Is Competition policy necessary?

Competition policy is defined as being, government policy to influence the degree of competition in individual markets within the economy. It aims to promote efficiency and protect the interests of the consumer

There are four main bodies set up in the UK with the task of monitoring firms,
-The Office of Fair Trading, headed by the Director General of Fair Trading (DGFT) has strong new powers to impose penalties on companies that breach the Competition Act 1998. In addition it keeps watch on UK, EC and international monopolies, mergers, restrictive agreements and anti-competitive practices. The DGFT advises the Secretary of State seeks undertakings from firms where necessary and can act directly to deal with certain practices.
-The Competition Commission has two main functions: it investigates and reports on matters referred to it by the Secretary of state or the DGFT (and in some cases the utility regulators); and the Appeal Tribunals of the Commission hear appeals against decisions of the DGFT under the Competition Act 1998.
- The Secretary of State for Trade and Industry who has overall responsibility for competition policy in the UK, takes the final decision to stop or change anti-competitive behaviour (including mergers) in the UK under the Fair Trading Act 1973. The Competition Policy Directorate advises the Secretary of State.
-The European Commission (Directorate General for Competition) has exclusive powers to act on certain large mergers with a European dimension. It also has powers to deal with restrictive agreements and anti-competitive practices when trade between members of the European Community, or in some cases the European Economic Area (EEA), is affected.

In addition a number of Sectoral Regulators (utility regulators and others) have a specific role to play in promoting or facilitating competition within their sectors. Some of these regulators also have the power to apply the Competition Act 1998 concurrently with the OFT. Examples of these regulators with such 'concurrent powers' are:

- Ofgem - in the energy markets
- Ofwat - in the water industry
- Oftel - in the telecommunications sector
- ORR - for railway services
- CAA - in relation to air traffic services

UK competition policy is generally pragmatic, e.g. it appreciates the potential gains as well as costs of monopoly power, and it investigates each case on its own merits. In the UK and EU, unlike the USA, monopolies are allowed as long as the firm does not engage in anti-competitive practices, which for instance, raise prices for customers, restrict supply, discourage innovation or damage competitors. It is therefore necessary for a body to overlook the habits of firms and confirm that none of the practices mentioned above are being used.

The 1998 competition act gave greater power to the authorities to hinder monopolies, where the authorities had been accused of being too weak in the past.

The competition commission has been criticised for adopting different standards from investigation to investigation. This is a result of the commission being made up of part time members who change for each investigation. No two reports are written by the same group of people.

The government has been accused of manipulating competition policy to serve its own political ends. It may have sometimes not stepped in perhaps where it should have done on occasion perhaps because of the impact on jobs or exports.

Firms have tended to lose little if found to be involved in anti-competitive practices. Typically they have been asked to modify their behaviour but little other action has been taken.

It is hoped that the 1998 competition act will tighten competition policy, firms may have to face large fines if proven guilty. Both in the EU and the USA firms have been issued fines of million of pounds and sometimes been forced to pay compensation.

These tighter regulations on competition policy may be necessary for firms to break into a market where there has previously been monopoly power.

With reference to past cases, describe what aspects of monopolies and mergers are investigated

Competition policy is based on the assumption that possession of the market power is not in itself necessarily a bad thing as long as it is not against public interest. What has to be considered is how market power is used and the behaviour of firms is considered on a case by case basis. Many aspects of monopolies must be investigated in order to decide on whether a firms conduct is unlawful or against public interest. A number of questions are asked of companies to do this. Three main aspects of market power are targeted, these are

- How existing monopolies and oligopolies behave
- The growth of market power through mergers
- Oligopolistic collusion

Various acts have been passed to help the regulatory bodies decide what aspects of monopolies and mergers should and should not be permitted. This also helps the bodies to keep consistency in their settlements.

The 1948 act Monopolies and restrictive practices) decided that monopolies are to be investigated on an individual basis. It is not assumed that they are always acting either for or against public interest. The 1956 act (restricted trade practices) established that firms are obliged to register any restrictive practice agreements; these are assumed to be against the public interest unless those involves can justify them to the restrictive practices court. In 1964 an act was passed to prohibit minimum resale prices and in 1965 it was agreed that mergers could be investigated. The 1973 fair trading act created the office of Director General of Fair Trading. Monopolies can now be referred if they have 25% of the market (previously 33%). Nationalised industries can be investigated. Local not just national monopolies could now be investigated. In 1980, the competition act passed aims to deal with anti-competitive practices by firms, for example

- Predatory pricing – Selling products at a loss to drive out competitor
- Full line forcing – Making retailers buy the whole product range even if they only want one product
- Exclusive supply – Selling to only one outlet in an area

One area of particular concern to the commission is the pricing policies of dominant firms. The questions of interest to the commission include, for example: has the firm abused its market power by charging unreasonably high prices and securing excessive profits? Has it created its profitability and position of market dominance by price discrimination?

A common complaint of the commission is of the high level of profits earned by dominant firms, this is often considered to be against public interest. It can be quite difficult to assess profits and keep to the same consistent guidelines so as not to be unjust. The profits of a dominant firm will be measured, the commission is then required to form a view to its reasonableness or otherwise. The commission puts the observed profit rate into perspective by comparing it with the average rate of return put on capital employed or manufacturing industry in general. In an investigation into Indirect electrostatic reprographic

equipment, the commission, while conceding that Rank Xerox's profits were exceptionally high concluded that "Such profits would not have been made if the company had not been as efficient as we judge it to be".

In its investigation the commission has come across many examples of anti competitive practices used by dominant firms to distort, suppress or eliminate competition in order to maintain and enhance their own market position. For example in colour film, Kodak was criticised for confining the distribution of its colour films to certain appointed dealers

Price discrimination refers to the practice of charging different buyers different prices for the same product. This practice may assist suppliers to increase output and lower supply costs. On the other hand, price discrimination can be used to restrict competition and reinforce monopoly profits.

Another major area that needs to be regulated by the commission is that of the dominant firm's efficiency in supplying the profits. It asks many questions of the firm such as, is the firm cost effective as regards to its manufacturing and operations? Are supply costs as low as they could be? In investigating this point the commission accept that is impossible to apply any precise measurement on the efficiency of a company.

Where economies of scale are present, it is important that the firm's production is concentrated in plants of optimal size. The measurement of scale economies, like profit rates also presents difficulties. In cellulose fibres, it was estimated that the unit cost of a viscose staple plant with that of a capacity of 100m lbs. was half that of a plant with annual capacity of 35m lbs.

The points above are the main points investigated by the regulatory bodies in assessing the powers of large firms and whether its powers are all in public interest. Many of the large UK firms have established themselves as 'monopoly' suppliers by a policy of mergers or take-overs. There is an important set of regulations that need to be followed in this sector also. Many of these regulations are inforced by the MMC, the Monopolies and Mergers Commission. Much of the legislation for monopolies is applicable for mergers as well as it is often inevitably a monopoly that will form from the combination of two or more firms. However, as well as these, the below regulations are applicable also.

The monopolies and mergers commission is required to investigate and report whether or not a referred merger operates or might be expected to operate against public interest. In investigations the firms past conduct is looked at to establish evidence of abuse.

Usually any benefit that comes from a merger will depend on the achievement of greater efficiency in some branch of the enlarged firms operations. Important sources of greater efficiency may be distinguished.

While mergers may result in greater efficiency, thereby enhancing consumer welfare, they may also serve to increase market power. This is most clearly seen in horizontal and vertical mergers. Where the merging firms are already substantial sources of supply, this may reduce effective competition and permit the enlarged group more control over the market for its product and discretion over prices. The GKN – Birfield merger also involved the creation of a monopoly and re-established the position which had existed before 1959 when Birfield was the sole supplier of propeller shafts and constant velocity joints. The commission saw no danger in the merger because of the countervailing power of the group's main customers and their capacity for self-production if the need arose.