



EUROPEAN CHEMICAL
TRANSPORT ASSOCIATION



Co-operation and Collaboration between Logistic Service Providers

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EUROPEAN CHEMICAL TRANSPORT ASSOCIATION

ECTA comprises more than 80 members in 14 countries.

ECTA members are companies that are active in the chemical transport industry. ECTA members organize the land transportation of chemical goods irrespective of the transport mode used: road, rail, barge, short sea shipping, air. Membership includes road transport companies, commercial sections of rail transport companies, intermodal transport companies, barging and short sea shipping companies.

ECTA members control and influence the Safety, Health, Environment (SHE) and quality aspects of the transport that they organise and endeavour to implement the ECTA guidelines in these areas.

ECTA members are service providers to the chemical industry and are proactive towards their customers' needs and their stakeholders' interests.

European representation

ECTA provides the chemical transport and logistics providers with **an authoritative and independent voice at European level**. Within that scope it ensures that the industry's views are effectively communicated to key audiences, authorities and institutions within Europe at regional, national, international and European level.

ECTA elaborates in close co-operation with the European Chemical Industry Council (Cefic) guidelines on best practices in chemical logistics and invests in the European Safety and Quality Assessment System.



Paul P. Evertse held for many years the position of Procurement Manager Transportation & Logistics with ExxonMobil Petroleum & Chemical, EMEA.

Cathy Demeestere has before her current position as Secretary General of EPCA and of ECTA, been active at management level in the PetroFina Group (now Total). She holds a law degree, with further specialisation in International Law and is a Harvard MBA Alumna. Cathy Demeestere also seats as judge at the Commercial Court in Brussels.

Dr Wout Dullaert is assistant professor of Operations and Logistics Management at the Institute of Transport and Maritime Management Antwerp of the University of Antwerp. He is program director of the Postgraduate Program in Transport and Logistics Management. His research and consulting activities focus on the (re)design of production and distribution systems, tactical and operational distribution problems and horizontal cooperation in logistics.

Prof Cees J. Ruijgrok studied econometrics at the Erasmus University in Rotterdam. Presently he is professor in Transport and Logistics Management at the Tilburg Institute of Advanced Studies (TIAS) of the Tilburg University, where he holds the position of Academic Director at the Postgraduate Course of Transport and Logistic Management. He teaches also at a regular basis at the EPFL in Lausanne, the EPNC in Paris, the ITMMA course of UA in Antwerp and the Cranfield School of Management in the UK. He is associated as senior consultant at TNO Mobility and Logistics in Delft.

Ben Hermans Ben Hermans practises law in the field of intellectual property rights, ICT law, venture capital (private equity) and competition law. He is an adviser for Belgian and foreign companies and investment funds. Ben Hermans has a law degree (Antwerp University). He received a Master's degree in International Relations (K.U. Leuven, 1995) and in International and European Law (V.U. Brussel, 1996). In 1999, he received a Master of Law (LL.M) at the K.U. Leuven, with a specialization in European law. Before joining the Monard-D'Hulst law firm in 2003, he worked as parliamentary aid and independent adviser to various Belgian and foreign technology companies and investment funds (1997-2003).

Ruud d'Hondt is a Master of Economics of the University of Brabant (1987) and also a bachelor in Building Construction of Tilburg. He joined DOW Terneuzen (NL) in 1987 and held several positions in logistics and supply chain in quality management, procurement, planning and strategic organization; both in European as well as in global business context.

Co-operation and Collaboration between Logistic Service Providers

EPCA Offices, Brussels
30 May 2006



Moderator :

Paul P. Evertse
ExxonMobil Petroleum & Chemical



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Cathy Demeestere

Secretary General ECTA and EPCA

Recommendations and Concepts by the EPCA-Cefic Supply Chain Think Tank

“Stop destructive competition and start effective co-operation!” was the key message Mrs Cathy Demeestere, Secretary General of ECTA and EPCA, delivered to the ECTA members’ audience. She gave an overview on the results drawn from the works of the EPCA-Cefic “Supply Chain Think Tank” on models for improving co-operation and collaboration between LSPs in order to increase long-term competitiveness of the European chemical industry.

Both, the chemical industry and the related supply chain industry, play an extremely important role in today’s European economy representing the largest chemical block in the world. Mrs Demeestere recalled impressive figures such as 3 mio workers (9%) in EU chemical manufacturing producing 25% of the total EU exports, and 1500 mio tons of chemicals moved every year generating a traffic worth 60 billion € per year. But the future might be less bright. *“The EU as a major chemical production region is at risk”, she warned. “To secure the industry’s long-term competitiveness, decisive action by both the industry and the authorities is required to steer the critical drivers determining their future in the right direction over the next ten years.”* According to Mrs Demeestere, supply chain improvement is one of these ‘critical drivers’. Already in 2004, the EPCA-Cefic Supply Chain Think Tank had pointed

* LSP = Logistic Service Provider



out six general recommendations to improve supply chain management: collaboration, segmentation, co-ordination, system optimisation, standardisation and liberalisation. Besides internal measures to meet 'best practice' standards, each logistic company should seek improvement through closer co-operation on three axes:

- Vertical changes to be obtained by working with suppliers and customers on programmes such as VMI, CPFR, modal and packaging systems;
- Horizontal changes to be obtained by co-operation with other LSPs on reducing costs, adapting shared services, pooling and back-loading and adapting common standards to embrace structural changes;
- LSP development, at last, should enhance the companies' capabilities to meet the evolving needs of the industry.

Besides defining collaboration measures and clear mechanisms, the Think Tank's working groups recommended closer co-operation in order to boost overall development of LSP capabilities by improving skills, talent and training measures, and by collaborating on safety, security and environmental issues.

Opportunities for collaboration exist in several areas, but some measures are easier to implement than others. High benefits can e.g. more easily be drawn from establishing a shutdown planning and exchanging time and geographical data, but also by creating alliances with other LSPs or feeding producer and customer CPS. More lengthy and difficult to implement: co-operation regarding MTO and MTF, container terminals and value parks.

The chemical industry and the related supply chain industry play an extremely important role in today's European economy.

The chemical industry totally relies on their LSPs and therefore expects them to develop new capabilities and working methods. Essential requirements are a greater European coverage by LSPs, more modal shift and flexibility, better design capabilities and long-term competitiveness. Want it or not, says Mrs Demeestere, but disappointment with LSPs against these requirements leads to transactional behaviours by service buyers - baring the risk for LPS to face even lower financial returns and undermining their confidence to invest on the long term. To make it clear, Mrs Demeestere presented overall figures from 2002/03, showing a decline in average provider margins from about 3% to 2% in 2003. As Secretary General of ECTA, she can only recommend to stop destructive price competition and start effective co-operation between shippers, LSPs and shippers' customers based on fair sharing of benefits and in line with EU competition rules. Benefits can be substantial, according to the Think Tank's findings: Information synchronisation on a vertical level can generate savings up to 4 €/t while horizontal co-operation to optimise exchanges and networks may generate up to 5,2 €/t. Together with modal shift enhancement and LSP performance improvements, the accumulated potential reaches about 15 billion € supply chain cost improvement – i.e. 2% of the overall turnover.



How to get there? Cathy Demeestere named some key competences required in the future such as supply chain management knowledge and skills, creativity and innovation as well as IT skills. Social competences will become more and more important: multicultural adaptability and flexibility, networking capabilities, language skills and joint-venture skills (such as negotiating, partnering). To solve recurrent implementation problems, better communication skills are badly required to build up trust between parties.

With an eye on the future management, EPCA, together with producers and LSP companies, is currently developing partnerships with major universities to create a better understanding of the industry's actual needs.

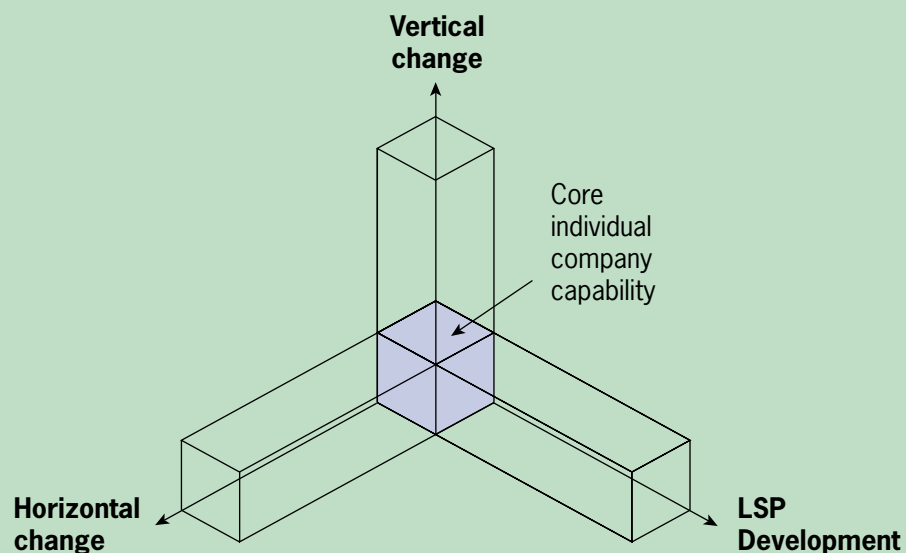
Last, but not least, she reminded shippers and LSPs to change their way of planning: *"A lot of costs emerge from the "rush-hour-approach" and by wanting to treat each and every customer the same way."*

Segmentation could be the key word for the future, with standard prices for a standard service and extra pricing for services rendered on basis of specific individual needs or in peak times. Especially when facing extremely demanding 'customers of customers', such as supermarkets who set very tight schedules.

Safety, security and environmental requirements have been addressed in Guidelines issued by Cefic, ECTA and EPCA, Mrs Demeestere recalled. Still, implementation needs to be boosted by creating a higher awareness within companies, also amongst marketing and sales management: "Best practice" standards should become part of business deals.

"United we will win", Mrs Demeestere concluded, but *"you need to go out and do it!"*

2004 EPCA-CEFIC Supply Chain Think Tank report : conceptual improvement framework





Dr Wout Dullaert

Institute of Transport and Maritime Management Antwerp, University of Antwerp

Empirical Evidence on Opportunities and Impediments to Horizontal Co-operation

Joint field research conducted by Dutch and Flemish universities on the benefits and barriers to horizontal co-operation (HC) in logistics have shown that LSP companies expect HC to improve profitability, especially in their core-business. But only clear rules on fair sharing of benefits will help to overcome natural mistrust between competitors to create long-term strategies built on horizontal co-operation.

“What is all the fuss about horizontal co-operation in logistics?”, Dr Wout Dullaert wondered. “It seems to be a ‘hot’ topic right now. But is it of any good to individual LSPs as well as to the industry overall?” Co-operation certainly is not a new concept: it simply means co-ordinated interaction to benefit from each other’s strengths. But like symbiosis in nature, co-operation between economical players only works well when based on mutualism, i.e. creating a win-win situation by fair sharing of benefits achieved through common action.

There are evident reasons for chemical industry LSPs to search better horizontal collaboration. They all face declining profit margins, stricter customer and legal requirements and less freedom to design cost-efficient solutions with shippers keeping a firm hand on how and when they want their goods to be moved and stored.

To get a clearer picture of motivational parameters that hinder or foster co-operation between LSPs, the Flemish Institute for Logistics asked the Institute of Transport and Maritime Management Antwerp (ITMMA) of the University of Antwerp to launch a survey among 1500 leading LSPs in Flanders/Belgium, obtaining a response rate of 11,7%. The survey was designed as a set of research propositions on opportunities and impediments for horizontal co-operation in logistics.

The first set of propositions focused on opportunities. Companies were asked to score the positive impact of HC in the field of cost & productivity, service and market position. The results show that LSPs firmly believe, that HC will increase productivity, i.e. generate better revenue for them. More than 80% agreed on this proposition highlighting that this

* HC = Horizontal co-operation

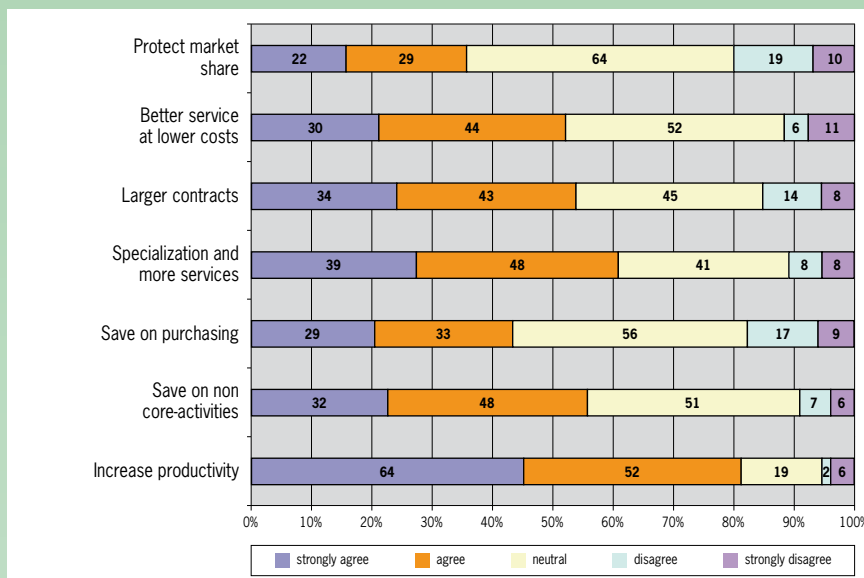


is the strongest motivation for them to look into HC. Expected savings on non core-activities still scored high (55%), whereas only about 43% believe that HC could generate savings on purchasing. More than 60% believe that HC could help them specialize and still offer a wider range of services, and about 54% agree that HC offers an opportunity to get larger contracts. Overall, more than half of the responding LSP companies believe that HC will improve their service quality at lower cost. When asked, whether they believe that HC will protect their market share, only 35% agreed while 20% expressed serious doubt on this assumption. The reason, according to Dr Dullaert, seems to be that shippers do not care much about LSP co-operation. Some shippers even like to deal with several different LSPs as they believe that they get a better price by co-ordinating logistics themselves. Overall, Dr Dullaert concluded, the first part of the survey shows a trend among LSPs to look into HC for short-term benefits, but not necessarily as part of a long-term strategy.

Nevertheless, he added, “quick wins” can be a perfect way to get started, in order to gain confidence and build up a more in-depth partnership later on.

When it comes to question companies on impediments for HC, the most crucial problem seems to be setting a fair allocation mechanism. Almost 80% of Flanders’ LSPs consider that allocation mechanisms are essential for successful HC, two thirds of them believe that it is hard to guarantee a fair share of benefits. Still 55% have difficulties in determining the actual savings achieved through HC. Many companies (approx. 68%) think it’s difficult to find the right partner and even more (75%) to find a trusted partner who can actually lead a co-operation, especially if more than two parties are involved. When treating with strong partners, many companies fear an unequal bargaining situation: 58% approx. believe that larger partners benefit most and fear a decrease in their own corporate identity. For almost two thirds HC bears a threat of absorption.

Opportunities of horizontal co-operation



The biggest barrier to horizontal co-operation, nevertheless, seems to be the determining and dividing of gains.



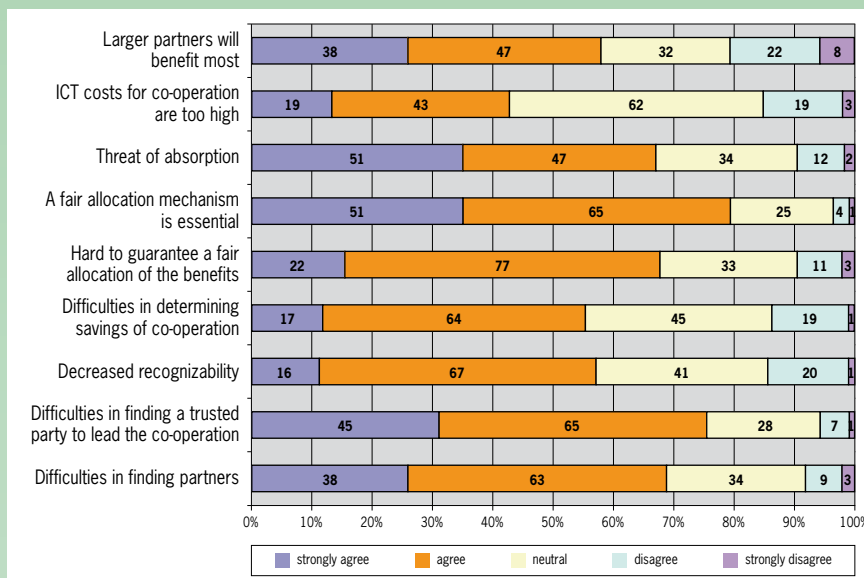
A set of hypothesis testing was used to identify main motivations and obstacles to HC. It turns out, that the history of past co-operation does not significantly influence the decision to seize HC opportunities, neither does the size of the partner. The most important parameter seems to be profitability, Dr Dullaert pointed out. This means that more profitable LSPs are not very inclined to co-operate whereas smaller companies are more open to it. The same seems true regarding the selection of the right partner. Neither history nor size influence the attitude of respondents towards partner selection impediments (as well as other impediments mentioned beforehand), whereas profitability is looked at as a crucial criteria.

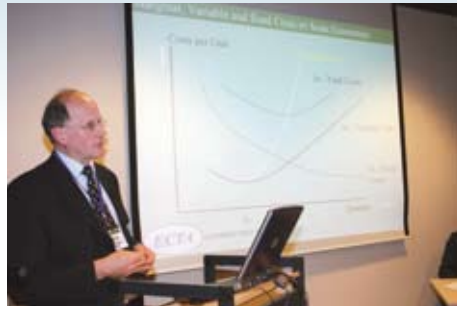
The results of the study led by Dr Dullaert show that opportunities are widely supported, especially when related to the core business of a company. Companies believe that they will get a chance through HC to offer a better service to their customers. Most of them agree on impediments regardless if their

company has already experienced HC or not. The biggest barrier to horizontal co-operation, nevertheless, seems to be the determining and dividing of gains.

By conducting a parallel research in the Netherlands (2500 LSPs, 7,7% response rate), Dr Dullaert's team verified if the results obtained in Flanders are representative cross-border. It appears that both, Flemish and Dutch believe firmly in the benefits of co-operation. Even if they show slight differences in attitude towards HC, the same impediments seem to be relevant. A more trustful approach in HC in the Netherlands could be explained by a longer experience of Dutch LSPs with co-operation, whereas Flemish companies seem to be highly interested in HC while less trustful.

Impediments to horizontal co-operation





Prof Cees Ruijgrok

Mobility and Logistics Business Unit of TNO Built Environment and Geosciences, Delft/Netherlands

Sustainable Co-operation and Multimodal Network Optimisation

Professor Cees Ruijgrok indicated methods that help evaluate the potential for logistic partnerships and select attractive partners to achieve scale economies and avoid sub-optimisation. Furthermore, he explained some key parameters for multimodal network models able to generate impressive gains. But partnerships will only last, if all parties involved have a clear view on the potential gains and set up a mechanism to share costs and benefits.

“The money lays out on the streets”, Prof Ruijgrok says, “it’s only difficult to pick it up.” Nevertheless, not all the money out there is worth going after it. The main reasons for LSPs to collaborate are scale economies. If marginal costs stay beneath average costs, scale economies can be obtained by enlarging the production volume. Even if the price of an additional service is below average costs, it is still attractive to accept it if the decrease in average costs is larger than the generated revenue. But companies should bear in mind, that every system has its limits. Above a certain volume of service, costs increase. Going after too many different clients, e.g. may put a logistics company at risk to decrease its profitability. How to determine those limits? The decision to accept a certain price is determined by the level of marginal costs and the slope of the average cost curve. The effort to obtain more

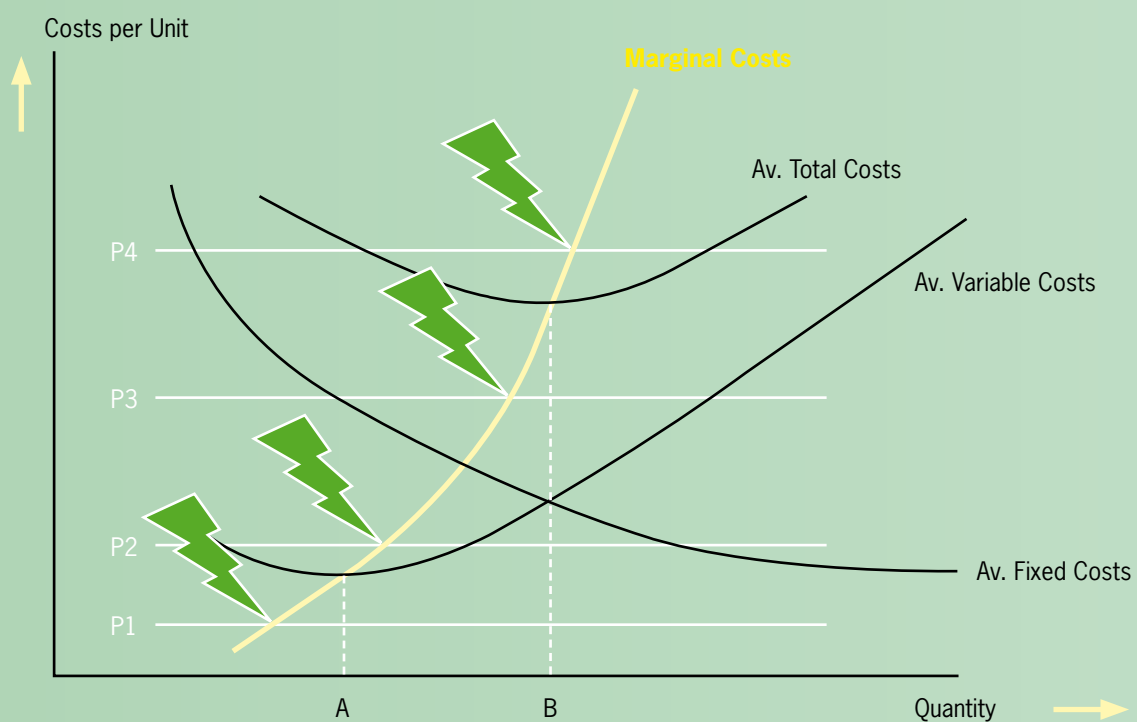


volume is especially worthwhile if both variable and total costs are still declining with growing demand. But it's not always easy for LSPs to analyse where exactly they stand with regard to those parameters. Activity base costing can be very helpful to determine "break even" points. Some costs are obvious and easy to be tracked: price invoicing, ordering, excess inventory, late delivery, poor product quality. But the invisible part of the "Cost Iceberg" is much more difficult to evaluate, although it can amount to 70% of total costs. This part of the "Cost Iceberg" is a result of over- as well as under-engineering, lack of standardized processes and products, start up delays, rework, downtime, duplicated efforts and lost revenue.

Investment into extra volume is supposed to generate an increase in revenue and to lower costs by increased efficiency.

But even in a small partnership, it becomes more complicated to determine who actually pays for investment and who gets the gains. The ideal case states that costs decrease while revenues go up. But what about the profit when both increase or decrease? Process optimisation within one company is not easy to achieve, but it's even more difficult and can be dangerous when several partners are involved in a chain optimisation process. "It's like the Holy Grail", Prof Ruijgrok underlines, "everyone is in quest of it, but it's dangerous to achieve."

If Prices are below Costs it can still be attractive to join





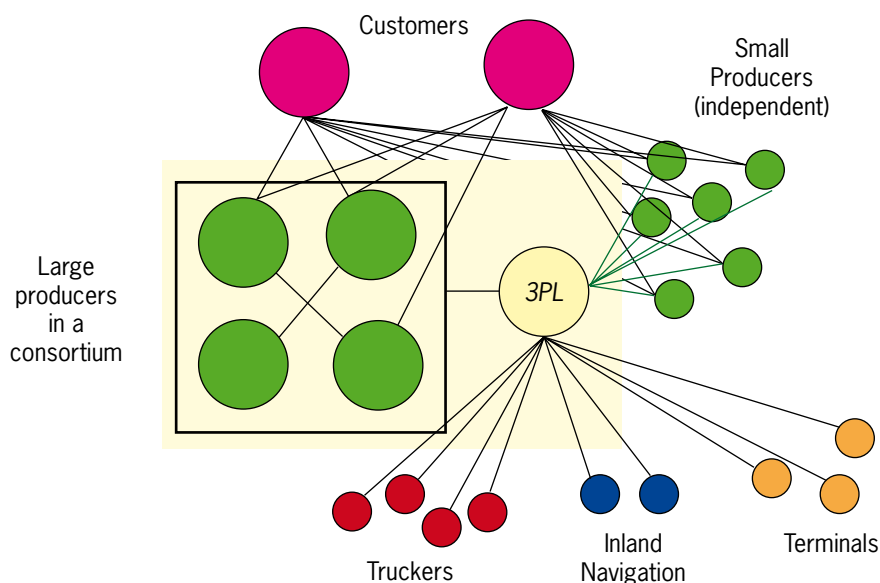
Companies therefore should evaluate risks and benefits linked to investment in HC partnerships before they get started. What's the value of working together and what needs to be set up to achieve better value? According to Prof Ruijgrok, a successful collaborative system is based on *"the enlargement of transparency in logistics networks in order to achieve efficiency and effectiveness of the supply chain by exchanging data to improve the logistics planning process."* More gain is not to be found by cutting costs, but by avoiding sup-optimal solutions and situations. *"It is the famous domino effect because of lack of network communication: if one truck is late at an unloading site, the next one will be delayed as well."* Prof Ruijgrok cited the case of Unimills. First, the company only focused on minimizing transport costs. Unsatisfied with the result, they decided to review their planning of transport operations and look for optimised chain solutions. The transport costs went up in the first

More gain is not to be found by cutting costs, but by avoiding sup-optimal solutions and situations.

place, but waiting times were reduced and equipment was used more efficiently. Overall total supply chain costs decreased significantly.

Optimisation often involves co-operation in multi-modal transport. Hybrid networks in logistics are common. Companies use different transport modes in parallel to reach the same point. They use an internal or third party central control concept to manage the split between the different modes, e.g. inland navigation, rail and road transport. In such

Typical collaborative structure



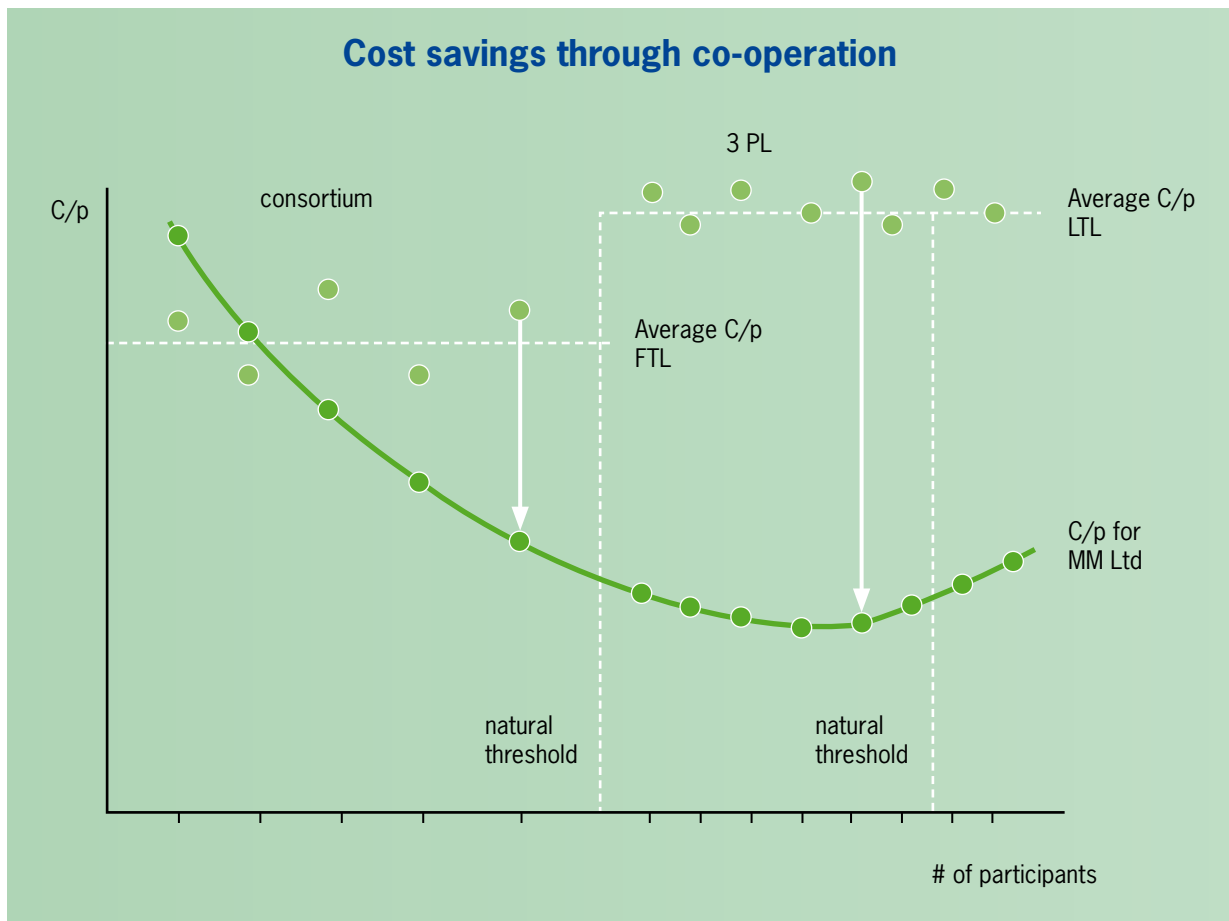


typical collaborative structure, large producers cooperate in a consortium to create more volume. They request a third party to organize and control the optimal split of transport modes using different transport operators to move goods to their retailers. This third party logistics company will also find a certain number of small independent producers to complete, i.e. to “fill in the gaps” at an interesting rate.

Their main objective is to combine stable and peak patterns in an optimal way. Stable parts can be transported via the hub network, peak and urgent goods are moved directly by truck. Prof Ruijgrok mentioned the example of a LSP working for a chemical company. Originally, goods were moved

directly using road and rail transport. Adding maritime transport to their scheme considerably improved the system, cutting transportation costs by double digits, but the goods travelled a longer way and needed better co-ordination by a third party LSP. In a multimodal network where big and small shippers are served by the same split control provider, small shippers are the ones who gain most in efficiency by considerably lower transportation costs, but all participants see continued synergies being created.

“If you want people to co-operate, you have to be clear about the profit possibilities and the profit share”, Prof Ruijgrok insisted. “Before you even get started, you need to determine what happens if one party fails



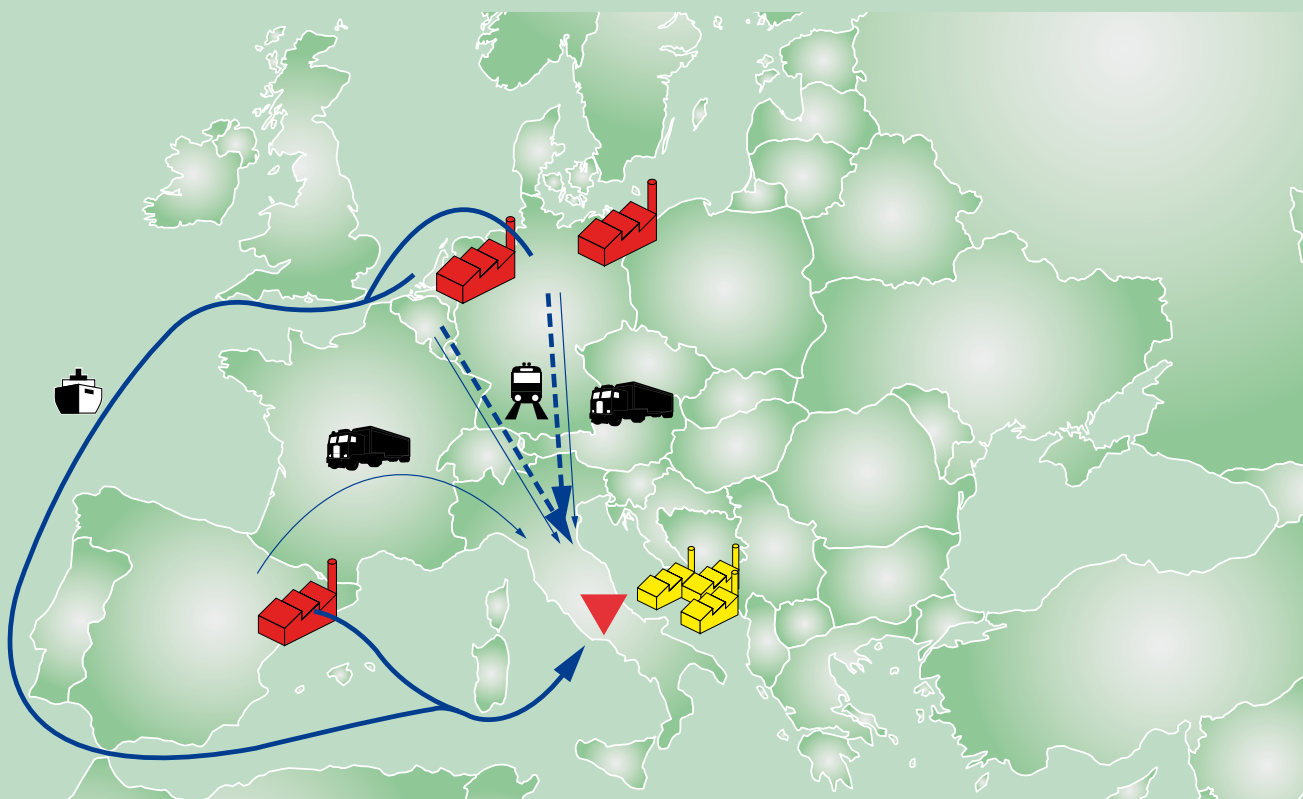


Successful collaborative systems ask for a clear view on the system optimisation and require all parties to redesign existing business models and responsibilities. Shippers as well as transport operators need to change the rules and shift some of their operation control to a third party LSP.

or if the objectives are not reached.” Successful collaborative systems ask for a clear view on the system optimisation and require all parties to redesign existing business models and responsibilities. Shippers as well as transport operators need to change the rules and shift some of their operation control to a third party LSP. According to Prof Ruijgrok’s experience, double digit gains are perfectly achievable, but “you need to establish clear investment and gain sharing mechanisms in order to guarantee a win-win situation for all parties involved.” At last, monitoring KPI’s is essential to determine whether the Service Level Agreements are being met. “I have seen many companies start horizontal co-operations, but only those few succeeded who had set up very clear share mechanisms.”

Prof Ruijgrok recommended a contract period of 3 to 5 years in order to achieve a certain economy of scale. “It takes one year to start up and build confidence. Partners involved have to learn to be ‘looked over the shoulder’. I recommend including a project pilot in the start-up phase to check that the different information systems work well together.” Also, the case of one party stepping out of the contract needs to be clearly addressed beforehand.

Case study : with Collaborative Planning, Forecasting and Replenishment (CPFR), Multimodal transport and Vendor Managed Inventory (VMI)





Ben Hermans

Attorney at law, Monard-D'Hulst, Brussels, Belgium

Horizontal Co-operation Agreements: Legal Pitfalls and Opportunities

Ben Hermans gave a compact overview on all legal areas to be taken into consideration when setting up horizontal agreements. Although European competition law puts strict limits on horizontal co-operation, a wide range of exemptions, especially for the transport industry, applies. As a European business lawyer he can only recommend companies to consult their lawyer *before* setting up the terms of a horizontal agreement rather than relying on them when something goes wrong.

A 'Horizontal Agreement' is defined as an "agreement between companies operating at the same economic level in the market". The most common forms of horizontal agreements are

- Concerted practice (practical co-operation or co-ordination of market behaviour through direct or indirect, loose contact);
- Contracts between parties (ad hoc basis, framework agreement);
- Structural co-operation (e.g. joint venture with or without legal personality).

The majority of horizontal agreements are R & D agreements, production agreements including specialization agreements, purchasing and commercialization agreements, agreements on standards and environmental issues. Most agreements incorporate several elements and are not easy to qualify. When contracting a horizontal agreement, companies should check same against EC and national competition law and consider contract law and tax law implications.

To prevent cartels, article 81 of the EC Treaty prohibits "all agreements between undertakings, decisions by associations of undertakings and concerted practice which may affect trade between EU member states which have as their object or effort the prevention, restriction or distortion of competition." This only applies if their common



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market share exceeds 10%. The most common examples of prohibited practices cited by Mr Hermans are:

- Direct or indirect price-fixing or fixing of any other trading conditions
- Limit or control production, markets, technical development or investment;
- Share market or sources of supply;
- Application of dissimilar conditions to equivalent transactions with other trading parties;
- Imposing supplementary obligations by contract although they are unrelated to the subject of such contracts in order to distort or prevent competition.

Exemption from the prohibition applies if agreements generate overall economic benefits, even if they affect competition. These agreements are allowed if they contribute to improving the production and distribution of goods and to promoting technical and economic progress. It is understood that consumers must get a fair share of the resulting benefits. For evident reasons, natural monopolies may exist for geographical reasons – but not by contract!

The base line remains valid: agreements should never impose restrictions on undertakings which are not indispensable, and must not eliminate competition. Competition on the relevant market must remain substantial.

Equivalent provisions exist within the European Economic Area and in each individual EU member state. Sometimes, national competition law is even stricter than EU law. Unless it bears a European dimension, non-compliance with competition law is nowadays a matter of national authorities (e.g. Deutsches Bundeskartellamt). Most investigations are not launched by competition authorities ‘ex officio’, but after a complaint filed by a competitor, supplier etc. The authorities can issue a “cease and desist” order: companies are enjoined to immediately stop the incriminated practice; all agreements are regarded as void. *“Do not underestimate these authorities, Mr Hermans warned, “they have a long arm. Nothing might happen for ten or twenty years, and then suddenly, someone files a complaint. In this case, you are better off talking to the authorities first and benefit from amnesty.”* Fines can amount up to 10% of annual turn-over, according to gravity and duration of the infringement.

Application of competition law on horizontal agreements in the field of transports (rail, road, inland waterways) is laid down in EU Council regulation 1017/68. They prevail on general rules of EC art. 81. Non binding guidelines have moreover been issued by the EU Commission in 2001.

According to regulation 1017/68 agreements within the transport industry are in line with competition law if “the sole object and effect of the agreement is to apply technical co-operation by approved means, and if the agreement is deemed not to restrict competition.”



Are considered as ‘approved means’ (closed list):

- the standardization of equipment, transport supplies, vehicles or fixed installations;
- the exchange or pooling, for the purpose of operating transport services, of staff, equipment, vehicles or fixed installations;
- the organization and execution of combined transport operations, and the fixing and application of inclusive special competitive rates;
- the use, for journeys by a single mode of transport, of the routes which are most rational from the operational point of view;
- the co-ordination of transport timetables for connecting routes;
- the grouping of single consignments;
- the establishment of uniform rules as to the structure of tariffs and their conditions of application (excluding actual transport rates and conditions!).

Groups of small and medium-sized undertakings are exempted from the application of EC competition law, if the total carrying capacity does not exceed 10 000 metric tons in road transport and if the individual capacity of each undertaking belonging to a grouping does not exceed 1000 metric tons.

Assessment criteria for horizontal co-operation agreements under the EC Commission Guidelines vary per type of agreement. The starting point of any analysis is the market power of the parties. A low combined market share or market concentration (depending on how many competitors operate in one market) seriously decreases likelihood of competition restrictions. Additional factors include entry barriers and stability of market shares.

Commercialisation agreements involving co-operation in sales, distribution or promotion of products and services are exempted, if the combined market share does not exceed 15%. Price-fixing is nonetheless almost always illegal.

Standardization agreements regarding the definition of technical or quality requirements for current or future products, production processes or methods are legal when adopted by recognized standards’ bodies based on non-discriminatory, open and transparent procedures. They are illegal if they are defined to keep other competitors out of the market. There exists a certain “grey area”, according to Mr Hermans, as joint control over production or innovation can be of a nature to exclude others.

Environmental agreements are agreements by which the parties undertake to achieve pollution abatement by fixing targets or measures directly linked to the reduction of pollution or waste. This is a sensitive area, as environmental agreements can have substantial impact on the output of third parties and shut products out of the market, as they can’t comply with new measures. Environment agreements are therefore prohibited when used as a tool to engage in a “disguised cartel” (price fixing, output limitations, market allocation).

“Last but not least,” Mr Hermans underlined, “be always aware that national competition authorities might have a stricter view than EC competition authorities. Prevention is better than cure.”



When setting up a horizontal agreement, a company should always consider the contract law aspects. First of all, parties need to determine autonomously which national law is applicable, especially in the case of cross-border agreements. In general, it's the law of the country most closely connected, i.e. the seat of the party whose performance is characteristic for the contract rather than the law of the country where the customer of a service or production is located, that applies.

Mr Hermans insisted on the importance of key contractual provisions covering a wide range of issues, especially the validity of warranty and limitation of liability clauses: *"A small incident can cause massive damage!"* Therefore, liability should be limited to an amount covered by the company's insurance. This limits exposure to a certain amount. Indirect damage including loss of profits should be excluded and even cases of "force majeure" (natural disasters, terrorism, riots etc.) should be clearly addressed.

Mr Hermans insisted on the importance of key contractual provisions covering a wide range of issues, especially the validity of warranty and limitation of liability clauses.

Other issues to be covered by contractual provisions are:

- Notice periods and terms: indefinite or definite contract period? How can you get out of a contract?
- Indemnities for termination (with/without cause, material breach, bankruptcy...) have to be determined
- Exclusivity
- Contractual liability (see above)
- Competent court or arbitration (not necessarily in the country whose law has been chosen to be applicable to the agreement).

Mr Hermans recommends using arbitration in important contracts for settling conflicts rather than judicial procedures, even if arbitration is more expensive. But in his opinion, it's worth the money because it helps settle conflicts faster and offers better confidentiality. Also helpful is to make the differentiation between conflicts regarding technical aspects that will be submitted to an expert and conflicts regarding points of law or on the construction of the contract. Technical issues can be referred to an expert, legal points to arbitration.



Ruud d'Hondt

Senior Purchasing Specialist Labour & Services Department of Dow Benelux/UK/Nordic

A case study: Integrated Logistics Services

At Dow's second largest plant outside the US, in Terneuzen (Netherlands), TNT Logistics provides site logistics services involving other LSPs, with focus on MRO and construction project materials. The evolution of the scope of services goes hand in hand with a progressive shift of knowledge, competence and liability.

Dow's main objective for signing a contract with TNT was to secure continuity of inbound logistics services by outsourcing receipt and distribution of MRO products. The Dow crew was aging and so was the equipment. Replacement had to be avoided and outsourcing seemed the best option, explained Mr d'Hondt. By choosing one single LSP, Dow wanted to limit the numbers of site entries and traffic on site. By contracting a specialized logistics provider, Dow expected to improve operational quality, flexibility, efficiency and productivity as well as inventory and information management due to a more sophisticated logistics information system connected to Dow's information system.

To select the right partner, Dow set up a long list of 30 candidates based on market knowledge, sized down to 16 potential candidates after data analysis.

Request for quotations were sent out based on criteria such as location, geographical coverage, experience, financial situation, quality of response and innovative concepts, and price. 5 Candidates were invited for an in-depth presentation, 2 actually entered negotiations. TNT was finally chosen mainly due to their location, commitment and price.

The outsourcing agreement was deployed in 5 phases over 4 years covering an increasing scope of services:

- Receiving MRO materials outside the Dow site
- Adding distribution of MRO materials
- Adding packaging
- Adding supplier-managed inventory for R & D labs to avoid running out of critical equipment



- Currently under negotiation: adding quantity and quality check on incoming materials, on-site MRO management, Dow's outside warehouse management, project material tracking, connecting TNT's warehouse management system and Dow's transaction systems, out-bound courier management.

Mixed Dow-TNT teams were involved in a progressive learning process. Including quality control will be the biggest challenge for the near future, as it requires new technical knowledge to be picked up by TNT. Materials overall involved are spare parts, repair components, tubes and cables, office supplies, laboratory supplies, production samples, safety materials.

The current scope of services include:

Receiving and Storage:

Receiving in-bound materials, cross-dock and ex-storage; temporary storage in-bound for projects including administration; visual identification and quantity & quality check for incoming materials.

Distribution:

Collecting and packaging of out-bound materials, returns or repairs; managing courier services for out-bound materials operated by partner LSPs; on-site distribution of incoming supplies, cross-dock and ex-storage; collecting ex-works supplies in the Terneuzen area on round-trips to suppliers.

On-site Logistics:

Receipt administration for Dow's internal repair shop; R & D sample management; back up for Dow's employees at the central warehouse for spares and internal repairs.

Off-site Logistics:

Managing Dow's off-site warehousing.

In 2004, 6500 orders (11.000 items) were received via TNT, 3000 items had to be returned. TNT resources and equipment: 16 full time employees; 2 crane trucks and 2 vans.

Currently, Dow is preparing the most challenging step in extending and integrating TNT's services, including:

- Take-over of lease contracts on handling equipment;
- Take-over of office equipment;
- Pricing and purchasing of consumables (such as packaging materials and office supplies);
- Data confidentiality;
- Shared responsibility in the site central warehouse;
- Off-site warehouse optimisation;
- Liability and accountability on losses and courier transport;
- Technical knowledge related to the received equipment;
- Compensation formulas (if possible performance-related)



Dow was satisfied with TNT's response time on distribution and stock picking, their optimal courier selection, SMI (inventory for lab's equipment) and central receiving off-site. Room for improvement remains in the areas of technical knowledge for QC, internal back up and house-keeping, obsolete spare parts reduction and liability on stock losses. Since the scope changed over the years and since no real stock validation or accurate inventory had been done upfront, it is difficult to evaluate the exact overall financial impact. Regarding TNT's choice of LS subcontractors, Mr d'Hondt explained that Dow

is issuing safety guidelines and limits, but TNT is free to choose what they consider the most suitable partners.

Questioned whether Dow worries about the ongoing rationalisation process amongst LSP, he said: *"We watch the ongoing process closely, but don't see any additional risk. The contract is clear on that. For the rest, we are not 'married' for ever. Returning to the initial state would not be an option; but after a period of 5 years, we can have a new look on the market."* Nevertheless, if Dow returned to the market, TNT would be undoubtedly in a strong position.

Dow-Site Terneuzen – S-W. Netherlands



site Terneuzen: 26 chem.plants incl. 3 steamcrackers
approx. 2,100 empl. / 900 contractors

ECTA-EPCA-Cefic Guidelines on Best Practices in Chemical Logistics

Since the creation of ECTA in 1999, the chemical transport industry has already gone a long way in developing its own SHEQ management systems and pro-actively controlling and auditing their performance.

ECTA ensures the chemical transport industry with a consistent, unified approach matching the needs and expectations of the chemical industry and contributes to the continuous improvement of the standards of efficiency, safety, quality and the environmental impact of the chemical transport and logistics chain in Europe.

In joint working groups formed by representatives of transport service providers and producers of chemical goods, with – where appropriate – the participation of authorities and institutions, ECTA develops in an open and transparent manner “Best Practices” in transport and logistics of chemical goods in Europe. The Guidelines which are developed in the working groups are actively promoted through ECTA to the chemical transport sector and are freely available and downloadable on www.ecta.be.

List of Best Practices ECTA-EPCA-Cefic :

- Industry Security Guidelines
- Guidelines on Subcontracting
- Behaviour Based Safety - Guidelines for the Safe Loading and Unloading of Road Freight Vehicles
- Guidelines for Transportation Security
- Behaviour Based Safety - Guidelines for safe driving of road freight vehicles
- Road Transport Equipment : Guidelines for Standardization of Equipment
- Standard Rail Tank Cars for the Carriage of Liquid Chemicals in Bulk : Requirements for Design, Construction and Testing
- Guidelines for 16 hour operation
- Guidelines for Safety Awareness and Behaviour in the Supply Chain
- Guidelines for Standardized Delivery Performance Measurement
- Recommendations on Safety, Health and Environmental (SHE) Management Practices for Logistics

Free downloads at www.ecta.be





Leaders in Chemical Transport Round Table

30 May 2006 – de Warande
“EU Transport Policy”

A select group of chemical transport company owners and managers enjoyed the presence of Ari Vatanen, Member of the European Parliament for France, Member of the Committee on Foreign Affairs, Substitute Member of the Transport Committee and former Rally Raids world champion. This “close” encounter with Mr. Vatanen yielded a very interesting debate on the use of public funding in the transport modes and multimodal view of transport for the future.





EUROPEAN CHEMICAL TRANSPORT ASSOCIATION



“WHY BECOME A MEMBER ?”

ECTA Membership :

- Contributes to the recognition of the chemical transport industry and its business needs.
- Gives access to first hand information on what is happening and evolving in the transport and logistics of chemical goods in Europe.
- Allows participating in the pro-active development and application of “Best Practices” in the transport and logistics of chemical goods in Europe.
- Creates a unique networking opportunity in the sector.

For more information, please contact the ECTA offices by using the contact form at our website www.ecta.be or tel. + 32 2 741 86 81

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ECTA is a signatory association to the EU Road Safety Charter