

# In Line with the Year 2024 Street Creed: ‘No Gree for Anybody’, the Nigerian Electricity Regulatory Commission commenced the Year Guns Blazing

## Proem

True to the ‘Nigerian Street Creed’ for the year 2024: **“No Gree for Anybody”**, the Nigerian Electricity Regulatory Commission (the **“Commission”**) has commenced the year, guns blazing. The Commission had, in the past, been considered as one of the best regulators (if not the best), when it came to thought-leadership, public engagement, licensing process and the issuance of brilliant regulations/orders. The only aspect of the Commission’s operations that had attracted several complaints was the enforcement of its own rules. A significant number of people have felt that the Commission, especially before now, had barely done enough to enforce even its own rules. Many also lamented about the Commission’s inadequacy in sanctioning market participants who exhibited market indiscipline, amongst other similar issues.

Some stakeholders had suggested that a reason for these inadequacies as exemplified above, especially for all previous federal administrations, was political interference. In such cases, before regulatory action can be taken, an influential person in government would use his or her influence to insist that such action be stayed, and the Commission (rather unfortunately and in most cases) indeed stayed or abandoned such action, completely.

Political interference had always been a recipe for ensuring that any regulator remained what may be termed ‘a toothless bulldog’. That said, the Commission appears to have commenced the year, pretty much the way it ended the year 2023, in a way that reflects to all and sundry that it would no longer bear the appellation of a ‘toothless bulldog’- that is, guns blazing.

In this piece, we do a quick x-ray of three (3) actions taken by the Commission towards the end of last year and so far, in this year (2024), that suggest that the Commission does mean business. These actions have been reviewed below, in no particular order.

## Regulatory Intervention in Kaduna Electricity Distribution Company

By the Order on the Regulatory Intervention in Kaduna Electricity Distribution Plc. (the **“Order”**) effective from January 1, 2024, the Commission ordered the removal of the directors and dissolved the board of directors of the Kaduna Electricity Distribution Plc. (**“Kaduna Disco”** or the **“Company”**). The Commission also appointed an administrator who, in practicality, is the new chief executive officer responsible for the management of its day-to-day affairs and designated special directors for the Company.

Specifically, Section 75 of the Electricity Act empowers the Commission to inquire into the conduct or functioning of any licensee in carrying out its obligations under its licence and in accordance with the provisions of the Electricity Act. Upon carrying out an inquiry, if the Commission believes that the licensee is gravely non-compliant to a number of conditions (including a prolonged default in carrying out anything required of it under the Electricity Act, regulations or directives of the Commission and its licence) then the Commission can take the steps described in the preceding paragraph.

The Commission also stated in the Order, that it shall administer the sale of Kaduna Disco in accordance with the provisions of the Electricity Act, 2023. The Electricity Act requires that such a sale should be based on the highest and best price offered.

Specifically, under Section 28 of the Electricity Act, where the Commission invokes its powers to revoke a licence further to section 75(4) of the Electricity Act, the undertaking must be sold in a manner compliant with Section 77 of the Electricity Act. Section 75(4) provides that *“If after taking any or all the steps stipulated under subsection (2) or such other measures as in the opinion of the commission is appropriate in the circumstances, the state of affairs of the licensee does not improve, the Commission shall invoke its powers to revoke the license of the concerned licensee.”*



The steps referred to in subsection (2) include dissolution and removal of the board, appointment of administrators, issuing orders requiring certain actions by the relevant company and employing such other regulatory intervention tools. A prevalent query in the circumstances is whether Kaduna Disco is ripe for sale such that the Commission has complied with Section 75(4) of the Electricity Act.

It is germane to mention that Kaduna Disco's operations span some of the poorest regions in the country. This reality most likely played a role in the significant financial deficits experienced by the company. Furthermore, the fiscal integrity of Kaduna Disco is potentially compromised by the substantial debts accrued by a vast number of ministries, departments and agencies of the federal and state governments in the State. The rectification of this issue could represent a significant business prospect.

#### Adherence to the Terms and Conditions of License and Regulations issued by the Commission

The Electricity Act, the licences and several regulations and guidelines issued by the Commission create legal obligations for licensees which they are required to fulfil. However, it is not automatically the case that licensees will comply with legal obligations without a monitoring system.

One of such legal obligations of licensees provided in Section 72(8) of the Electricity Act and is also a condition of its licence, is that a licensee shall, unless expressly exempted by its licence, prepare, and submit to the Commission, each year, such accounting information as the Commission may require.

There are other obligations in applicable regulations and guidelines such as the Reporting Compliance Regulations, the relevant License Terms and Conditions, Guidelines and Assessment for Fit and Proper Persons for Corporate and Individual Participation in Regulated Electricity Undertakings, and the Uniform System of Accounts Regulations, amongst others. For a long time, the Commission wasn't aggressive with enforcing the legal obligations created by many of these regulations, guidelines and licence terms and conditions.

The Commission has, very recently, become austere in ensuring that licensees comply with their regulatory and other obligations such that it then becomes necessary for licensees to undertake, at the minimum, regulatory audits, to determine where they may be faltering and thus, correct same.

One issue that has also taken centre stage is 'compliance monitoring', as specified in the terms and conditions of the licence issued to each licensee. Consequently, licensees are now mandated to comply with the requirement of submitting an annual audit report to the Commission, pursuant to the general terms and conditions of licences issued to licensees in the sector. The condition to submit audit reports as reflected in the conditions of a licence had been existing prior to this time however it would appear that its enforcement was given minimal attention by the Commission. Recently however, it appears, according to the popular Yoruba song by Haruna Ishola that: **'oṣon apala ti sun, finally, a ti kuro ni ti atijo'**(meaning the season has changed, finally, we have moved away from the former state of things), and licensees who did not comply are now mandated to so do.

#### The Commission's New Changes to the Mini-Grids Regulations

The Commission has developed revised regulations for mini-grids, incorporating innovative and forward-thinking adjustments. These changes are poised to enhance trust among investors and developers in Nigeria, while also expediting the infusion of private capital. One of such changes is with respect to the consent or refusal for the location of an isolated mini-grid by a Disco.

Both the former and the new Mini-Grids Regulations specify that the Commission may grant a permit for an Isolated mini-grid, upon the confirmation that based on the distribution licensee's plans, approved by the Commission, the Mini-Grid activities will not interfere with the expansion plans into the designated unserved area. Two new things the Commission has now done is to give the option of written consent from the distribution licensee for the proposed mini-grid to be so situated, where the proposed mini-grid area is covered by the distribution company's expansion plan as approved by the Commission.

Further, the relevant Disco now has only fifteen (15) business days of being served the request for confirmation and consent, to confirm and consent or refuse same. Where the Disco remains silent, it will be deemed to confirm and consent to the siting of the relevant isolated mini-grid within its franchise area.

There are other interesting and forward-looking changes that could drive socio-economic development, create job opportunities, and facilitate electrification using clean energy sources.

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