

September 14, 2009

The Honorable Eric Holder

Attorney General

United States Department of Justice

950 Pennsylvania Avenue

Washington D.C. 20530

Dear General Holder,

I am writing today to express my concern with the proposed acquisition of the second largest voting system company by the largest voting system company. Last week, Election Systems & Software Inc. (ES&S) announced that it plans to purchase Premier Election Solutions, Inc., a subsidiary of Diebold Inc. This acquisition may have serious adverse implications for how our country votes. Since this industry provides a product vital to American governance, I am asking that the Antitrust Division examine this acquisition carefully to make sure there is no anticompetitive impact on election officials, states, or voters.

There is a history of concern over lack of competition in this industry. In 1997, American Information Systems purchased Business Records Corporation and became the company now known as ES&S. At the time, the Department of Justice intervened and forced a divestiture of the optical scan voting equipment business to another company, Sequoia Voting Systems. The concerns over consolidation have not abated in the past decade; in fact, the number of voting systems manufacturers is continually decreasing.

Elections are run by state and local election officials. Counties and cities have to purchase voting systems to count the ballots. A county may not be able to negotiate effectively against a company that controls the vast majority of voting systems in the country. ES&S, currently the largest election system company in the U.S., serves 1,985 jurisdictions in more than 43 states with approximately 67 million registered voters. ES&S systems were used in counting approximately 50% of votes in the last four major U.S. elections. Meanwhile, Premier Solutions has a 33% share of the U.S. market. If this acquisition proceeds, one company could control over three-quarters of the U.S. market for voting systems. Given other factors, including high barriers to entering the market, I am deeply concerned that local governments and taxpayers will not be getting a fair deal because too much market power will be held in too few hands.

It is in the public interest to maintain a range of choices in voting systems. Historically, states have used a wide variety of voting systems from a number of manufacturers. A 2003 Congressional Research Service report raised concerns over the consolidation of voting systems in the United States. The report indicates that having a diversity of voting systems in our country may decrease the likelihood of widespread election fraud. We need to do everything possible to make our elections reliable and secure.

As Chairman of the Senate Committee on Rules and Administration, I understand that following the new requirements in the Help America Vote Act, the voting system industry has gone through many changes. The largest of these changes is a new, more rigorous voting system testing and certification program. I am not without sympathy of the increased costs that accompany new federal testing requirements and that voting system companies must bear. However, that does not alleviate my concern of any one company obtaining such an outsized share of the market.

I ask that you perform a full and fair review of this proposed acquisition. We need to ensure that local governments can choose among a range of options for voting systems, that prices and services offered by these companies are competitive and fair, and that voters are assured that elections are secure and their tax dollars are being used wisely.

I look forward to hearing from you on this issue. If your staff has any questions, please contact my office at 202-224-6352.

Sincerely,

Charles E. Schumer

Chairman

Senate Rules and Administration Committee