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## **REGULATION IN THE INDIAN ED-TECH INDUSTRY**

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### **ABSTRACT**

The Ed-Tech sector in India has witnessed a remarkable growth in recent years due to the pandemic. Even though the Ed-Tech industry was well and present before the pandemic, it was fuelled by the increased accessibility to technology and improved digital literacy during the pandemic. The pandemic transformed the education industry, by combining the offline and online mode of education. There has been a plethora of positive effects of the Ed-tech industry but it has also given rise to a lot of problems ranging from payment scams to unethical practices by service providers. The pandemic has forced individuals to use the education technology sector to prevent themselves from falling behind. Is the industry capable of providing users with the services without exploiting them?

The Education Technology industry has been omnipresent in the market roughly since the last twenty years. Although, it did grab a considerable market share, the pandemic turned out to be a blessing in disguise for the sector. The Education Technology industry has seen a multi-fold advancement since the pandemic. Students and parents who were afraid to go forward with online model and were resistant to change were forced into adopting it after the pandemic struck the world. Like every other innovative sector, the Ed tech industry has faced its share of challenges and in this article we are going to discuss the need for regulation in this relatively new and extensive sector. Nowadays, as dynamically technology is developing and incorporating itself in the mainstream sectors like finance, newspaper, payments, it is helping us advance, but at the same time giving birth to complications which were previously unheard of.

First, let us go through some of the problems faced by the Ed- tech industry. This would help us assess the need for a regulator in the Ed-tech industry. There are about 11,000 companies operating in the Indian Ed- Tech Industry. An industry this massive, functioning without any hindrances seems nothing short of dream. The major chunk of the problems in the ed-tech industry has rooted from the customers complaining about the unfair trade practices like using misleading advertisements, persistent sales executives and automatic debt transfer being used in an unethical manner.

These problems had been brought to the attention of the parliament after an open letter was sent to the education minister regarding the unethical practices by the Ed-Tech players. Education as a sector provides mobility to the social aspect of a community. The online educators have served the society after the pandemic hit us. The unethical practices though, have tarnished the moral aspects of it.<sup>1</sup>

The parliament stated that the Ed-Tech industries may be considered as E-commerce entities and hence, should be expected to follow the Consumer Protection (e-commerce) Rules, 2020. It was proved to be less than ideal recourse though, therefore the Ministry of Education in January, 2022 announced that it would formulate the regulations for the ed-tech industry. At the same time, some

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<sup>1</sup> Anirudh Chakradhar, 'EdTech in India needs stronger regulation' (2022) (September 11<sup>th</sup> 2023) <<https://idronline.org/article/education/edtech-in-india-needs-stronger-regulation/>>

of the lead Ed-Tech players decided to come together and form a self-regulatory code. They came together and formed the Indian Ed-tech Consortium.

The Indian Ed-tech Consortium is backed up by the Internet and Mobile Association of India (IAMAI). The main objective of this consortium is to give all users quality and affordable education and to maximize teaching- learning outputs through technology. The consortium has established a two tier grievance redressal mechanism.

1. Tier I- Internal Complaint Forum by IEC Member
2. Tier II- Self- regulation by Independent Grievance Review Board

The qualifying characteristics to be a member- entity of the IEC Council are as follows: -

- i. Entity should be imparting education in any of these sectors- pre-k, K-12, higher education, test preparation, language, teacher training, skill development or professional education segment;
- ii. The entity should provide education using an online forum, over internet or other computer networks. They are eligible to be a member even if they are just providing their services in India and not incorporated there.
- iii. The entities will become eligible only after paying a prescribed entry fee to the Consortium.

A distressed consumer could start by filing a complaint in the Tier-1 redressal system and may only go to tier- II, if their issue has not been resolved by Indian Ed-tech Consortium within 30 days of receipt of such complaint.<sup>2</sup>

The process mentioned above shows us how the Ed-tech industry within itself has created a self-sufficient eco-system by taking care of the regulation aspect too. This in some ways is a pro for the Indian education industry but a con for its customers. When it comes to foreign investments in

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<sup>2</sup> Internet & Mobile Association of India, 'Memorandum of Indian EdTech Consortium', (November 17<sup>th</sup> 2022) <[https://www.indiaedtech.in/images/India%20Edtech%20Consortium\\_Memorandum\\_Logos\\_27.06.2022.pdf](https://www.indiaedtech.in/images/India%20Edtech%20Consortium_Memorandum_Logos_27.06.2022.pdf)>

the field of education, India has allowed an FDI upto 100%. Even with no cap imposed by India, it had not seen major foreign investments until we entered into the Ed-tech sector. Since the Pandemic, the Ed-Tech industry has seen a remarkable boom in FDI. India has seen a funding of 270 million US dollars till 2022 (statista)<sup>3</sup>. The reason for the boom in the Ed-tech industry and not the overall education industry can be credited to the regulatory manner. The investment before the Edtech industry was limited because of the rigorous regulatory framework which the mainstream education industry falls under. The flexibility in regulation of the Ed-tech industry enables the other nations to invest without much consideration. Bringing a legislative act to regulate the ed-tech industry would make FDI difficult for the education industry. Here lied the conflict for the deciding authorities, even though a regulation was necessary for the proper functioning of the Ed tech sector, it would discourage foreign investment. This led to the formation of Edtech consortium, a self-regulatory body.

The first part of the article highlighted the regulation of the Edtech industry, now it is time for us to wait and assess the functioning of the Ed-tech consortium. Another issue which the Ed- Tech industry faces is the one pertaining to Killer Acquisition. In India, acquisitions are only regulated by a regulation unlike mergers which are regulated by NCLT. The regulation by SEBI which governs acquisition is called the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. Acquisitions in the Ed-tech industry have grown considerably during the COVID-19 pandemic. The reason for this increase has been the need of the companies to hold a considerable market position, scale their businesses and expand their operations swiftly.

Many major industries abroad have noticed a pattern of killer acquisitions recently. Killer Acquisition as a term has not be defined although it can be loosely termed as the practice by which established firms having a market standing acquire upcoming small firms in their industry with the aim of eliminating potential competition. Killer Acquisition slaughters the competitor and their product or in this case their service as well. The concept of Killer Acquisition came into focus in 2014 when Facebook acquired WhatsApp, and the question whether antitrust laws were doing

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<sup>3</sup> Sanyukta Kanwal, Education in India - Statistics & Facts (August 30<sup>th</sup> 2022)  
<<https://www.statista.com/topics/6146/education-in-india/#topicOverview>>

enough to save the nascent competitors arose. That's where the concern for India's competition law came in.

Section 4 of the Competition Act <sup>4</sup>prohibits enterprises from misusing their dominant position. Some of the examples of how the dominant position can be misused is either by restraining creation of products, specialization or improvement in the relevant sector.<sup>5</sup>

Accordingly, in cases

(i) where a merger has occurred with the aim of keeping a company's dominance in regard of a specific sector, and

(ii) the relevant platform or sector for the protection of which the merger took place is launched in India, the CCI may examine such cases under Section 4 for maltreatment of predominance. In the case the CCI accepts that the merger adds up to maltreatment of predominance, the CCI may force a punishment on the offenders which also includes undertakings.

The CCI also has the right to impose conducts and underlying solutions on other ventures too. Mergers that do not qualify the essential needed for mergers mentioned under Section 5 of the Competition Act or are qualified for the "de minimis" exception may be scrutinized under Section 4 of the Competition Act for maltreatment of predominance. In the occasion, such amalgamations are found to include maltreatment of predominance, cures appropriate for easing the Appreciable Adverse Effect on Competition (AAEC) in the event of conflict might be thought of.

Byju's has acquired a total of 19 companies and invested in two others. All these acquisitions were said to be means of improving quality of education and making it more accessible to students. It has spent a total of \$2.88 Billion on these acquisitions. There is no proof of Byju's using these acquisition as a scheme to overpower the acquired industries and as a result, killing them. The amount of acquisitions forces one to consider. Byjus is rumoured to use a strategy similar to that

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<sup>4</sup> The Competition Act, Published by Ministry of Law and Justice (2002)

<sup>5</sup> Pranav Mukul, Boom in Ed-Tech gets bigger: M&As, fundraises soar, way above 2-year total, The Indian Express, (September 11th 2023)

of Facebook (Meta) which allowed it to neutralise its competition and to integrate its rival's products. The technique as discussed above was the 'acquire and kill' strategy.<sup>6</sup>

The Indian Ed-tech Industry is experiencing its first ever killer acquisition by Byjus. Even though the financials of the company has neutralised the threat, it doesn't mean that other companies won't follow through with the same strategies.

An individual regulator in the Ed-Tech industry has become a need of the hour. Although various divisions of the ed-tech sector are monitored by their respective laws it still is not enough for the users to work hassle free. There are a lot of problems which needs to be countered for the sustenance of this sector and non- exploitation of its users.

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<sup>6</sup> Swetha Somu and Sanigdh Budhia, 'Byju's killer acquisition: CCI's knife against a gunfight' (2022) RGNUL financial & mercantile law review accessed on (12th September 2023) <<https://www.rfmlr.com/post/byju-s-killer-acquisition-cci-s-knife-against-a-gunfight>>