



COMPETITION COMMISSION OF INDIA

Case No. 31 of 2024

In Re:

Airen Metals Private Limited
(Through M/s Bakbone Recovery and
Consultancy Pvt. Ltd.)
246 Engineers Colony, Sirsi Road,
Panchyawala, Jaipur-302034

Informant No. 1

Airen Copper Pvt. Ltd.
(Through its Director Mr. Bhwnesh Sharma)
F-728, Road No. 9F2, VKI Area,
Jaipur- 302013.

Informant No. 2

And

Hindalco Industries Limited
(Unit: Birla Copper)
21st Floor, One Unity Centre,
Senapati Bapat Marg, Prabha Devi,
Delisle Road, Mumbai – 400013

Opposite Party No. 1

M/s Vedanta Limited,
1st Floor, 'C' Wing, Unit 103, Corporate Avenue,
Atul Projects, Chakala, Andheri(E)
Mumbai, Maharashtra, India- 400093

Opposite Party No. 2

CORAM

Ms. Ravneet Kaur
Chairperson

Mr. Anil Agrawal
Member

Mr. Deepak Anurag
Member



Order under Section 26(2) of the Competition Act, 2002

1. The present Information has been filed by M/s Airen Metals Private Limited ('AMPL'/'Informant No.1') and M/s Airen Copper Pvt. Ltd ('ACPL'/'Informant No.2'), (collectively referred to as '**Informants**') under Section 19(1)(a) of the Competition Act, 2002 ('**Act**') alleging contravention of the provisions of Sections 3 and 4 of the Act, by M/s Hindalco Industries Limited ('HIL'/'OP-1') and M/s Vedanta Limited ('VL'/'OP-2') (collectively referred to as '**Opposite Parties**'/'OPs').
2. As per the Information, OP-1 and OP-2 are in the business of providing Refined Copper (*viz.* Copper Wire Rod, Copper Cathode *etc.*) to companies who process and convert it to manufacture finished products of copper. OPs are stated to control almost 75% of the business of providing refined copper while the remaining 25% business is being catered by import/unorganised sector. It is stated that OPs, being the sole suppliers of copper in the Indian market, have been enjoying duopoly status in India since the last 30 years. The total annual consumption of refined copper within the country is around 6.6 Lakh Tonne, out of which share of OP-1 is 55 to 62% and share of OP-2 is 18 to 22%.
3. It is stated that M/s Airen Metals Private Limited/Informant No.1 along with its then Group Company *i.e.* M/s. Airen Copper Pvt. Ltd./Informant No.2 was purchasing its raw material *i.e.* Copper Wire Rod/Copper Cathode from the OPs till FY 2020-21.
4. As per the Informants, companies desirous of buying copper are required to place their respective bookings with the OPs on unknown price *viz.* Cash Settlement Price ('CSP') of the day declared by the London Metal Exchange ('LME'). It has been stated that OPs, on receipt of the order for purchase of copper will thereafter immediately resort to hedging back-to-back on LME Platform, and it is for that reason alone that the OPs were accepting the copper booking from its domestic customer on unknown price *viz.* CSP of the day declared by LME; month average of CSP, any period average of CSP within the same calendar month, Real Time Spot Price.
5. It has been stated that the back-to-back hedging by OPs is also evident from the identical marketing policy of OP-1 and OP-2, which, *inter-alia*, provide that if a

booking made by a purchaser is not lifted, in that event OP-1 and OP-2 will have option to liquidate the booking and recover losses/other charges from that purchaser. As per the Informant, the amount of loss claimed by the OPs, cannot be calculated unless back-to-back hedging has been done by the OPs. The relevant clauses from the marketing policies of both OP-1 and OP-2 are reproduced as under:

OP-1 (M/s Hindalco Industries Limited)

Carry over cost:

1. PBNB (Priced but not dispatched)

*a. LME Booking done between 1st to 23rd is to be lifted within the same month and in case it is carried over to the next month then carry over charges of \$15 will be charged for each month of carry over. The bookings are to be lifted within M+2, otherwise **HIL will have option to liquidate the same and recover losses/other charges from the customer.***

*b. LME Booking done after 24th of the month can be lifted by end of next month and in case it is carried over to the M+2 month then carry over charges of \$15 will be charged for each month of carry over. The bookings are to be lifted within M+3, otherwise **HIL will have option to liquidate the same and recover losses/other charges from the customer.***

OP-2 (M/s Vedanta Limited)

vii) PNDL Carry over charges:

a) Material Priced between 1st to 23rd of the month (M)

<i>Sr. no</i>	<i>Particulars</i>	<i>Applicable Charges</i>
<i>1</i>	<i>Material lifted within the same month</i>	<i>Nil</i>
<i>2</i>	<i>Material lifted in the next month (M+1)</i>	<i>US\$ 15/- PMT</i>
<i>3</i>	<i>Material lifted in (M+2)</i>	<i>US\$ 30/- PMT</i>
<i>4</i>	<i>Material not lifted till (M+2)</i>	<i>Seller has the option to de-price the material on or after the last LME day of M+2 and recover</i>

		<i>the LME difference (D) from the buyer. US\$ 45/- PMT+D, in case the seller decides not to exercise the de-pricing option on last LME day of M+2.</i>
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b) Material Priced between 24th to 31st of the month (M)

<i>Sr No.</i>	<i>Particulars</i>	<i>Applicable Charges</i>
<i>1</i>	<i>Material lifted by last working day of subsequent month (M*+ 1)</i>	<i>Nil</i>
<i>2</i>	<i>Material lifted in (M*+2)</i>	<i>US\$ 15/- PMT</i>
<i>3</i>	<i>Material not lifted till (M*+3)</i>	<i>US\$ 30/- PMT</i>
<i>4</i>	<i>Material not lifted till (M*+3)</i>	<i>Seller has the option to de-price the material on or after the last LME day of M+3 and recover the LME difference (D) from the buyer. US\$ 45/- PMT + D, in case the seller decides not to exercise the de-pricing option on last LME day of M+3.</i>

6. It has also been stated that companies were required to give booking margin/financial arrangement in the form of security money to OPs for placing order for the purchase of copper as per OPs marketing policy. Normally, such security amount varied from 5 to 10% of the copper price and the booking margin could be given either in cash or in the form of Bank Guarantee ('BG') to the OPs. Further, in case the prevailing rate of copper in LME platform comes down in comparison to booking rate, then customers were required to make an additional Mark to Market ('MTM') payment to OPs, over and above the existing security money.

7. As stated by the Informants, they received purchase order for different items of copper from Bharat Heavy Electricals Limited ('**BHEL**') and Central Organization for Railway Electrification ('**CORE**') as detailed below:

S. No.	Date	Name of the Company	Quantity (MT)
1.	21.05.2019	BHEL	300
2.	05.09.2019	BHEL	492
3.	16.01.2020	CORE	1269
	Total		2061

8. In order to meet the requirement of supplying copper to BHEL and CORE, the Informants placed orders for the same to the OPs in terms of their respective marketing policies. The Informants lifted the copper booked with OP-1, however, out of the total amount of copper booked between 22.01.2020 and 10.06.2020, 933.131 MT remained to be lifted from OP-1 and at that time, security deposit of Rs. 1,82,92,023/- was available with OP-1. Similarly, the Informants booked Copper from OP-2 between 02.03.2020 and 01.06.2020 and after lifting the booked Copper with OP-2, 92.283 MT copper was pending for lifting by the Informants.
9. It has been stated that due to Covid-19, there were closure of industries and a lack of demand in the economy, which resulted in non-payment of booked copper to the OPs. Due to non-payment of invoices (which were duly covered through BG) in the prescribed time period of 90 days, the OPs invoked the entire BG amounting to Rs. 50.35 crores, provided in favour of OP-1 and OP-2 almost at the same time *i.e.* 02.07.2020 and 03.07.2020 in spite of the fact that all the BGs were having sufficient time period in their expiry.
10. It has also been stated that both the OPs adjusted the amount of BGs invoked by them against the various bills, which as per the terms and conditions of the payment could have been made by the Informant within 90 days after the date of bill. Therefore, both the OPs in a concerted action, during the peak time of Covid-19 Pandemic, due to their dominant position, decided to invoke all the BGs lying with them towards adjustment of their bills by curtailing the normal period of 90 days available to the Informants in the normal course of business.



11. The invocation of BGs by both the OPs was in excess of amount outstanding against Informants, and the same got refunded after a long time of 3 to 4 years after taking legal action.
12. Due to invocation of the BGs by the OPs, the bank account of the Informants got overdrawn and resultantly, debit freeze was imposed on 02.07.2020 and 03.07.2020 by the lender bankers of Informants. The Informants had to undergo Corporate Insolvency Resolution Process ('CIRP') under the provisions of Insolvency and Bankruptcy Code, 2016 ('IBC'). Consequently, the Informants could not lift 933.131 MT quantity of booked copper from OP-1 and 92.283 MT quantity of booked copper from OP-2.
13. Owing to non-lifting of the above stated quantities (933.131 MT from OP-1 and 92.283 MT from OP-2) by the Informants, the booking of copper got de-priced by OP-1 and OP-2 on 03.08.2020 and 09.07.2020, respectively, and resulted in respective gains of Rs. 7,37,00,925/- and Rs. 36,39,438/-. The gains made by OP-2 was passed on to Informant No.1 on 10.09.2020.
14. It has also been stated in the Information that the Informant No.1 had filed a FIR against OP-1 on 05.05.2021 which was registered at Vishwakarma Police Station, Jaipur bearing no. 190/2021 on 07.05.2021. However, the Investigating Officer reported the dispute to be of civil nature, hence the Final Report (FR) No. 407/2021 got filed by the Police on 18.11.2021. As per the Information, the Final Report filed by Police is pending for acceptance in Case No. 4094/2021 before Addl. Sr. Civil Judge cum ACMM-3, Jaipur Metro II.
15. Similarly, Informant No.2 filed a FIR against OP-1 on 05.05.2021 which was registered at Vishwakarma Police Station, Jaipur bearing no. 192/2021 on 10.05.2021. The Final Report (FR) No. 384/2021 got filed by the Police on 18.11.2021. The Case No. 236/2021 was lodged before Addl. Sr Civil Judge cum ACMM-3, Jaipur Metro II, which accepted the Final Report of Police on 01.09.2022.
16. It is alleged that OPs have abused their dominant position by imposing unfair and discriminatory conditions in their Marketing Policy on purchase of goods by the purchasers in India, stating that if the copper booking made is not lifted by the



customers, the OPs will have option to liquidate the same, and recover losses/other charges from the purchasers.

17. Based on the above averments, the Informants have prayed to the Commission:

- a. To direct an investigation in terms of the provisions of the Act, for the abuse of dominant position by the Opposite Parties by imposing unfair condition in sale of goods and pass appropriate orders on the basis of such Investigation;
- b. To direct the Opposite Party No.1 to refund the following amounts: (i) Rs. 7,37,00,925/- along with Interest @ 18% p.a. till the date of payment and Rs. 93,61,365/- being interest @ 18% p.a. on the excess amount of BG invoked till the date of its refund to the Informant No.1, (ii) Rs. 1,28,00,410/- being interest @ 18% p.a. on the excess amount of BG invoked till the date of its refund to the Informant No.2, (iii) Pass such other order or orders which the Commission may deem fit and proper in the interest of justice.

18. The Informants also sought interim relief under Section 33 of the Act, requesting the Commission to restrain the OPs from abusing their dominant position by imposing unfair condition in sale of goods and be directed to discontinue the practice of not giving benefit of the profit earned to the customers (purchasers) on such cancellation of copper booking made on back to back hedging done by them in LME Platform against such booking of copper by the customers (purchasers).

19. The Commission considered the matter in its ordinary meeting held on 19.02.2025 and decided to pass an appropriate order in due course.

20. The Commission has examined the Information and material available on record. The primary grievance of the Informants appears to be non-sharing of the profit gained by OP-1 on de-pricing the copper which was booked by the Informant but was not lifted by them during the prescribed time. The Informants have alleged that the OPs, who have duopoly status, are abusing their dominant position by imposing unfair and discriminatory conditions in their Marketing Policies, stating that if the copper, booked by the customers, is not lifted by them within the prescribed time, the OPs will have option to liquidate the same, and recover losses/other charges from the

purchasers while not sharing profit from the sale of the same. It was also stated that the BGs, issued in favour of the OPs and kept as security against the copper supplied to the Informants, were invoked prematurely while sufficient time remained in their expiry.

21. The Commission notes that both Informants filed FIRs against the above-mentioned conduct of OP-1, on which the Police filed Final Reports, since the concerned dispute was considered to be civil in nature. The Final Report for Informant No.1 is pending for acceptance, while the Final Report for Informant No.2 has been accepted by the concerned Magistrate. It is also noted that the Informants have undergone CIRP under the provisions of IBC.

22. At the outset, the Commission notes that the concept of 'collective dominance' is not present in the provisions of the Act, and thus, the allegations against the OPs, who are stated to be functioning as a duopoly in the market, falls outside the jurisdiction of the Act. Nevertheless, the Commission has analyzed the alleged conduct against the OPs in the present matter.

23. With respect to the conduct of OP-1 in de-pricing the booked copper, the Commission observes that OP-1 sent an email dated 01.07.2020 to Informant No.1, requesting a liquidation plan for the 'available booking'. The relevant extract from the mail has been reproduced as below:

'Please find below the details of available booking, and we would like to inform that more than 850 Mt booking is older than 3 months.

Request you to kindly provide liquidation plan for the available booking, as per our marketing policy circular the booked material should have been lifted.'

24. OP-1 sent another email dated 07.07.2020 to Informant No.1 requesting a liquidation plan by 09.07.2020 for the available booking of 933 MT and stating that if the same is not received the booked material would be de-priced as per the Marketing Policy. The relevant excerpt from the mail is reproduced as under:

'Further to the trailing mail we have not received the liquidation plan, request you to please provide Liquidation plan latest by 09.07.2020 for the available booking of



933 Mt or else as per the Marketing policy circular we will be forced to wind-up the available booking of 933 MT.'

25. It is noted that another email dated 13.07.2020 was sent by OP-1 to Informant No.1, giving time till 14.07.2020 for response in respect of lifting the booked material. The relevant extract from the mail has been reproduced as under:

'We are yet to receive any confirmation from you to lift these booking. Since bookings have already crossed the ageing of 60 days, which is as per the policy, HIL holds the entire right to liquidate these without any further notification to you, if no response is received by end of day tomorrow i.e., 14th July'20.'

26. It is further noted that OP-1 had sent another reminder through email dated 24.07.2020, stating that if no response was received in respect of the bookings, OP-1 would be forced to wind-off the same as per their Marketing Policy. The relevant extract is reproduced as under:

'We have been continuously following up for liquidation plan of available booking but till date we have not received any reply from your end.

Request you to please revert immediately as we cannot hold these bookings more and as per Marketing policy circular, we will be forced to wind off the booking.'

27. From the perusal of the above-mentioned emails, the Commission notes that several chances were given by OP-1 to Informant No.1 for lifting the material, and only after the failure of Informant No.1 to lift the pending copper, it was de-priced by OP-1.

28. The Commission is also mindful of the fact that copper is a commodity whose prices fluctuate as per the price fluctuations in the international market. Therefore, the OPs take certain risks when they enter into an agreement to sell copper at a future date based on future prices calculated in the manner specified in the Marketing Policy and agreed to by the parties. The condition for de-pricing and recovery of loss for the booked copper is applicable only in case the terms of the contract are not fulfilled by the purchaser resulting in loss to the seller. Such condition in the commodity market which is prone to price risks cannot be considered to be unfair.



29. Moreover, the Commission notes that the seller's right to withhold any gains from liquidation arises only when buyer refuses to lift the contracted material and did not perform his part of contractual obligations. In the Commission's opinion, the buyer who has not followed agreed terms and conditions of the contract cannot take advantage of its own default even though the buyer is liable for damages/losses to that extent which the seller suffered due to non-lifting of contracted material.
30. With regards to issues related with premature invocation of BGs by the OPs, the Commission observes that such issues are in the nature of civil and contractual dispute between concerned parties which ordinarily *ipso facto*, does not require intervention of the Commission.
31. In view of the facts of the case and analysis carried out *supra*, the Commission is of the view that there is no requirement of delineating the relevant market, as per the provisions of the Act.
32. In light of the above, the Commission is of the view that *prima facie* no case of contravention of Section 4 of the Act is made out in the present matter. The Commission directs that the matter be closed forthwith under Section 26(2) of the Act. Consequently, no case for grant for relief(s) as sought under Section 33 of the Act arises and the same is also rejected.
33. The Secretary is directed to communicate to the Informant, accordingly.

Sd/-
(Ravneet Kaur)
Chairperson

Sd/-
(Anil Agrawal)
Member

Sd/-
(Deepak Anurag)
Member

New Delhi
Date: 30.05.2025