

Privacy Please – Establishment of a New Data Protection Authority and Transition from the Bureau to the Commission – No 4

Introduction

Another highlight of the Nigeria Data Protection Act (“NDPA” or the “Act”) is the establishment of a principal statutory authority known as the **Nigeria Data Protection Commission** (“NDPC” or the “Commission”). Recall that its predecessor, the Nigeria Data Protection Bureau (“NDPB”) was carved out from the National Information Technology Development Agency (NITDA) in 2022 as a regulatory body **with no enabling act**. The Commission has now replaced the NDPB as the apex regulator of data protection-related matters in Nigeria. In the ensuing paragraphs, we have examined the transition of the Commission from the NDPB, its structure, powers, functions, and the importance of this to businesses.

From the Nigeria Data Protection Bureau to the Nigeria Data Protection Commission

As noted above, prior to the enactment of the Act, data protection regulation was mainly carried out by the NITDA. However, on January 13, 2022, the Honourable Minister of Communications and Digital Economy was reported to have advised the president of Nigeria of “an urgent need to establish an institution that will focus on data protection and privacy for the country”. This ultimately led to the creation of the NDPB which began operations on February 4, 2022, as an offshoot of NITDA.

The NDPA upon enactment transformed the NDPB to the Commission, the Act transfers and vests all the rights, powers, remedies, documentation, and personnel of the NDPB to the NDPC. Additionally, the Act provides that all orders, rules, and regulations that were made or issued by NITDA or the NDPB shall continue in effect as if they were made or issued by the Commission until they expire, are repealed, or replaced.

The Nigeria Data Protection Commission – Structure, Setup, and Powers.

In terms of the structure, the Commission is set up as a body corporate, with perpetual succession and a common seal. It has the ability to sue or be sued in its corporate name; and can acquire, hold and dispose of its property.

The Commission is led by the National Commissioner who reports to the Governing Council. The Governing Council when established, is expected to consist of (i) a part-time Chairman, who shall be a retired judge of Nigeria, (ii) the National Commissioner, (iii) a representative not below the rank of a Director or its equivalent, and (iv) one representative from the private sector. Members of the council are to be appointed by the president on the recommendation of the minister and are required to possess a certain level of experience and competency in data privacy and protection.

The Commission is empowered to function independently in carrying out its functions, as the principal regulator for data protection in Nigeria. It is also empowered to:

- a. Oversee the implementation of the provisions of the Act;
- b. Prescribe fees payable by data controllers and data processors in accordance with data processing activities;
- c. Issue regulations, rules, directives, and guidance under the Act;
- d. Prescribe the manner and frequency of filing and content of compliance returns by data controllers and data processors of major importance to the Commission;
- e. Call for information from a person, or inspect any documents with respect to anything done under the Act;

- f. Conduct investigations into any violation of a requirement under the Act or subsidiary legislation made under the Act by a data controller or a data processor;
- g. Impose penalties in respect of any violation of the provisions of the Act or subsidiary legislation;
- h. Acquire assets, and sell, let, lease, or dispose of any of its property;
- i. Establish a Fund for the performance of its functions and
- j. Perform such other acts as are necessary to give effect to the functions of the Commission.

Consequently, it is important for data processors and controllers to understand the scope and extent of the powers of the Commission.

Key Considerations for Business

Business organizations that process personal data will need to cultivate a proper relationship with the Commission, some of the key considerations include:

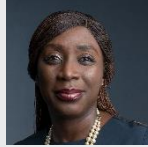
1. **Engaging the regulator:** Business organizations are encouraged to note the proper regulator to engage with as it relates to their data processing activities. One of the issues faced by the NDPB was that a few organizations continued to engage with NITDA on data protection-related matters. With the establishment of the Commission, it is now settled that there is only one regulator for all data protection-related matters in Nigeria. We also note that up until recently the former NDPB website remained active but has now transitioned into the Commission's website.
2. **Monitoring the regulator's activities:** It is key for businesses to pay close attention to the activities of the regulators. So far, the Commission has shown that it intends to play a very active role in regulating the sector and recently on 19th of July conducted a sensitization workshop on data privacy compliance in light of the recently passed Nigeria Data Protection Act 2023 in Lagos. We expect that the Commission will release certain guidelines and regulation on provisions related to data protection e.g., the designation of data controllers and processors of major importance. Businesses will need to pay close attention to the Commission and the regulations that it will likely formulate with respect to the protection of the personal information of data subjects.

Conclusion

Regulators are key when it comes to ensuring the compliance and enforcement of laws and policies in every society. From all indications, it appears that the Commission will play a very active role in the protection of personal data. So far, there have been a number of pronouncements by the Commission e.g., registration requirements for banks and telecom companies etc. We expect that the Commission will soon begin active enforcement of the provisions of the Act and encourage businesses to stay alert and compliant.

Aluko & Oyebode is a registered Data Protection Compliance Organisation (DCPO) and we are able to assist organisations in facilitating their data protection compliance plans in line with the prevailing practices.

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