

GAO

Report to the Chairman, Committee on
Science, Space and Technology, House
of Representatives

May 1991

AIR FORCE STOCK FUND

Hydrazine Sales Consistent With the Commercial Space Launch Act



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**National Security and
International Affairs Division**

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May 31, 1991

The Honorable George E. Brown, Jr.
Chairman, Committee on Science,
Space and Technology
House of Representatives

Dear Mr. Chairman:

At the request of the former Committee Chairman, we reviewed the Air Force's sales of hydrazine propellants to private firms for use in commercial space launches to determine if such sales complied with the intent of the Commercial Space Launch Act (CSLA). CSLA is intended to encourage and facilitate commercial space launches by the private sector. The Air Force purchases hydrazine propellants from Olin Chemicals and sells the propellant from its stock fund to both government and authorized commercial customers. Olin, which would like to increase its direct commercial sales, has alleged that the Air Force is competing with it by making hydrazine propellants available to private firms and by depriving it of the opportunity to sell its product directly to commercial customers.

Results in Brief

We found no basis on which to conclude that the Air Force's selling of hydrazine propellants to commercial customers was contrary to the requirements or the intent of CSLA. Further, the Air Force has authority, separate from CSLA, for its sales practices in support of commercial space launch activities. Under 10 U.S.C. 2208, defense agencies may make sales from stock funds to parties outside of the Department of Defense. A major purpose of CSLA was for the federal government to encourage and promote private sector participation in the national space program. While CSLA does not specifically address the issue of government agency competition with private sector interests, it gives agencies considerable discretion in balancing the private sector's commercial interests and the government's interests regarding public health and safety, safety of property, or national security interests.

In any case, the Air Force's sales of hydrazine propellants to authorized commercial customers do not compete with Olin's commercial sales. Olin does not have the Air Force's special approval to transport Aerozine-50, a hydrazine blend, nor does it have access to the National Aeronautics and Space Administration's (NASA) Kennedy Space Center and the Cape

Canaveral Air Force Station, where the storage facility is located. Presently, commercial customers can purchase the hydrazine propellants directly from Olin, and Olin can obtain the special approval to transport Aerozine-50. However, access to the storage facility at Cape Canaveral would be more difficult because of NASA and Air Force officials' concerns about government liability if commercially owned propellant were mishandled and the current policy prohibiting storage of commercially owned hydrazine propellant.

Background

A hydrazine propellant is an essential element for a Delta or Titan rocket launch. It is a liquid propellant that, when combined with an oxidizer, provides the lift-off for these launch vehicles. Hydrazine propellant comes in three grades of purity and has two derivative products. Aerozine-50, a blend of two hydrazine products, is used in the Delta and Titan launch vehicles. A high purity grade of hydrazine propellant is used to position satellites into their final orbits.

Olin Chemicals is the only domestic producer of hydrazine propellants, and it has supplied the propellant for military and space applications since the late 1940s. Since March 1988, the propellant has also been available for sale to authorized commercial customers through the Air Force Stock Fund that is managed at the San Antonio Air Logistics Center. The stock fund operates as a self-sustaining revolving fund, performing a cyclical function of purchasing stock with cash from sales, holding the stock until sold, and then purchasing more stock to replenish inventory.

The stock fund's sales of hydrazine propellants to commercial customers fluctuated in fiscal years 1989 and 1990. Commercial sales increased over this period from \$1.83 million to \$4.33 million or from about 9 to 34 percent as a proportion of the stock fund's total hydrazine propellant sales (see table 1). In both years, sales of Aerozine-50 represented the largest commercial sale of hydrazine products sold through the stock fund.

Table 1: Stock Fund's Total and Commercial Sales of Hydrazine Propellant in Fiscal Years 1989 and 1990

Dollars in millions

Hydrazine propellant	Fiscal year			
	1989		1990	
	Total	Commercial	Total	Commercial
Aerozine-50	\$17.48	\$1.61	\$9.94	\$3.68
Monomethyl	1.11	0.12	1.50	0.11
Monopropellant	0.56	0.04	0.39	0.09
High purity	0.07	0.05	0.54	0.38
H-70	0.28	0	0.38	0.08
Total	\$19.50	\$1.83	\$12.75	\$4.33

Note: Totals may not add due to rounding.

According to a stock fund official, the amount of commercial sales will depend on the number and type of commercial launches. For example, a Delta launch vehicle uses 5,000 pounds of Aerozine-50 whereas a Titan uses 140,000 pounds. Stock fund projections show that commercial sales will level off to about 12 percent of total hydrazine propellant sales through fiscal year 1995.

CSLA designates the Secretary of Transportation as principally responsible for promoting and overseeing commercial launch operations through the issuance of licenses to conduct such activities. The act also contains provisions dealing with other federal agencies' participation and assistance in carrying out the act's objectives. In this regard, the act allows federal agencies to assist private firms in their commercial launch activities, including providing government property or other services that may be excess or otherwise not needed for public use.

Olin's and Air Force's Positions on Sales to Commercial Customers Differ

In a letter to the Department of Transportation's Office of Commercial Space Transportation, dated December 14, 1989, Olin alleges that the Air Force's sales of hydrazine propellants from the stock fund to commercial customers constitute unfair governmental competition because Olin is being deprived of the opportunity to sell its product directly to commercial customers at the market price. Further, Olin alleges that (1) such actions violate the intent of CSLA, which is to encourage the privatization of the commercial space launch industry; (2) the hydrazine propellants are not excess launch property as provided for in CSLA; and (3) the Air Force purchases the propellant directly from Olin for the purpose of reselling it to commercial customers.

The Air Force's position is that its authority to sell hydrazine propellants to commercial customers in support of commercial space launch activities is independent of, and not inconsistent with, CSLA. The Air Force apparently relies on the statutory authority that is provided in 10 U.S.C. 2208, which provides that sales of stock fund materials can be made to commercial customers when beneficial to the government. It also relies on its manual 67-1, which establishes its policy of allowing sales of stock fund materials to commercial customers. The Air Force maintains that its hydrazine propellant sales are beneficial to the United States and national space goals because they assist in the development of commercial launches by private, domestic enterprises. The Air Force has also stated that the sales result in improved safety and reliability, more efficient record keeping, and consistent quality assurance.

Air Force's Sales to Commercial Customers Are Consistent With the Requirements and Intent of CSLA

We found no basis on which to conclude that the Air Force's sales of hydrazine propellants from its stock fund to commercial customers were contrary to the requirements or the intent of CSLA. Further, the Air Force has acted properly under authority independent of CSLA that allows defense agencies to make sales from stock funds to persons outside the Department of Defense. The CSLA provision authorizing federal agencies to facilitate the acquisition of excess launch property by the private sector is not the exclusive authority under which agencies may provide such property. The legislative history of CSLA shows that Congress contemplated that agencies could rely on other authority. (See app. I for a discussion of the act's legislative history.)

The Air Force relies on separate authority, 10 U.S.C. 2208, that governs the operation and financing of Defense Department stock funds, including the Air Force Stock Fund. The statute authorizes the Secretary of Defense to prescribe regulations that may authorize supplies to be sold to commercial customers, if the Defense Department's needs require it and if it is otherwise authorized by law. In our opinion, this statute gives the Air Force the authority to sell fuels out of its stock fund to private firms for commercial space launch purposes.

The Air Force's position is further strengthened by the fact that CSLA contemplates that the government should ensure that commercial space launch activities are carried out in a manner that protects public health and safety, safety of property, and national security interests. In drafting the legislation, the House Committee on Science and Technology anticipated that government supervision over such activities would be

needed to safeguard life and property, prevent actions that would jeopardize national security and foreign policy, and ensure that treaty obligations are met.

Even if the provision for facilitating the acquisition of excess property did apply, it would not prohibit the sale of government launch property, such as hydrazine propellants, to commercial customers. CSLA merely requires that the commercial availability of launch property from a domestic source be considered. The legislative history shows that the judgmental nature of this provision was clearly intended.

During hearings on a draft bill to amend CSLA, officials from commercial space launch companies expressed their concerns about a provision in the draft bill restricting the sale of government launch property or services if substantially equivalent property or services were otherwise commercially available from a domestic source on reasonable terms and conditions. In response to these concerns, the Chairman of the House Subcommittee on Space Science and Applications clarified the bill's language to avoid any implication that the use of government property and services would be prohibited if they were available from the private sector. During hearings, the Subcommittee Chairman indicated that the provision should be amended to provide that a government agency need only consider the availability of a private sector alternative. This appears to be the basis of the current and enacted language.

Hydrazine Propellant Is Not Sold as Excess Property

The Air Force did not sell the hydrazine propellants as excess government property. According to stock fund officials, the Air Force purchases the quantity of hydrazine propellants after commercial customers forecast their requirements for the upcoming year. The Air Force then stores the agreed upon quantity and makes it available to the customers when required. Thus, there are no excess quantities in the sense that anything exceeding baseline requirements are available. There is no Air Force policy limiting the amount or proportion of commercial sales from the stock fund.

The Department of Transportation has not defined what constitutes "excess" for purposes of CSLA, and an agency official stated that it was the responsibility of the agency supplying the product to identify excess launch property. Stock fund officials told us they do not need to define excess since the stock fund is currently operated to provide only enough hydrazine propellants to meet commercial space companies' requests.

Air Force Sells to Authorized Customers but Is Not Required to Check If Ventures Are Foreign or Domestic

The stock fund's operating instructions justify sales of hydrazine propellants to authorized commercial customers because these sales are said to benefit the United States and national space goals by assisting in the development of commercial launches by private, domestic enterprises. To become authorized, a company must submit information to the Air Force on how its program supports national goals. Currently, 15 commercial companies are authorized to purchase hydrazine propellants from the stock fund.

Stock fund and Air Force officials told us only domestic companies are authorized and there is no requirement to check if authorized customers use stock fund-purchased hydrazine propellants for domestic or foreign ventures. For example, they did not investigate if an authorized company was building a satellite or providing a launch service for a foreign company or government. The officials stated that even if an authorized company used the propellant in a foreign venture, stock fund policies were still adhered to because the United States benefited when the hydrazine propellant was originally sold to a domestic, commercial company.

Air Force Can Transport Aerozine-50 and Has Access to Storage Facility

The Air Force holds the special approval required to transport Aerozine-50 and has access to the storage facilities at the Cape Canaveral Air Force Station. For Olin to increase its direct commercial sales, Olin would need to obtain a permit authorizing the shipment of Aerozine-50. Olin would also need to develop a means to bring its products onto the Kennedy Space Center and/or Cape Canaveral Air Force Station at the appropriate time to meet individual launch requirements since NASA currently prohibits courtesy storage of commercially owned hydrazine propellant for safety reasons.

Transportation

The transportation of hydrazine propellants is regulated by the Department of Transportation. The propellant can be transported in drums or in bulk quantity by a tanker. Transportation of all drummed and bulk hydrazine propellants, except blends, must be done in accordance with regulations for shipping hazardous materials that are toxic by inhalation. Special approval is required for shipping drummed and bulk Aerozine-50 because it has no proper shipping name under federal regulations since it is a blend of hydrazine products.

Currently, the Air Force is the only entity that has the special approval for transporting Aerozine-50. The Air Force has contracted with two carriers, both of which maintain four trucks that are dedicated solely

for Air Force use. According to a Transportation Department official, Olin could obtain the special approval if it adheres to the same safety standards and could contract with carriers just as the Air Force has. An Olin official told us the company had not contacted the Department of Transportation to obtain the special approval but that Olin could also contract carriers to transport Aerozine-50.

Storage

Although NASA is responsible for the handling and storage of hydrazine propellants for commercial and government launches, the hydrazine propellant is stored at the Cape Canaveral Air Force Station where the Air Force has oversight responsibility for ensuring that the storage facility and the products comply with applicable safety guidelines.

NASA officials told us they are concerned about government liability if there are personal safety accidents or contamination resulting from mishandling commercially owned hydrazine products. NASA stores only government-owned bulk hydrazine propellants at Cape Canaveral. Until recently, NASA stored both commercially and government-owned drummed hydrazine propellants. However, Air Force inspections found that the fuel storage area where the hydrazine propellants were stored was not complying with applicable safety regulations. Specifically, separate inspections found an excessive number of drums stored in the area and improper labeling on them. NASA attributed the overcrowding to the uncoordinated acquisition and shipment of commercial and government drums of hydrazine propellants. Concerned that the overcrowding might compromise safety, the Kennedy Space Center terminated courtesy storage for commercially owned propellants that are now available from the stock fund.

Since NASA will now only accept government-owned hydrazine propellants, NASA and Air Force officials told us that Olin may need to consider constructing its own long-term storage facility. Otherwise, Olin would need to arrange for the delivery of the propellant within days of the time it is needed for commercial launches. According to these officials, this would be difficult because launch schedules are very unreliable and delays are common. NASA and Air Force officials said it may be difficult for a private company to construct such a facility for hazardous materials because of the public's concern over safety.

An Olin official told us the company had not investigated the possibility of constructing a storage facility near the Kennedy Space Center or Cape Canaveral. However, he noted the company routinely dealt with safety

concerns and community pressure when it built or expanded other facilities. The Olin official also said that the company had good relations with the communities near their existing production and blending facilities.

Department of Transportation's Views

Olin requested the Department of Transportation to determine whether the Air Force's sales from the stock fund to commercial companies were contrary to the letter and spirit of CSLA. Department of Transportation officials told us CSLA and its implementing regulations did not provide for the Department to make the determination requested by Olin. In a written response to Olin, the Department stated that both Olin's and the Air Force's arguments had merit, but the Department believed that policy guidance provided by CSLA and the National Space Policy required the government to balance the interests of various groups of the commercial space sector when a government action that is advantageous to one such group may discourage or deter the activities of another.

Scope and Methodology

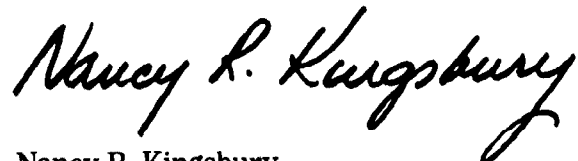
To accomplish our objectives, we interviewed both government and civilian officials as well as reviewed documents discussing the stock fund and hydrazine propellants. Government officials interviewed were from the Office of the Secretary of Defense; Headquarters, Department of the Air Force; the San Antonio Air Logistics Center; the Air Force Eastern Space and Missile Center; NASA; and the Department of Transportation. We spoke to representatives from Olin Chemicals and reviewed correspondence on its allegations. We reviewed documents from NASA and the Air Force Eastern Space and Missile Center on the storage and handling of hydrazine propellants at the Cape Canaveral Air Force Station and Kennedy Space Center. We also reviewed documents from the Department of Transportation on the shipment of hydrazine propellants and its role in implementing CSLA. Lastly, we researched the legislative history of CSLA. As agreed with the Committee staff, we did not review the pricing of the propellant to commercial customers.

We conducted our review from January to March 1991 in accordance with generally accepted government auditing standards. As requested, we did not obtain official comments from the Department of Defense, NASA, or the Department of Transportation on this report. However, we discussed the information in this report with officials of those agencies and included their comments where appropriate.

Unless you publicly announce its contents earlier, we plan no further distribution of the report until 30 days after its issue date. At that time, we will send copies to the Departments of Defense and the Air Force; Department of Transportation; NASA; and Olin Chemicals. Copies will also be made available to others on request.

Please contact me on (202) 275-4268 if you or your staff have any questions concerning this report. The major contributors to this report are listed in appendix II.

Sincerely yours,



Nancy R. Kingsbury
Director
Air Force Issues

Legal Analysis of the Air Force's Sale of Hydrazine Propellants From Its Stock Fund

Legal Question

Is the Department of the Air Force's selling of hydrazine propellants to private firms for their use in commercial space launches contrary to the provisions and intent of the Commercial Space Launch Act (CSLA)?

GAO's Legal Position

We found no basis to conclude that the Air Force's actions were contrary to the requirements or the intent of CSLA. In carrying out the purposes of CSLA, the Air Force has acted on proper legal grounds under the authority of 10 U.S.C. 2208, which allows defense agencies to make sales from stock funds to persons outside the Department of Defense (DOD).

The Commercial Space Launch Act

In 1984, the Congress enacted CSLA, 49 U.S.C. 2601 et.seq. (1988), for the purpose of encouraging and facilitating commercial space launches by the private sector. Section 2604 designates the Secretary of Transportation as principally responsible for promoting and overseeing commercial launch operations through the issuance of licenses to conduct such activities. Specifically, this section states that the Secretary shall

“(1) encourage, facilitate, and promote commercial space launches by the private sector; and

(2) consult with other agencies to provide consistent application of licensing requirements under this [act] and to ensure fair and equitable treatment for all license applicants.”

The act further contains various restrictions and requirements for the issuance of licenses in sections 2605 and 2607.

The act also contains various provisions dealing with the participation and the assistance of other federal agencies in carrying out the act's objectives. In this regard, section 2614 allows the Department of Transportation and other agencies to assist private firms in their commercial launch activities by providing “excess” government property or other services, such as the use of a government launch site. The Air Force plays an integral role in providing such assistance for commercial launch activities.

Parties' Contentions

Olin Chemicals' Position

Olin Chemicals has charged that the Air Force's actions in selling hydrazine propellants constitute unfair governmental competition because Olin is deprived of the opportunity to sell its product directly to commercial users at the market price. Olin contended that such actions were contrary to the letter and intent of CSLA. Olin apparently believed that a provision in section 2614(a) requiring that consideration be given to the commercial availability of substantially equivalent launch property from a domestic source was intended to preclude government agencies (e.g., Air Force) from competing against commercial firms such as fuel suppliers. Olin, in assuming that section 2614(a) applies, questioned whether the propellant could be considered "excess launch property."

Air Force's Position

The Air Force has concluded that for various reasons it is not competing with Olin for sales of hydrazine propellants. The Air Force has also stated that its authority to provide for sales of the propellant from the stock fund to private firms for commercial launch purposes is independent of, and not inconsistent with, the authority to sell launch property contained in CSLA. In this regard, the Air Force relies on Air Force Manual 67-1, which provides for sales of stock fund materials to commercial activities when such sales are beneficial to the U.S. government. The Air Force states that its sales of hydrazine propellants are beneficial to the United States because of improved safety and reliability; more efficient record keeping; and consistent quality assurance resulting from providing commercial users the same propellant, storage, and transport facilities used on government programs.

GAO's Analysis of Olin's and the Air Force's Positions

Olin's contention that the Air Force's fuel sales were contrary to CSLA appeared to be based primarily on section 2614(a). That section authorizes the Department of Transportation and, implicitly, other government agencies to take such actions as may be necessary to facilitate the private sector's acquisition of government launch property and services

that are excess or are otherwise not needed for public use.¹ Consideration must be given, however, to “. . . the commercial availability, on reasonable terms and conditions, of substantially equivalent launch property or launch services from a domestic source.”

In our opinion, Olin's reliance on the above section has two major shortcomings. First, the Air Force apparently is not relying on this section as authority. In this regard, there is no indication in the section that it is the exclusive authority under which agencies may provide launch property and services to the private sector. In fact, the legislative history clearly shows that Congress contemplated that agencies could rely on other authority:²

“In drafting this subsection, the Committee was aware of the fact that different Federal agencies have differing degrees of authority regarding the lease, sale, transaction in lieu of sale, or otherwise, of launch property or launch services, as well as different applicable terms and/or conditions . . . Nothing in the subsection is meant to affect in any way the existing authority of any Federal agency to establish and/or collect reimbursements for the lease, sale, transaction in lieu of sale, or otherwise, of launch property or launch services of the United States.” [Underscoring supplied.]

The Air Force apparently relies on other separate and independent legal authority for selling the fuel in question, namely, its authority under 10 U.S.C. 2208 to sell stock fund materials. For this reason it is difficult to say that the Air Force's actions conflicted with section 2614(a).

Second, even if we were to assume that section 2614(a) applies to this situation, that section does not specifically prohibit the sale of government launch property or services to private firms; the section merely requires that the availability of the launch property or services from a domestic source be considered. The legislative history shows that the judgmental nature of this provision, which was added in 1988, was clearly intended.³ The original version of the bill that became law stated that the Department of Transportation “shall not take such actions [selling government launch property or services] if substantially

¹In its December 17, 1990, letter to the Chairman of the House Committee on Science, Space and Technology, the Department of Transportation stated that it had taken no action under section 2614(a) or been involved at all in facilitating the private sector's acquisition of fuel from the Air Force's stock fund.

²Senate Report Number 98-656.

³Section 4(a) of P.L. 100-657, Nov. 15, 1988. The pertinent committee reports (Senate Report Number 100-593 and House Report Number 100-639) basically restated the provision.

equivalent launch property or services are otherwise commercially available from a domestic source on reasonable terms and conditions." [Underscoring supplied.]

During consideration of the bill, concerns were expressed over the proposed restriction on the use of government launch property or services by commercial launching firms. For example, in a letter to the Chairman, Subcommittee on Space Science and Applications, House Committee on Science, Space and Technology, a group of 20 companies that engaged in commercial space launching activities commented:

"As written, however, this subparagraph could have a destabilizing effect on the ELV [Expendable Launch Vehicle] companies' use of Government services and facilities. It could result in them having to prove to the U.S. Air Force and National Aeronautics and Space Administration, possibly prior to each launch, that 'substantially equivalent facilities' are not available 'on reasonable terms and conditions'. This could further complicate the already complex and difficult manifesting process for the ELV companies." [Underscoring supplied.]

In response to these comments, the Chairman recognized the need to clarify the bill's provision to avoid any implication that the use of government facilities would be prohibited if such facilities were available from the private sector. The Chairman indicated that the provision should be amended to provide that a government agency need only consider the availability of a private-sector alternative. This appears to be the basis of the enacted and current language of section 2614(a).

The Air Force's justification and legal basis for its actions in selling hydrazine propellants to private firms are clearly supported by the policies and objectives that are set out in CSLA. However, the Air Force apparently relies on a different statute for its sales authority — 10 U.S.C. 2208, which governs the operation and financing of DOD's stock funds, including the Air Force's stock fund.

Under 10 U.S.C. 2208, paragraph (h), the Secretary of Defense is to prescribe regulations governing the operations of activities and the use of inventories authorized by that section. The section further states that the regulations may authorize, if DOD requires it and if it is otherwise authorized by law, supplies to be sold to or services or work performed for persons outside DOD. In short, the Air Force has the authority to sell fuels out of its stock fund to private firms for commercial space launch purposes.

Consistent with 10 U.S.C 2208, DOD has issued DOD Directive 7420.13, which provides for the establishment of stock funds by defense agencies. DOD has also issued DOD Directive 3230.3, which authorizes defense agencies to provide assistance for commercial space launch activities, including the providing of launch property such as fuel propellants. Similarly, the Air Force has issued Air Force Manual 67-1, dated April 13, 1987, in which chapter 4 deals with the receipt, storage, and issue of fuel propellants. The manual authorizes the sale of Air Force stock fund material to commercial activities “. . . when it has been determined that such sales are beneficial to the U.S. Government. . .”. [Underscoring supplied.]

As mentioned earlier, the Air Force maintains that its sales of stock fund propellants to private firms that are engaged in commercial launch activities are beneficial to the United States. In its May 18, 1990, letter to the Department of Transportation, which discussed Olin's position, the Air Force stated:

“The President's National Space Policy and the history of the CSLA firmly establish that a U.S. commercial space launch industry is beneficial to the United States. The Air Force has therefore reasonably determined that sales of stock fund propellants to U.S. firms engaged in the commercial space launch industry is beneficial to the United States. In addition, improved safety and reliability, more efficient record-keeping, and consistent quality assurance resulting from providing U.S. commercial users the same propellant, storage, and transport facilities used on government programs, may reasonably be determined to provide a benefit to the United States.”

The Air Force's position is further strengthened by the fact that CSLA itself contemplates that the government should ensure that commercial space launch activities are carried out in a manner in which proper protection is given to the public health and safety, the safety of property, and the national security interests of the United States. (See sections 2602, 2607, 2609, and 2610).

The Department of Transportation has recently expressed its own views regarding the dispute between the Air Force and Olin, taking a neutral stance that is not inconsistent with our position. In a December 17, 1990, letter to the Chairman, House Committee on Science, Space and Technology, the Director of the Office of Commercial Space Transportation stated that section 2614(a) did not alter the authority of any federal agency to make excess government property or services available to the private sector.

On the other hand, the Director stated that both parties' arguments had merit, but we should emphasize that the Department of Transportation's view here appears to be directed to general policy rather than to legal considerations. The Director stated:

"It is the Department's view that policy guidance provided by the Commercial Space Launch Act and the National Space Policy requires the government to balance the interests of the various elements of the commercial space sector when government action that is advantageous to one such element may discourage or deter the activities of another. We are concerned, therefore, that eliminating the AFFSF [Air Force Fuels Stock Fund] source of propellant could result in significantly higher operational costs for commercial firms that would adversely affect their ability to compete in the international market. At the same time, encouraging and facilitating commercial launch activities does not mean the government can subsidize the industry especially at the expense of a commercial supplier like Olin."

We share the Department of Transportation's concerns about balancing the competing interests of various private firms that are involved in the commercial space launch industry. Although CSLA does not specifically address this matter, consistent with the act's overall objective—to encourage and facilitate the commercial space launches by the private sector—a government agency should be sensitive to the impact of its actions on various elements within the commercial space launch industry.

It is equally clear, however, that the government's interests are of major importance, particularly when public health and safety, safety of property, or U.S. national security interests are involved. In our opinion, CSLA gives government agencies considerable discretion in balancing all of these interests. Thus, the Air Force has exercised a judgment that we are not in the position to question on legal grounds.

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