

GLOBAL

COLD CHAIN NEWS

SPECIAL REPORT: BRITISH DISTRIBUTION TRENDS • APRIL 2011

Editors

Dean Stiles T: + 44 (0) 1304 228196
E: dean.stiles@globalcoldchainnews.com

Sally Nash T: + 44 (0) 1304 22819

Advertising and publishing

David Crawford T: +44 (0) 208 643 4948
E: david.crawford@globalcoldchainnews.com

Subscriptions

www.globalcoldchainnews.com
Tina Massey tel: +44(0)1326 560420
E: tina.massey@globalcoldchainnews.com

Published by

Commercial Transport Publishing Limited

APRIL 2011

Britain is a world leader in logistics and distribution with its retailers operating some of the most sophisticated centralised distribution systems in the world. We examine the developments in UK temperature controlled transport

UK temperature controlled-transport market booms

London, UK: The number of temperature controlled vehicles in the UK is set to grow by 28% and reach 172,000 vehicles in 2013.

The temperature controlled road transport industry has become a major part of the UK economy with 134,100 vehicles operating in the UK in 2010. This is the result of a continuous increase in domestic consumption and higher standards of quality requirements of food products, pharmaceutical and healthcare products, according to a report by TechNavio. There has been a steady increase in the demand, particularly for articulated vehicles (semi-trailers) and this trend is

expected to continue in 2011 according to the report: UK Refrigerated Road Transport Market 2010-2013.

"With the UK market gaining momentum after the recession, several trends have been aiding the growth of the road transport market. With the increase in population growth, there has been an increase in the number of eateries in the UK. This in turn is driving the demand for refrigerated road transport vehicles. Moreover, with the economy gaining momentum, consumer spending is slowly increasing again. Thus, giving a major boost to the refrigerated road transport market," TechNavio's analyst says.

"Increased awareness about food safety among consumers has also been driving the growth of refrigerated transportation. End users are becoming highly cautious about the quality of food, which is driving the companies to opt for refrigerated transportation.

Market players as a result are improving the efficiency of the vehicles and the refrigeration systems."

"The most prominent trend in the UK refrigerated market is the focus on environmental issues. Low fuel consumption and reduced noise pollution will be key factors considered by refrigerated vehicle manufacturers."

Case study: Marks and Spencer's green blueprint

Marks and Spencer's Plan A is a set of 180 environmental commitments described by its chief executive Mark Boland as an "integral part of our business [and] an integral part of the brand".

Plan A dates back to 2006, when Sir Stuart Rose, chief executive at the time, decided that the retailer needed to go beyond traditional corporate social responsibility, in which M&S has a rich heritage.

Environmental issues were coming to the fore, while customers were becoming sceptical about the claims that big businesses were making. To move forward and stay one step ahead of customer demands, Sir Stuart believed that M&S should become a green business.

Mike Barry, head of sustainable business at M&S, says Sir Stuart saw that "part of our retail battleground will be in being a sustainable brand".

Barry was tasked with translating Sir Stuart's vision into a set of firm principles, that became Plan A - a comprehensive set of commitments to becoming a more sustainable business.

According to Barry, the breadth of Plan A is one of its distinguishing features. "One of the reasons it has been well received is we have not cherry-picked any issue. We are tackling [everything]," he says.

Products are at the heart of Plan A, while developing a more sustainable supply chain is also critical. More than 20m people visit M&S stores every week, which adds up to 2.7bn individual items of food and clothing sold every year.

"[This is] a change management programme," says Barry. "It is about changing how we do business, and engaging every employee and every customer in a more sustainable future."

One initiative is in its temperature controlled goods transport fleet. M&S's stores and transport fleet now use 20% less energy. It is also involved in trials by one its transport contractors, Gist, using a prototype nitrogen powered, closed refrigeration system, for trucks.

On its cold store fridges, rather than replacements that use harmful greenhouse gases, it has opted for a

more measured (and cheaper) approach of halving the carbon footprint of its refrigeration systems by 2015 by cutting leaks and using a kinder form of hydrofluorocarbons in these systems. It aims to eliminate the use of harmful HFCs from its refrigeration systems by 2030.

"Plan A is not about being dogmatic," says Barry. In the case of revamping the refrigeration systems, "we are being sensible and pragmatic - delivering change, but in a way shareholders would understand and respect".

Despite the challenges, M&S had achieved 70 of its Plan A commitments by last summer. It expected to increase this to 90 by the end of March this year. A year ago, it extended Plan A from 100 to 180 commitments.

The group has launched a £50m incubator fund to foster the development of new green products and services. Parts of the business compete for investment to explore new ideas in transport, logistics, and food and clothing production.

PAGE 2:

- Wiseman extends milk deals
- Reed Boardall back in profit

PAGE 3:

- Logistics goes low-carbon
- Grocontinental expands

PAGE 4:

- E-mails and why they form part of UK contract law

Wiseman extends Co-op milk deal

East Kilbride, Scotland, UK: Dairy company Robert Wiseman has won the contract to supply the Co-operative Group with its own-branded milk in a deal that sees 350 farmers become dedicated suppliers for the chain.

Under terms of the two-year contract, Wiseman will supply 100% of the mutually-owned supermarket chain's own-brand milk from August. At present Wiseman supplies 75% of the Co-op's milk.

Some 350 of Wiseman's dairy farmers will form a supply chain for the Co-op, receiving a premium rate for providing about 363m litres of milk a year to around 4 000 stores. Dairy Crest and Arla lost out in the tender process, but the Co-op said that Dairy Crest remains a major supplier of dairy products for its stores. The Co-op said it had always intended to set up one dedicated milk supply scheme once it completed integration of recently acquired food retailer, Somerfield. Robert Wiseman Dairies processes and delivers around 30% of the fresh milk consumed in Britain.

Langdons to open £8m warehouse in Redditch

Redditch, UK: Temperature-controlled company Langdons is building an £8m depot in Redditch. It will have storage capacity for around 3,500 pallets of frozen food and 1,600 pallets of chilled food, as well as a large chilled marshalling area. The 4,645 sq m facility, to be completed by August, replaces a rented warehouse in the area. Langdons has rented a depot in Redditch for nearly seven years and says it had "always been too small for our requirements in the Midlands". Langdons has depots in Bridgwater, Luton, Peterborough, Dover, Liverpool, Glasgow and Barnsley. Langdon Industries specialising in controlled temperature operations. Approximately 25,000 pallets of frozen and chilled foods pass through its network every week.

Reed Boardall Transport returns to profit

York, UK: Temperature-controlled transport operator, Reed Boardall Transport returned to profit after several years of losses, posting a pre-tax profit of £768,001 (US\$1,252m) for the year ending 31 March 2010, compared to a pre-tax loss of £652,262 (US\$1,063) in 2009. Turnover for the period dropped slightly to £30.2m (US\$49.258m) from £30.3m (US\$49.429m). Reed Boardall Cold Storage boosted turnover 51.5% to £35.3m (US\$57.57) for the 12 months to 31 March 2010, up from £23.3m (US\$38m) in 2009, with pre-tax profit rising 46% to £5.7m (US\$9.23m) from £3.9m (US\$6.36) the previous year. Growth came from the first full year of the extension to its cold store in Boroughbridge, which has capacity for 112,000 pallets at -25°C.

"We believe it is the largest facility of its kind in the UK and it has been more than 80% full throughout the year. The increased volume and the efficiencies of a larger store have led to the improvement in the division's profit," Boardall says in a statement.

Full results for the Reed Boardall Group, which include turnover from Reed Boardall's vehicle servicing and parts business, ended the year with a £50.9m (2009: £49.1m) turnover and pre-tax profit up substantially at £6m (2009: £2.8m).

"The directors are optimistic about the prospects for the group, although it seems likely that pressure on prices will continue for some time, making cost efficiency the only means of maintaining profit," says Boardall.

UK retailers switch to climate-friendly natural refrigerants from 2009 to 2010

London, UK: The number of UK retailers using climate-friendly refrigeration with natural refrigerants has increased from 46 stores last year to 239 in 2010 says The Environmental Investigation Agency's Chilling Facts III report. It says that in 2009 as much as one-third of a supermarket's carbon footprint came

from the cooling gases in its refrigeration systems. Then just 14 UK stores used climate-friendly technologies. The report found that lack of standardisation in training programmes has continued to create problems, slowing down the introduction of climate-friendly technologies.

Obituary: Edward Stobart

Carlisle, UK: Edward Stobart, who died aged 56 on 31 March, took Eddie Stobart, the Cumbria-based haulage business founded by his father, and, over 30 years, built it into the best-known and biggest privately-owned haulage company in the United Kingdom.

Edward's father, Eddie, founded the company as an agricultural contracting business in the 1950s. But it was the third of his four children (always called Edward to distinguish him from his father) who turned the company into a household brand after taking over the transport side in 1976 at the age of 21.

Edward Stobart's initiatives include the distinctive, and very traditional, green, red and gold livery, for the company's trucks that were kept spotlessly clean and in immaculate condition. His drivers were required to wear a shirt and tie, later a uniform with polo shirt, and encouraged to wave and sound their horns when a member of the public recognised the brand.

In 1986 Stobart brought in a new

management team, including his younger brother William, and the firm moved to a new site with better vehicle facilities and warehouse capacity to cope with increased demand for an integrated storage and distribution service. The company continued to gain new business, and several more depots were opened. By the mid-1980s it was growing at about 25% a year. By 2000 the company had more than 800 lorries and 22 depots. It was Eddie senior who began the tradition of giving Eddie Stobart's lorries female names. The first three were named after the sixties' model Twiggy and the singers Tammy Wynette and Dolly Parton. Edward continued the tradition, with more recent vehicles named after Ffion Hague (following a request from her husband, William Hague, now the UK's foreign secretary), Paris Hilton, and UK television presenters Trinny and Susannah, and Fiona Phillips. Edward Stobart and his first wife, Sylvia, had four adopted children. He also had two children by his second wife, Mandy.

British logistics cuts carbon emissions

Tunbridge Wells, UK: A voluntary scheme to reduce carbon dioxide emissions from heavy trucks and vans published its first annual report to coincide with Climate Week.

The Logistics Carbon Reduction Scheme (LCRS) has attracted the support of nearly 50 leading businesses including retailers, third party logistics providers and utility companies that operate some 40,000 commercial vehicles.

The scheme, which is managed by the Freight Transport Association (FTA), involves businesses providing details of their fuel usage, fleet and activity data. The administrative burden of providing data is minimal because it is collected routinely by operators to manage their businesses. Scheme members commit at a senior director level to participate in the scheme and to have their data independently verified by the association as part of the reporting process. The first annual report tracked emissions from 2005 to 2009 from the sector.

Participants committed collectively to an 8% reduction of carbon dioxide emissions by 2015 (compared to 2010 levels). Future annual reports will monitor the progress towards meeting the target.

Simon Chapman, chief economist at the FTA, says: "Carbon dioxide emissions from freight represent 30% of all transport emissions, and the industry recognises it has an important role in bringing overall levels of emissions down. Analysis of fuel use emissions data since 2005 by scheme members suggests that some progress has already been made,

particularly through driver fuel efficiency training, use of bio fuels and increases in vehicle carrying capacity. However, better visibility of fuel costs, which the scheme promotes, suggests there is still a big prize for operators to aim at. The cost of fuel continues to represent over a third of the costs of running a truck."

Unlike national carbon dioxide reduction targets, which commit the UK to an absolute cut in carbon dioxide emissions, the scheme's target focuses on producing less carbon per unit of resource or activity. Chapman says: "The 8% intensity reduction in just five years is challenging. However we believe it is achievable given the opportunities that alternative fuel and vehicle technology offer in improving fuel efficiency and the contribution that telematics and traffic office IT can make to working resources harder.

"Setting an absolute cut in emissions, whilst superficially attractive as it would tie into national targets, is impractical. Freight demand and therefore absolute levels of fuel use is heavily dependent on economic growth and changes in business of scheme members. These are not factors that businesses can predict with any certainty. What operators can commit to is how they will make use of low carbon technologies and fuels and leveraging greater productivity out of their resources." Whilst the scheme's development has been industry-led, there is considerable potential for government action to reinforce the progress made by businesses to reduce their carbon dioxide emissions. The target reflects a business as usual scenario and current government policies that are not as helpful as they could be, he says.

Chapman adds: "If government wants more then it can help us by looking at higher capacity trucks, defending double deck trailers against a possible European height limit of 4 metres, making rail freight cheaper and easier to use, restoring rail freight grants and bio fuel duty incentives and maintaining a fairer deal on fuel."

Transport industry unlikely to meet demands of low carbon economy

Berkhamsted, UK: The UK freight industry is unlikely to meet the goals for carbon reduction and economic performance unless positive policy actions are taken says a new report: 'UK Freight Transport: setting a coherent strategy and direction for 2020 and beyond', by LCP Consulting. The report author, Professor Alan Braithwaite says that radical and difficult changes in freight transport policy and investment are needed if the industry is to contribute fully to economic prosperity and environmental sustainability. Braithwaite says: "These will involve a combination of taxation to promote more efficient use of resources, regulation to drive more efficient, safe, clean and fair operations and planning processes that enable innovation and investment to deliver a step change."

Braithwaite said: "The network for freight and logistics that will enable it to contribute to reduced congestion and improve economic and environmental effectiveness is a much wider challenge than has been articulated. "It involves complex interactions of capacity and flows. This has yet to be adequately recognised in policy development, partly because of deficiencies in the available data and modelling."

The report says that freight and logistics has "punched above its weight" over the past 10 years, delivering economic growth with improving freight efficiency. It also notes that freight and logistics will need to make a significant contribution to meeting longer-term congestion and climate change goals.

This will require a basket of radical measures, it claims, incorporating technical, modal and supply chain structural change

CUTTING THE CARBON FOOTPRINT

Newark, UK: The British Frozen Food Federation plans to reduce the carbon footprint of the cold chain by 15% across the industry through a series of initiatives. The plan has been prepared with the support of the Carbon Trust. There are similar initiatives in the US to "green" operations. Oregon-based Stahlbush Island Farms powers its processing plant with a biogas power plant and in Connecticut, family-business, Carla's Pasta is installing a 300kW fuel cell power plant at its frozen food processing site.

Grocontinental expands UK warehouse

Whitchurch, UK: Temperature-controlled transport operator Grocontinental has submitted a planning application for a 5,493sq metre extension to its existing frozen and chill storage and distribution warehouse. It comes weeks after the family-run firm announced a separate £2.25m (US\$3.64) investment in a new 3,700sq metre warehouse. The temperature-controlled warehouse expansion will boost the dairy warehousing sector in the UK which has declined in the past decade says Linda Grocott, joint managing director. "This latest application is part of our future growth plans," she said. "One of the objects of this development is to provide additional sub-zero and chill warehousing capacity together with additional blast freezing/defrosting facilities," says Grocott.

Legal: UK contract law clarification

E-mail chains: Can they amount to a binding guarantee?

Helen Fairhead, associate at London-based Reynolds Porter Chamberlain LLP explains why courts now regard e-mails as legal binding documents.

It is a basic principle of English law that a contract can be formed orally, without documents. However, where the contract is for the sale or disposition of an interest in land, or a guarantee, statute requires a signed written agreement.

Specifically, Section 4 of the Statute of Frauds 1677 provides that a guarantee (or alternatively a memorandum or note of a guarantee) has to be in writing and signed by or on behalf of the guarantor.

However, in the recent case of *Golden Ocean Group Ltd v Salgaocar Mining Industries PVT Ltd*, the High Court has held that a chain of e-mails was sufficient to constitute a guarantee, even though the alleged guarantors had not signed a final guarantee document.

In this case, the claimant (G) owned a vessel which T, a nominee company of the defendant (S), sought to charter. G entered into e-mail negotiations to charter the vessel with an individual (Mr X) who was acting on behalf of both T and S. Reference was made during these negotiations to G's contract for charter with T being "fully guaranteed by S".

The basic terms of the contract were agreed by the email exchanges and further conditions to the charter (referred to as

"subjects") were satisfied at various stages in those exchanges. On the apparent conclusion of e-mail negotiations, versions of the charter agreement were circulated but these were not signed by either S or T. When the date for delivery of the vessel approached, T and S refused to take delivery of it and denied the existence of both the contract for charter and the guarantee. G subsequently brought proceedings against S, claiming that the e-mail correspondence was sufficient to establish the existence of a guarantee. S denied the existence of the guarantee on the basis that the series of e-mails was incomplete as it ended without a recap or a full agreement incorporating all the terms. The High Court judge, Clarke J, held that the e-mails and other documents exchanged between the parties established a sufficient memorandum or note of guarantee as: 1) the name of the guarantor appeared in the e-mail with the intention that it was a "signature" and 2) there was evidence of an intention to contract. The issue of what amounted to a "signature" had previously been considered by the court in the case of *N Mehta v J Pereira Fernandes SA* where it was held that the automatic insertion of a person's e-mail address when the e-mail was transmitted did not amount to a signature.

In this case, Judge Pelling QC reviewed the various authorities dealing with the issue

of what amounted to a signature and held that: "a party can sign a document for the purposes of Section 4 by using his full name or his last name prefixed by some or all of his initials or using his initials, and possibly by using a pseudonym or a combination of letters and numbers (as can happen for example with a Lloyd's slip scratch)."

What was important was that: "whatever was used was inserted into the document in order to give, and with the intention of giving, authenticity to it. Its inclusion must have been intended as a signature for these purposes."

On the facts of the *N Mehta* case, as the insertion of an e-mail address was automatic, there was no relevant intent for it to constitute a signature.

However, it was common ground between the parties in the *Golden Ocean* case that an electronic signature was sufficient to amount to a "signature" for the purposes of section 4 of the Statute of Frauds 1677.

Giving judgment the judge acknowledged that the e-mails, which constituted the contract, were signed by the electronically printed signatures of the persons who sent them. Interestingly, Clarke J also commented that an e-mail, the text of which begins "Paul/Peter", may be regarded as signed by Peter because by that form of wording, Peter signifies that he is addressing Paul and "authenticates the content of the whole of what follows."

What constituted the guarantee

In the *Golden Ocean* case, the court held that it did not matter how many previous emails or documents there were in a chain of correspondence: a court was entitled to look at all of them. Clarke J noted that in the context of contracts for charter with guarantees, it was common to find chains of e-mails, documents and the fulfilment of "subjects" along the way and that it made "good commercial sense" to look at all documents which might constitute the guarantee. Clarke J stated: "It seems to me highly desirable that the law should give effect to agreements made

by a series of e-mail communications which follow, more clearly than many negotiations between men of business, the sequence of offer, counter offer, and final acceptance, by which, classically, the law determines whether a contract has been made. This is particularly so when charter parties with guarantees are often negotiated and concluded by the sort of e-mail exchange seen in this case; and are not necessarily followed by a drawn-up charter." Clarke J held that the fact that one of the parties had made a "request for a recap" did not mean that an agreement had not been made as a

recap would have been "recapitulation of an agreement that had (arguably) already been made in writing". In any event, Clarke J referred to the fact that the last e-mail in the chain referred implicitly to previous communications in the chain. "Subject to Contract" Negotiating parties often try to mitigate the risk of entering into a binding contract (or guarantee) by expressing pre-contractual negotiations as being "subject to contract". The inclusion of this phrase is said by the courts to create a strong presumption that the parties do not intend to be bound.

GLOBAL
COLD CHAIN NEWS

Global Cold Chain News Special Reports are published quarterly and are part of the business intelligence service for temperature controlled logisticians available on subscription from www.globalcoldchainnews.com

Global Cold Chain News provides business intelligence reports with news and analysis about trends and developments in temperature-controlled logistics, transport, storage, and distribution of food, pharmaceuticals, and other temperature-controlled products nationally and internationally.

Editorial Office

Dean Stiles T: +44 (0) 1304 228196
E: dean.stiles@globalcoldchainnews.com

Marketing and Sales

David Crawford T: +44 (0) 208 643 4948
E: david.crawford@globalcoldchainnews.com

Subscriptions and Administration Office

www.globalcoldchainnews.com
Tina Massey tel: +44(0)1326 560420
E: tina.massey@globalcoldchainnews.com

Commercial Transport Publishing Limited

39a Meneage Street, Helston,
TR13 8RB, United Kingdom

Commercial Transport Publishing Limited

Registered in England and Wales
Company number: 6453302

Registered office: 6 Corunna Court, Corunna Road,
Warwick CV34 5HQ, United Kingdom

www.globalcoldchainnews.com