

## NexTrust Deliverable 6.6 - Report on the interaction between the key players in the logistics chain

### Deliverable 6.6

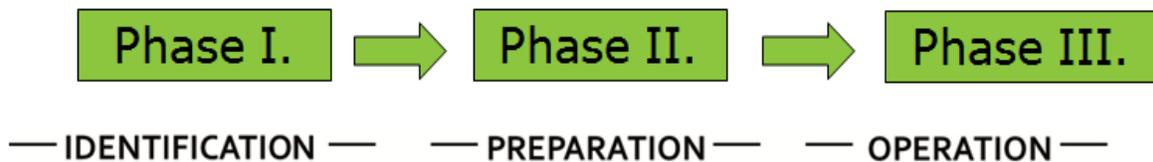
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PROJECT INFORMATION			

## Background and Executive Summary

The main objective of the NexTrust research project is to increase efficiency and sustainability in European logistics by designing interconnected, trusted networks that collaborate together along the entire supply chain. With this, NexTrust is following a straightforward but effective 3-Step trusted network research methodology (hereinafter “3-Step Methodology”).



[Figure 1: 3-Step Methodology]

This methodology looks at horizontal collaboration as a structured and controllable process. In summary, this process is broken down into three chronological steps, which in some cases can overlap, but is the logical collaboration process to follow.

- 1) Identification
- 2) Preparation
- 3) Operation

The herein presented Deliverable 6.6 focuses on the interaction between the key players in the logistics chain especially in the first two stages of the 3-Step-Methodology: identification and preparation. The relevance of general contract, competition law and confidentiality aspects have been analysed. It is a natural consequence that competition law and confidentiality play an important role in the identification and preparation stages of logistics collaboration projects.

The *identification* phase is the stage of data collection and matchmaking. It precedes the (pre-contractual) phase in which a match is identified and the business case is developed. Collaboration in the supply chain comes with the setting up of a matchmaking service. Therefore individual shippers provide transportation data to trustee companies that run a data platform in view of the comparison of this transportation flow data with the data of other shippers which do the same in order to find bundling opportunities. In this stage a variety of legal issues comes up, such as confidentiality, data security, data ownership, prevention of misuse and the competition law risk of (in)direct information exchange. The identification phase is an individual stage; shippers interact with the trustee on a one-to-one basis.

The *preparation* phase is the succeeding, collective pre-contractual stage which covers the period after a match is identified to the moment (operational) contracts have been entered into between the shippers and logistics service providers. In this stage the trustee has introduced

the shippers involved and they will work out their business case together under the management of the trustee who does not only give direction to the business case development process but who can also assure that the shippers involved in the proposed collaboration, can avoid the exchange of commercial sensitive information. This can be avoided if the trustee is able to and will act as a 'black box'. Relevant legal issues are again confidentiality of data, competition law risks, the break-off of negotiations, mutual liability and the tender process to select a logistics service provider. In this Deliverable a detailed analysis has been made of the legal issues that come up for discussion in the preparation stage as well.

Successful collaboration is not a matter of luck. It is the result of a structured process from the very beginning. It is obvious that 'trust' between the players involved is essential to success. The trustee plays an important role to support the trust between the parties and so does proper legal process management. From the questionnaire we learned that the shippers and LSP's have rather little experience with collaboration in supply chain operations. However, the parties who said that they had no or little experience almost all said that they would be interested in collaboration if it served greater efficiency. One major issue especially on shippers side seems to be collaboration with competitors, though. It is one of the pillars of the NexTrust project to offer a legally compliant set-up for collaboration in supply chain operations even between competitors. Thus, we would see the need for marketing of the NexTrust idea to, among others, focus on the compliance aspects and show companies that there are options for legally compliant cooperation even between competitors.

This Deliverable will later on be supplemented by the following other legal deliverables:

- D6.1: "Consolidated legal report on the NexTrust pilot cases";
- D6.3: "Competition law aspects of horizontal and vertical collaboration and blueprint for the competition law training";
- D6.4: "Legal definition of the 'trustee' concept and on the legal forms";
- D6.5: "The effect of the absence of an international convention on multimodal transport";
- D6.7: "The legal framework for collaboration in logistics in e-commerce and CITS-ICT".

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## Introduction D6.6

### 1. Introduction

This Deliverable is the report for D6.6, on the interaction between key players in the logistics chain, due month 31 (December 2017). A questionnaire was prepared. Through the questionnaire we intended to get some insight in the handling of the main legal issues we deal with in NexTrust and how this affects market participant's willingness and readiness to engage in collaborations. The questionnaire was sent to a number of parties who are either considered shipper or logistics services providers in the supply chain. The outcome of the questionnaire will be discussed in this Deliverable.

### 2. NexTrust project overview

The NexTrust project has been granted funding from the EU Horizon 2020 Research and Innovation Programme under Grant Agreement 635874. In broad outline, the NexTrust Project specifically aims to increase efficiency and sustainability in the logistics chain by developing trusted collaborative networks that enable horizontal and vertical collaboration across shippers and industry sectors with all their respective supply chains, including last mile (e-commerce), in the European logistics market. These networks fully integrate shippers, logistics service providers ("LSP's" or "LSP") and intermodal operators as equal partners. These networks already show a significant reduction of greenhouse gas emissions and traffic congestion, while simultaneously improving asset utilization and logistics cost efficiencies, thus creating a more sustainable, competitive arena for European logistics that will be an inspirational example for the market. The NexTrust Project original plan was to cover 23 pilot cases in five different categories. By now, more than 30 pilot cases have been set up. The action engages major shippers as partners, plus SME shippers and LSP's with a track record in ICT innovation. Characteristic of the NexTrust project is the focus on market driven research and innovation. NexTrust intends to create 'stickiness' for collaboration in the marketplace, validated through large-scale pilot cases carried out in real market conditions. The underlying foundation of the NexTrust consortium is the belief that horizontal and vertical collaboration should not be viewed only in the context of a theoretical or technological exercise, but when applied and validated pragmatically, can lead to a new level of business maturity and innovation strategy.

NexTrust already shows that it achieves a high impact with improved asset utilization and logistics cost efficiency, creating a sustainable, competitive arena for European logistics that will be an inspirational example for the market. In the FTL (full truck load) pilot cases, results show that up to 40% of greenhouse gas emissions (GHG) and up to 46% of empty vehicle kilometers can be saved on single freight lanes.

### **3. Purpose and Scope of Deliverable 6.6 – interaction between the key players in the logistics chain**

The purpose and scope of Deliverable 6.6 is to gain more knowledge about the mechanism for potential of cooperation in the logistics sector between the key actors. The focus lies especially on the relationships between shippers and logistics service providers (“LSP” or “LSP’s”) from a legal perspective, the difficulties the companies encounter in practice and the potential for improvement with respect to integration and efficiency in the logistics sector. Shippers represent the owner of goods, whether consignors (the traditional meaning of shipper) or consignee (to whom cargo is shipped). LSP’s represent freight forwarder, carriers or third party logistic providers.

## **Report on the interaction between the key players in the logistics chain**

### **1. Research Questionnaire D6.6**

The goal of this Deliverable is to obtain more knowledge about the difficult situation of cooperation in the logistics supply chain. Both LSP's and shippers seem reluctant to enter into cooperation, especially if potential competitors are involved. Against this background, we wanted to further investigate the legal relationships between shippers and LSP's. We did this by means of an online questionnaire. The focus of the questions was laid on the legal handling of problems regarding competition law and confidentiality. This questionnaire was sent out to more than 100 suitable contacts of our law firm as well as all beneficiaries of the NexTrust project who were asked to forward it to their suitable contacts. This was supposed to serve as a multiplier. In addition, the questionnaire was also sent out to the members of the NexTrust Industry Board (NIB).

The questionnaire had 21 questions presented in four chapters: After general questions on the participant we did research on how specific legal issues are approached during a tender phase, if applicable. The third chapter was on the contractual (operational) phase of the relationship. The fourth and final chapter aimed at gaining information on the potential for innovation, especially for collaboration in which the parties make use of a trustee.

The set-up of the questionnaire was made as follows:

[Figure 2: introduction questionnaire]

**Questionnaire NexTrust**

The NexTrust project has been granted funding from the EU Horizon 2020 Research and Innovation Programme under Grant Agreement 635874. The main objective of the NexTrust research project is to increase efficiency and sustainability in European logistics by designing interconnected, trusted networks that collaborate together along the entire supply chain.

Through the questionnaire we aim to gain more knowledge on the potential of cooperation in the logistics sector. The focus lies especially on the relationships between shippers and logistics service providers ("LSP" or "3SP's") from a legal perspective, the difficulties your company encounters in practice and the potential for improvement with respect to integration and efficiency in the logistics sector.

The questionnaire will require about 15 minutes of your time and your participation is highly appreciated. If a question does not apply to your company or if you have no suggestion, you can leave it unanswered. Your input will be treated confidentially. In consideration for your kind contribution we shall provide you with a short summary of the main findings after evaluation of the survey, if you wish.

You can start with the questionnaire by clicking start.

[Start](#)

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[Figure 3: questions 1-4 General]

## General

**1 - Is your company a Logistics Service Provider ("LSP") or a shipper?**

LSP  Shipper

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**2 - In which country is your company seat?**

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**3 - In which countries is your company mainly active?**

- Whole EU
- Certain focus areas (e.g. Eastern/Western/Southern/Northern Europe, Benelux et al.)
- Certain countries

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**4 - Does your company have experience with collaboration between potential competitors in supply chain operations?**

Yes  No

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[Figure 4: questions 5-9 Tender phase]

## Tender phase

**5 - In your experience, is a new delivery operation your company is involved in initiated by means of a tender (by your company or another party) in more than 50% of the cases?**

Yes
  No

---

**6 - When a new delivery operation your company is involved in is initiated by means of a tender, will competition law aspects (e.g. safeguarding antitrust issues, negotiating compliance clauses) be addressed in the tender documentation in more than - roughly - 20% of the cases?**

- We have (close to) no experience with tenders for delivery operations
- No
- Yes

---

**7 - When a new delivery operation is initiated by means of a tender, will confidentiality issues (e.g. entering into a confidentiality or non-disclosure agreement, negotiation of a confidentiality clause) be addressed in the tender documentation in more than - roughly - 20% of the cases?**

- We have (close to) no experience with tenders for delivery operations.
- No
- Yes

---

**8 - Please specify which are the most relevant criteria to award an assignment in a tender?**

Sort the following five criteria with numbers from 1 to 5, 1 being the most relevant, 5 being the least relevant in your experience; in the text fields below you may insert further criteria and extend the ranking accordingly, when appropriate.

*Drag and drop the given criteria as desired.*

- 1  Price
- 2  Reliability
- 3  Sustainability
- 4  Service
- 5  Flexibility
- 6
- 7

9 - Which other legal issues besides competition law and confidentiality does your company frequently face when negotiating contracts for delivery operations, if any?

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[Figure 5: questions 10-16 Contractual phase]

## Contractual phase

**10 - For which period of time will contracts for delivery operations mostly be concluded by your company?**

- 0 – 1 month
- 1 – 3 months
- 3 – 6 months
- 6 – 12 months
- more than 12 months
- cannot be said because the period always varies

---

**11 - Does your company make use of model agreements and/or standard contractual terms/clauses/provisions with respect to the contractual framework for delivery operations?**

Yes     No

---

**12 - Will competition law issues (e.g. safeguarding antitrust issues, negotiating compliance clauses) be addressed/do they play a role in more than - roughly - 20% of the delivery operations?**

- No
- Yes

---

**13 - Will confidentiality issues (e.g. entering into a confidentiality or non-disclosure agreement, contents of such agreement) be addressed/do they play a role in more than - roughly - 20% of the delivery operations?**

- No
- Yes

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**14 - In your experience, which party (shipper, LSP, other) usually determines the applicable law and jurisdiction under the contract(s) for delivery operations?**

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**15 - In your experience, are the applicable law and jurisdiction clauses usually negotiable (always provided that it is EU law/jurisdiction)?**

Yes     No

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**16 - Which other legal issues besides competition law and confidentiality does your company frequently face in the tender phase for delivery operations, if any?**

[Figure 6: questions 17-21 Innovation]

## Innovation

**17 - Would your company consider to participate in a (horizontal) cooperation in the supply chain with potential competitors of your company's if competition law and confidentiality are safeguarded?**

- No
- Yes
- We already practice such cooperation on a regular basis

---

**18 - Taking your company's standard legal practices into account, would your company be open to adopt new standards (e.g. cooperation agreement, carriage contract) for greater efficiency in the supply chain process?**

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**19 - Would your company in principle be willing to consider to accept an intermediary (trustee) between the parties involved to safeguard the legal compliance (e.g. data protection and competition) of the cooperation and manage the process?**

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**20 - Which are in your view the greatest legal problems for cooperation between multiple parties in supply chain operations?**

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**21 - From a legal perspective, which improvements/innovations and/or solutions to which problems would you wish for in supply chain operations as conducted by your company?**

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[Figure 7: end questionnaire]

**Thank you**

Thank you very much for taking the time to complete this NexTrust questionnaire. If you wish to receive a short summary of the main findings after evaluation of the survey, you may fill in your name and e-mail address below.

In case of questions regarding the NexTrust project or this questionnaire, please do not hesitate to contact one of our team members directly.

Many thanks,  
The NexTrust team

Your name \*

Your e-mail address \*

**send** ▶



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**NexTrust** 

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## 2. Feedback

In total, nine companies filled in the questionnaire. Six of them were LSP's, three of them shippers. We had expected many more companies to participate and cannot assess why the feedback was not higher. The questionnaire had been designed in a rather simple way and most of the questions were deliberately "yes/no"-questions to make it as approachable and user-friendly as possible.

The questionnaire was sent out to a large number of addressees from different countries and, in addition, using the NexTrust beneficiaries as multipliers. It was online from 13 to 27 October 2017, trying to avoid public and school holidays as good as possible. Halfway through the two weeks in which the questionnaire was online a reminder was sent out to the addressees as well.

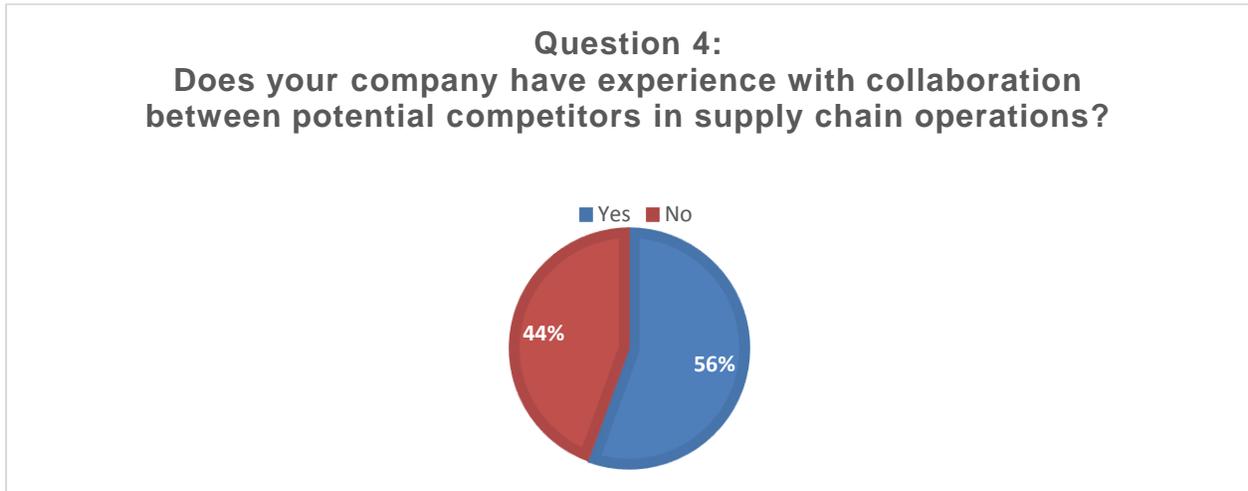
**[Patrick suggests to delete the highlighted paragraph above and insert here instead: The participation was limited, however feedback was received from both shippers and LSP's. From the total number of participants in the questionnaire, 67% were LSP's and 33% were shippers.]**

None of the participants of the questionnaire was, as far as we can see, a beneficiary of the NexTrust project or participated in one of the NexTrust pilot cases as a third party. A positive aspect was the variety of different countries the participants had their company seat in: The participants came from seven different countries, besides the Netherlands and Belgium from Germany, Spain, Slovakia and Austria. Most of them are active in the whole EU or Western Europe.

### 3. Analysis

#### 3.1 Experience with collaborations

56%, thus more than half, of the participating companies had experience with collaboration in supply chain operations.



[Figure 8: question 4 “experience with collaboration”]

All participants who answered in the affirmative also said they would participate in such cooperation on a regular basis. We conclude therefrom that those supply chain actors who participate in cooperation view it as feasible, valuable and positive.

However, only 33% of shippers had such experience. The percentage among the LSP’s was thus logically higher (66%). Considering the potential of collaboration with respect to cost- and CO2-reduction as shown in numerous NexTrust pilot cases, both on shippers’ and the LSP’s side we conclude that there is remarkably little experience with collaborations.

The flip side is that there seems to be a market for the NexTrust trustee model: Collaboration is not (yet) widely used, whereas 66% of the shippers already participate in collaborations one way or the other or would be open to commence with cooperation (please note that in connection with this question – Question 4 of the questionnaire – it was left open whether or not the collaboration would be with a competitor of the addressee). In this regard one should also take into consideration that all of the companies who had experience with collaboration said that they would practice such collaboration on a regular basis. From this we conclude that for these companies collaborations have been evaluated to have a positive effect on their business and validated in practice. Also, 75% of the companies participating in the survey who had no experience with collaboration in the supply chain said that they are interested in cooperation if legal compliance would be safeguarded.

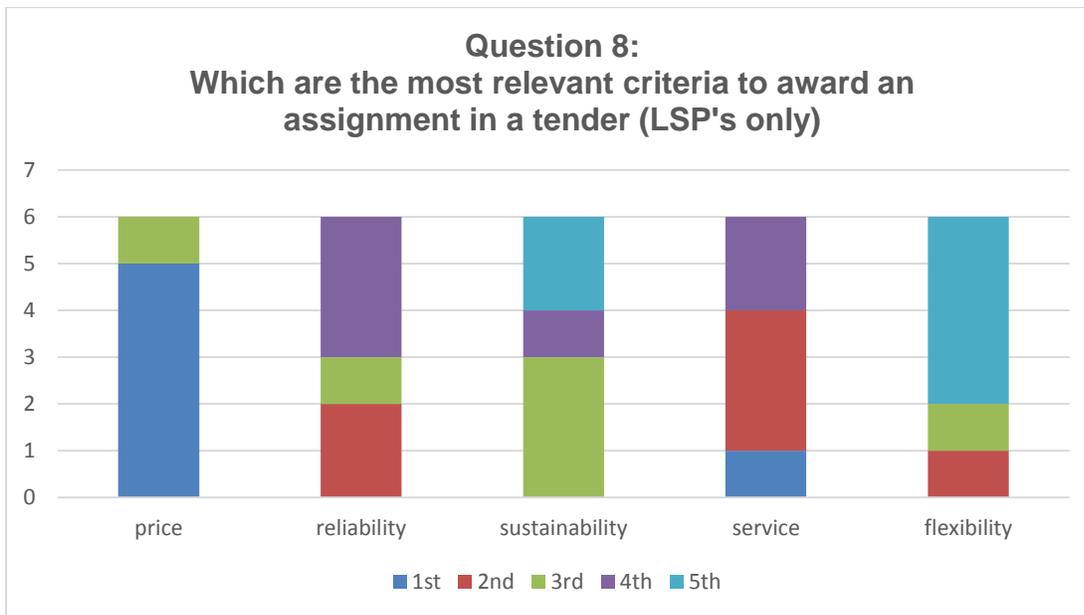
In our view, this can be interpreted as a positive indication for the potential of implementing collaboration models in the supply chain business.

### 3.2 Tender process

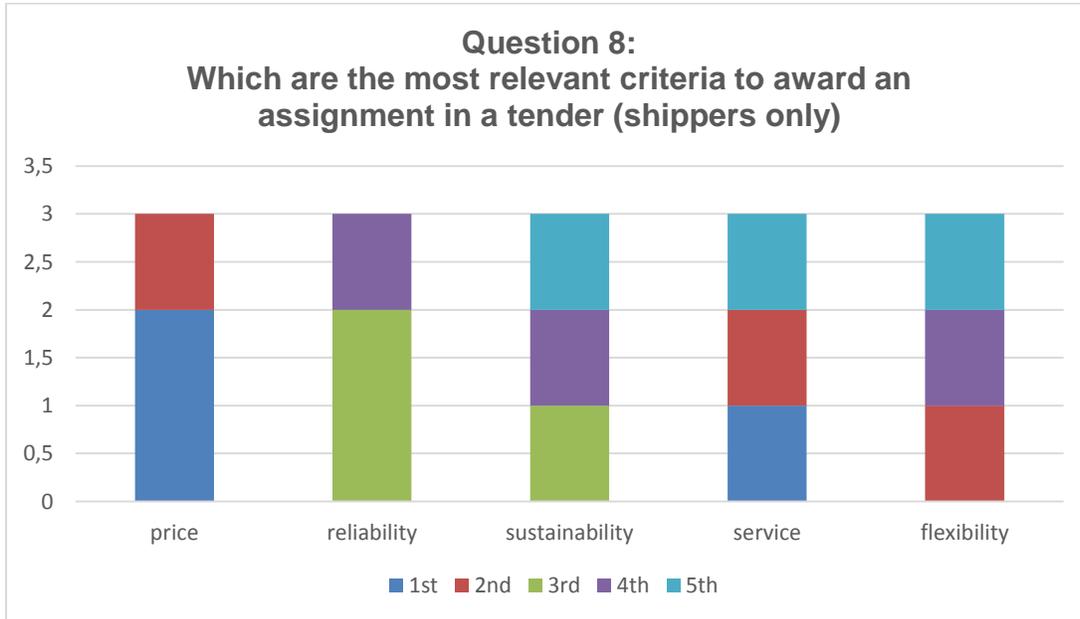
All the shippers who participated in the questionnaire initiate new delivery operations by means of a tender. On the LSP's side, only 50% experienced this approach. In this phase, competition law aspects and confidentiality seem to play a minor role pursuant to the participants of the questionnaire. On the shippers' side, all participants indicated that competition law aspects, e.g. safeguarding antitrust issues or negotiating compliance clauses, would not be addressed in the tender documentation in more than 20% of the cases. With respect to competition law, 50% of the participating LSP's however said that such issues would play a role in the tender documentation.

As it comes to confidentiality issues in the tender documentation, 50% of the LSP's and 67% of the shippers indicated that such issues, e.g. entering into a confidentiality or non-disclosure agreements or negotiating confidentiality clauses, would not be addressed in the tender documentation in more than 20% of the cases.

We then asked the participants about the most important criteria to award an assignment in a supply chain tender process. It is striking that if one splits the answers made by shippers and by LSP's, the results for both groups are almost identical – only the two criteria ranked lowest are in opposite order.



[Figure 9: question 8 “most relevant criteria to award assignment in a tender LSP's”]



[Figure 10: question 8 “most relevant criteria to award assignment in a tender shippers]

Pursuant to the questionnaire for both LSP’s and for shippers the price is the most important factor. Service followed by reliability were named next in the line, again by both LSP’s and shippers. While flexibility received the most nominations as least important by LSP’s, shippers saw it second least important. Interestingly, sustainability, one of the pillars of the NexTrust project, was not ranked higher than third most important by any of the participants. In each one of the cases it was considered less relevant than the price. 33% of the shippers even voted sustainability as the least important issue.

The picture becomes even clearer if one awards points for the above ranking, i.e. 5 points for each ranking as most important, 4 points for each ranking as second most important, 3 points for each ranking as third most important, 2 points for each ranking as fourth most important and 1 point for each ranking as fifth most important. In that case and LSP’s and shippers combined we can conclude that:

- Price reaches a score of 42 points which is eleven more than
- Service, with 31 points.
- Reliability (25 points) is considered third most important, while
- Sustainability (19 points) reaches less than 50% of the points of price.
- Flexibility is overall considered the least important of these five factors with 18 points, however trailing sustainability by only one point.

### 3.3 Contract phase

All of the participants of the questionnaire make use of standard agreements for their supply chain operations. Most of the shippers (67%) and the LSP's (75%) allow for a deviation, at least to a certain extent, of their standard agreements when negotiating the final agreement. For 67% of the shippers, the applicable law and jurisdiction clauses are non-negotiable while the LSP's seem to be more flexible in this regard. For the LSP's, applicable law and jurisdiction clauses are negotiable in 50% of the cases.

When negotiating the agreements, competition law aspects and confidentiality issues again seem to play only a minor role. Pursuant to 83% of the LSP's competition law does not play a role in more than 20% of the supply chain operations. On the same question, 100% of the shippers said it would not play a role. With respect to confidentiality issues, none of the participants – neither shippers nor LSP's – said these would play a role in more than 20% of the cases.

### 3.4 Innovation

All of the participants, both shippers and LSP's, confirmed that they are open to adopt new standards (e.g. new cooperation agreements, carriage contracts) if these serve greater efficiency in the supply chain process.

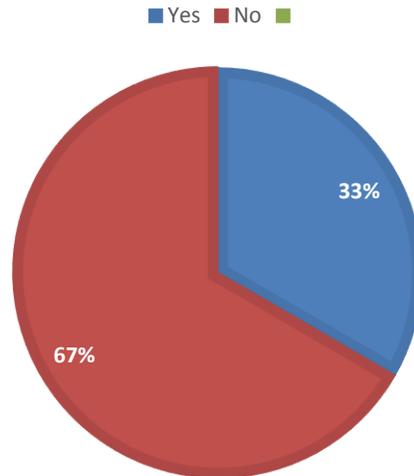
The majority of the participants would also be willing to consider to accept an intermediary (trustee) between the parties resp. acting as a third party in the supply chain process in addition to shippers and LSP's, on the condition that this intermediary shall safeguard the legal compliance (e.g. data protection and competition law) of the cooperation and manage the whole cooperation process.

However, when it comes to cooperation with competitors the participants become more hesitant. 17% of the LSP's said that they would not enter into a cooperation with competitors even if competition law and confidentiality issues were covered and safeguarded. On shippers' side, this issue becomes even more prominent – here, 66% say they would refrain from any such cooperation with competitors:



[Figure 11: question 17 “consideration collaboration if completion law is safeguarded LSP's”]

**Question 17:  
 Would your company consider to participate in a  
 (horizontal) cooperation in the supply chain with  
 competitors if competition law and confidentiality are  
 safeguarded (Shippers only)**



[Figure 12: question 17 “consideration collaboration if completion law is safeguarded shippers”]

When directly asked what the greatest legal problems for cooperation in supply chain operations were, the participants however surprisingly did not mention competition law. This might have been expected taking into account that the question explicitly focused on and mentioned competitors as well as considering the vast media coverage on e.g. illegal price- and volume-fixing cases in various industries which regularly lead to severe fines by the European Commission. Instead, the answers given on this question identified liability and insurance as the great legal problems for cooperation in supply chain operations.

Liability and insurance, however, are no issues which could be considered as specific for cooperation with competitors. Rather, these are more general points which arise in any bilateral or multilateral contractual relationship. This might indicate that the hesitation with respect to cooperation with competitors is rooted rather in principles than in concrete legal concern. In fact, in the market we occasionally hear from companies that their internal guidelines would strictly prohibit any exchange and cooperation with possible competitors. The reason would be to avoid any possible conflict with compliance obligations from the beginning. This regardless of the benefit of such cooperation and means available to safeguard (legal) compliance.

It is promising, on the other hand, that 33% of the LSP’s said that they would already participate in (legally compliant) cooperation where competitors are involved.

Within NexTrust, the beneficiaries show that there actually are means for legally compliant collaborations even between competitors. Such strict in-house rules as mentioned before might be detrimental for a company, especially if they disable the implementation of more efficient and cost-saving operations.

Maybe this is also what was meant by one participant of the questionnaire, an LSP, who answered on the question regarding the greatest legal problems for cooperation: "Mental shift". Although not a legal issue, but an indication that it should be shown in the market that (i) cooperation benefits the business and (ii) legally compliant cooperation even with competitors is possible.

### 3.5 Conclusion

The answers given by the participants were interesting and good enough to come to a valuable conclusion, although the overall response to the questionnaire was limited. The questionnaire was divided into four main subjects: general (experience with collaboration), tender phase, contractual phase and whether or not the participants were open to innovation.

More than half of the participating companies had experience with collaboration in supply chain operations. Considering the potential of collaboration with respect to cost- and CO<sub>2</sub>-reduction as shown in numerous NexTrust pilot cases, both on the shippers' and the LSP's side we conclude that there is remarkably little experience with collaborations. Collaboration is not (yet) widely used, whereas half of the shippers already practice collaboration one way or the other or would be open to start with collaboration and/or to practice such collaboration on a regular basis (please note that this does not necessarily mean collaboration with competitors – here, 66% of the shippers indicated they would not do so even if competition law issues and confidentiality would be safeguarded). Also, 3/4 of the companies participating in the questionnaire who had no experience with collaboration in the supply chain said that they are interested in cooperation if compliance with relevant legal aspects would be safeguarded. In our view, this can be interpreted as a positive indication for the potential of implementing collaboration models in the supply chain business.

All the shippers who participated in the questionnaire initiate new delivery operations by means of a tender. On the LSP's side, only half experienced this approach. We then asked the participants about the most important criteria to award an assignment in a supply chain tender process. It is striking that if one splits the answers made by shippers and by LSP's, the results for both groups are almost identical – only the two criteria ranked lowest are in opposite order:

- Price reaches a score of 42 points which is eleven more than service, with 31 points.
- Reliability (25 points) is considered third most important, while sustainability (19 points) reaches less than 50% of the points of price.
- Flexibility is overall considered the least important of these five with 18 points, however trailing sustainability by only one point.

Furthermore all of the participants of the questionnaire make use of standard agreements for their supply chain operations. When negotiating the necessary agreements, competition law aspects and confidentiality issues seem to play only a minor role.

As collaboration in the supply chain is a rather unique and new concept, the participants were asked how they feel about innovation (e.g. intermediary, specific agreements). All of the participants, both shippers and LSP's, confirmed that they are open to adopt new standards (e.g. new cooperation agreements, carriage contracts) if these serve greater efficiency in the supply chain process. All, except one participant, would also be willing to consider to accept an intermediary (trustee) between the parties respectively acting as a third party in the supply chain process in addition to shippers and LSP's, if this intermediary shall both safeguard the legal

compliance (e.g. data protection and competition law) of the cooperation and manage the process. However, when it comes to cooperation with competitors the participants become more hesitant. This could relate to the new concept of collaboration; e.g. that (potential) participants have to undergo a “mental shift”. The market needs to be aware that cooperation benefits the business. Even collaboration with (in)direct competitors is possible, on condition that competition law aspects are strictly safeguarded (for example by means of a trustee).

All in all we can conclude that collaboration in the supply chain works in practice. Parties, both shippers and LSP's have experience with collaboration or are open to start collaboration. Legal aspects play an important role, as confidentiality must be safeguarded.

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Figure 11: question 17 “consideration collaboration if completion law is safeguarded LSP’s”

Figure 12: question 17 “consideration collaboration if completion law is safeguarded shippers”

## List of references

- NexTrust project website [www.nextrust-project.eu](http://www.nextrust-project.eu)

## List of acronyms and abbreviations

ACROYNM	EXPLANATION
KKL	Kneppelhout & Korthals Lawyers
PU (Dissemination level)	Public
WP	Work Package

### Disclaimer

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