economic power in the hands of certain groups. If I remember correctly, in Canada, 46 per cent of all private corporations are concentrated in the hands of seven or eight families or financial groups. In these circumstances, Mr. Speaker, what I suggest is that the same mechanism must apply to the Imasco-Genstar transaction as to the Genstar-Canada Trust transaction. Otherwise, if we do not apply the same criteria to the two transactions, it might lead people to believe that there is a conflict between certain Ontario lobbies and interests in Quebec.

Mr. Speaker, this is what I wanted to say about the Imasco-Genstar transaction.

• (1150)

[*English*]

Mr. Vic Althouse (Humboldt—Lake Centre): Mr. Speaker, I think it might be useful in the few minutes that I have to review very quickly some of the provisions of Bill C-91. I am going to start by looking at the existing competition law, just to remind ourselves just how wretchedly ineffective it has been in policing the market-place. I want to quote two well known competition analysts, William Stanbury and Gill Reschenthaler who wrote this about our competition track record in Canada:

> The Canadian anti-combines legislation is quite properly viewed by practitioners and academics—in Canada and abroad—as relatively weak. Recent decisions have further weakened the law.
>
> The lack of sensitivity to the non-economic arguments for anti-trust enforcement and the concomitant absence of a fundamental distrust of economic power concentrations account, in large measure, for legislation which is largely behavioral in orientation and which relied exclusively on the criminal law until 1976.

This means we do not have either the motivation or the law to deal with competition issues, and the record bears this out. If we review the major aspects of our competition law we can see how barren the record of correction really is after 100 years of attempts at anti-competition law.

Let us look at that record. In all that time there has been one successful prosecution of illegal mergers, and I believe that was successful because the defendant pleaded guilty. There has been only one successful prosecution of monopoly of a market. Price discrimination is regarded by experts as unenforceable except under the most extreme conditions. What about conspiracy to fight fixed prices and share markets? This is regarded as weak, but workable, and has been found of limited use because of continuing court decisions. What about the question of misleading advertising and resale price maintenance? These have become a little more effective as a result of changes that were made to the Act in 1951 and again in 1969 respectively. There we have five major measures of an effective piece of legislation dealing with competition, and only two of them have been moderately effective. It has not been effective in legal mergers, monopoly of a market or price discrimination. When we get down to some of the market sharing and misleading advertising, we do occasionally find the legislation works on behalf of consumers.

There is no need to wonder why competition reform is necessary, or the reasons for bringing forth Bill C-91. What did we get? We do not seem to have the kind of remedies that are needed. We have recognized that the law courts do not seem to be a proper place for these kinds of cases to be dealt with. We have come up with a sort of halfway mixture of the tribunal and civil law procedures. We are not sure that this is going to solve the problem either.

How are we proposing to handle the monopoly or the abuse of a dominant position of a company that controls the market? In order to win a monopoly case the director of investigation and research now has to meet four basic tests. He must prove substantial control of a market; he has to prove that that control was exercised in a persistent and consistent manner; he has to prove that the anti-competitive act of that person or company means less competition; and the Crown has to prove that the practice that has been followed will lessen or prevent competition substantially. It is not clear what "substantial" means in the court.

Given these difficulties, meaning all four parts and the built-in defence that can be offered, that superior competitive performance brought these results about, means that many people who study this field say there is really little chance of a director winning any cases. Certainly Section 51 should be rigorously examined at committee level to ascertain whether its weaknesses mean that it will rapidly become just another inoperative section of the law.

We encounter the same problem in merger enforcement with this Bill. The director of investigation and research will have to demonstrate a "substantial" lessening of competition with another built-in defence that the merger brings "gains in efficiency". The defence is almost written into the Act by the method we have chosen in Bill C-91 to write the law. The confusion of the wording and the lack of any number of successful cases in past law do not give any ground for optimism for people who are worried about the competition field.

With regard to conspiracy, the third area of practice that we had hoped this law would be able to tighten up in favour of consumers and people in Canada, we find that price fixing, market sharing and restricting entry to competitors is at the heart of any competition law, and yet Canada's law in this area has been critically less effective in recent years.

It has been shown, for example, that prior to 1976 the Crown won close to 90 per cent of all conspiracy cases, but since that time the Crown has been winning just over 50 per cent. Bill C-91 does not really change the provisions of Section 32(1) to tighten this up, and we are continuing with a change in the Bill which does nothing to deal with the problem of conspiracies.

When we go into some analysis of conspiracy cases we find that the average fine has been about $71,000 for the period between 83 and 85, which means it has only kept pace with the