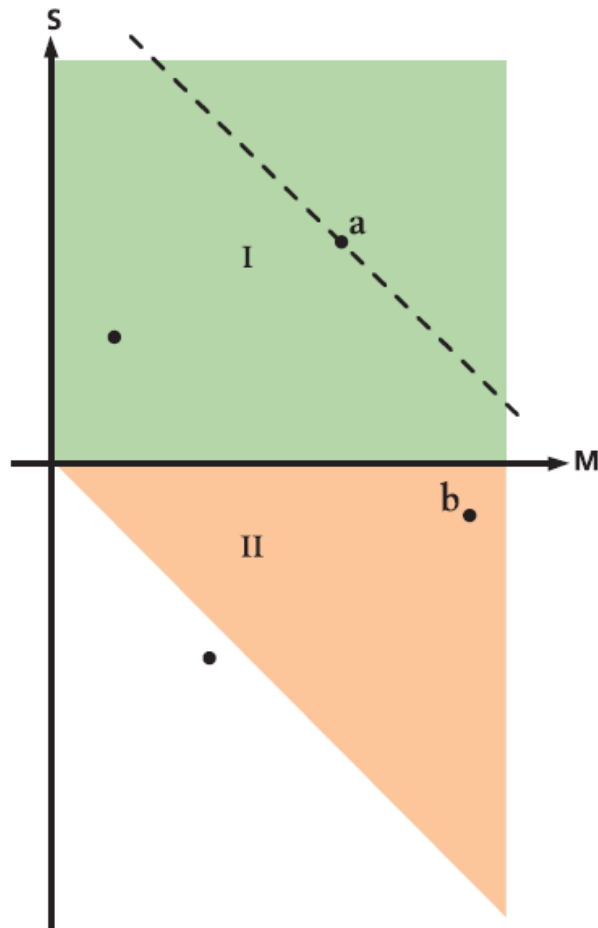
## (2) Information asymmetries?

- Even modest cost savings can lead to increased total welfare (cf the limited size of the dead weight loss)
- The merging parties will have private information about the potential for cost savings
- If total welfare, this can lead to false negatives (clearing harmful mergers) to avoid false positives
- Consumer welfare standard can counteract this bias, and lead to fewer false negatives
  - A practical point: KT's very restrictive stand on cost savings is a de facto consumer welfare standard?

## (3) The merger dynamics

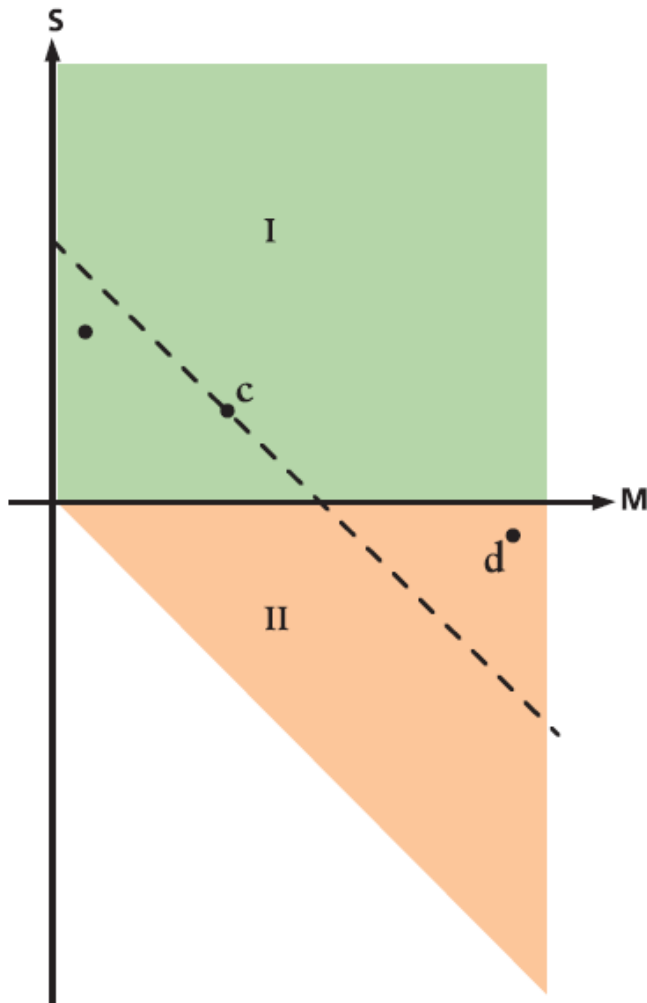
- No merger is often not an alternative, but rather another merger
- A shift from total to consumer welfare can lead to other and more benign mergers being proposed
- Can lead to higher total welfare
- Let us illustrate with Lyons (2002) model
  - $M$  = Profit increase for the merging parties
  - $R$  = Profit increase for the non-merging parties
  - $S$  = Increase in consumer surplus
  - Total welfare  $W = M + R + S$
  - To simplify, let us assume that  $R = 0$

# Positive merger dynamics?



- If total welfare:
  - Proposes **b**
- If consumer welfare:
  - Proposes **a**
- Higher total welfare at **a** than at **b** (see dotted line)
- A shift to consumer welfare leads to a higher total welfare
  - The alternative is not ‘no merger’

# But it all depends ...



- The firms are forced to go for the 'wrong' merger
  - $c$  instead of  $d$
- Lower total welfare
- Example:
  - Bans a merger with large savings of fixed costs
  - Any examples of  $d$  in Norway?

# Many mergers with cost savings?

- In some instances it should not matter with a shift from total to consumer welfare standard
  - If no cost savings, a shift should not matter
  - If marginal cost savings, could be passed on to consumers
  - If ‘new’ industries, changes in fixed costs should matter for consumers through innovation
- The empirical literature does not indicate that large cost savings following mergers are very common
  - Mergers may even lead to higher costs
  - The exception is the market for corporate control, but those acquisitions are not expected to be anticompetitive

# Consumer welfare in practice?

- Apparently, very few examples where it matters?



The screenshot shows the website of the Norwegian Competition Authority (KONKURRANSE-TILSYNET). The main article is titled "Panorama får kjøpe Bordsølv". The text discusses a merger between Panorama (Th. Martinsen Sølvvarefabrikk AS) and Bordsølv AS. It mentions that the competition authority has approved the merger, but notes that it is not clear if there is a basis for intervention. The text also states that the competition authority has received information from the merging parties and that the merger will have a positive effect on efficiency and consumer welfare.

**KONKURRANSE-TILSYNET**  
The Competition Authority

English Bokmål Nynorsk Nettstedskart Presse Kontakt oss a a a

Ulovlig samarbeid Misbruk av dominans Fusjoner og oppkjøp Vedtak og uttalelser Regelverk Om oss Aktuelt Publikasjoner Kraftpriser

**Meny**

- Nyhetsarkiv
- Artikler og innlegg
- Høringer
- ECN Brief
- Faglige aktiviteter
- Nyhetsbrev på e-post

**Panorama får kjøpe Bordsølv**

Konkurransetilsynet godkjenner at Panorama (Th. Martinsen Sølvvarefabrikk AS) får kjøpe Bordsølv AS. Etter en samlet vurdering har tilsynet kommet til at det ikke er grunnlag for å gripe inn mot oppkjøpet.

Konkurransetilsynet mottok alminnelig melding om oppkjøpet 2. juni 2006. Tilsynet påla partene å levere fullstendig melding, og denne ble mottatt 17. august.

Slik Konkurransetilsynet vurderer konkurransesituasjonen, kan oppkjøpet føre til at konkurransen svekkes. Panorama har imidlertid dokumentert at oppkjøpet vil gi samfunnsøkonomiske effektivitetsgevinster, og etter en samlet vurdering har Konkurransetilsynet kommet til at disse oppveier de mulige negative virkningene oppkjøpet kan ha på konkurransen.

Konkurransetilsynet finner dermed ikke grunnlag for å gripe inn mot oppkjøpet.

- In practice almost no scope for an efficiency defence?
  - KT requires ‘documentation’ of costs savings, and often those requirements not met by the merging parties
  - FAD has a tradition to assume that all potential profits are wasted, and KT has copied that mechanic approach
- If no efficiency defence, we have a consumer welfare standard (or something even more restrictive!)

# Pros and cons of consumer welfare

## **CW standard problematic?**

- More false positives
  - Mergers with large fixed costs are banned
- ‘Consumers’ an unclear concept?
  - Final consumers, or also intermediate consumers
  - Confusing EU guidelines?

## **CW standard beneficial?**

- Fewer false negatives?
  - Less scope for lobbying
  - Information asymmetries reduced
- Improved merger dynamics
  - They go for other mergers, that are less harmful?
- De facto standard becomes the de jure standard
  - Cf. documentation and waste
- Harmonization with other jurisdictions



# Konkurranselovutvalgets proposal

- No change in Section 1 in present competition law:

*‘The purpose of the Act is to further competition and thereby contribute to the efficient utilization of society's resources.*

*When applying this Act, special consideration shall be given to the interests of consumers.’*

- But a new interpretation:
  - First part: The overall goal is total welfare (as before)
  - Second part: The agencies should apply a consumer welfare standard in the case handling

# A weighted standard?

- Why not have an open door for total welfare in some cases (large fixed costs savings)?
  - In line with Konkurransetilsynets proposal
    - ”Vektet totalvelferdsstandard – der konsumentenes interesser veier tyngre enn produsentenes interesser”
    - ”Effektivitetsgevinstene må være *vesentlig* større enn de tap som eventuelt påføres konsumentene”
    - ”Unntaket bør formuleres som en ’kan-regel’”
- But such a weighted standard the worst alternative?
  - No longer commitment to consumer welfare standard, so potential gains are lost (cf. Point 1-3 above)
  - Large discretion to KT and not very transparent;
    - When will the ”kan-regel” be used and what are the weights?