



**IN THE MATTER OF INVESTIGATION INTO POSSIBLE
VIOLATIONS OF THE RIGHTS OF NIGERIAN CONSUMERS
IN THE PROVISION OF CONTACT-BASED INSTANT
MESSAGING SERVICE IN NIGERIA AND ENQUIRIES INTO
OBNOXIOUS, EXPLOITATIVE, AND UNSCRUPULOUS
BUSINESS PRACTICES BY WHATSAPP LLC AND META
PLATFORMS, INC. UNDER THE FEDERAL COMPETITION
AND CONSUMER PROTECTION ACT, 2018**

**INVESTIGATIVE REPORT OF THE FEDERAL COMPETITION
AND CONSUMER PROTECTION COMMISSION AND THE
NIGERIA DATA PROTECTION COMMISSION**

November 13, 2023



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1. INTRODUCTION

1.1. This is the report of the Investigative Panel (the Panel) set up by the Federal Competition and Consumer Protection Commission (Commission), regarding potential violations of the Federal Competition and Consumer Protection Act, 2018 (FCCPA), Nigerian Data Protection Regulation, 2019 (NDPR)¹, and enquiries into alleged obnoxious, exploitative, and unscrupulous practices by WhatsApp LLC, Meta Platforms, Inc., and relevant affiliates (hereinafter referred to as ‘Parties’) under the FCCPA.

1.2. The regulatory questions and legal issues presented are:

- A. Whether WhatsApp’s 2021 Updated Privacy Policy (Policy) and business practices with respect to its data collection and management processes are excessive, unscrupulous, obnoxious, or exploitative contrary to the FCCPA, including the mandate under Section 17(a) regarding enforcing other enactments on competition and consumer protection;***
- B. Whether WhatsApp’s 2021 Updated Privacy Policy complied with applicable standards under the FCCPA and the NDPR; and***
- C. Whether WhatsApp is dominant under the FCCPA; If affirmative, whether its practices (particularly, but not exclusively) with respect to the Policy constituted an abuse of dominance***

¹ The Nigerian Data Protection Act, 2023 was signed into law on July 12, 2023; after the commencement of this investigation. Consequently, this report relies exclusively on the NDPR which was in force at all material times.

2. LEGAL BACKGROUND

2.1. Meta, WhatsApp and relevant affiliates provide services into, and within Nigeria, and, or engage in commercial activities geared towards satisfying the demand.

2.2. Key relevant statutory Provisions:

- A. Section 2 of the FCCPA defines the scope of conduct and or entities that are, or maybe subject to the regulatory jurisdiction/authority of the Commission:
 - i. Section 2(2)(c) refers to all commercial activities aimed at making profit and geared towards the satisfaction of demand from the public.
 - ii. Section 2(3)(c) refers to any person in relation to the supply of services by that person into, or within Nigeria.

- B. Sections 17 and 18 of the FCCPA make certain provisions with respect to the functions and powers of the Commission:
 - i. 17(e): carry out investigations or inquiries considered necessary or desirable in connection with any matter falling within the purview of this Act;
 - ii. 17(g): eliminate anti-competitive agreements, misleading, unfair, deceptive or unconscionable marketing, trading and business practices;
 - iii. (17(h): empowers the Commission to issue directives and apply sanctions where necessary;
 - iv. 17(l): particularly as it relates to the administration and enforcement of any law with respect to competition and consumer protection. These functions and powers extend to conducting investigations and inquiries; eliminating anticompetitive or unfair and unconscionable marketing, trading and business practices; and to issue directives and apply sanctions where necessary;
 - v. Sections 72, 108, 124, 127 and 119 of the FCCPA provide specific context with respect to dominance, the abuse of dominance, unfair trading practice and consumer rights to fair dealings;

- vi. Regulations 1.2, 1.3(iii), 2.1, 2.11, 2.2, 2.3, 2.5, and 3.1 of the NDPR with respect to data protection are geared towards security of consumer data and the integrity of commerce in the data market, as well as regulatory stipulations on the localisation of data in Nigeria;
- vii. The Federal Competition and Consumer Protection Commission – Administrative Penalties Regulations, 2020 (APR) make provisions on the imposition of administrative penalties under the FCCPA.



3. PROCEDURE AND SOURCES OF INFORMATION

- 3.1. About May 2021, the Commission became aware of the then WhatsApp's Updated Privacy Policy ("Policy"). The Policy became effective on May 15, 2021. Publicly available evidence and consumer feedback appeared to suggest that the Policy was foisted on Nigerian users in a manner that did not comport with applicable standards of fairness. Specifically, the voluntariness of acceptance or consent to the Policy under standards identified above, including under the NDPR and FCCPA appeared questionable.
- 3.2. In order to most appropriately address any possible violations of extant law and regulations, particularly, the FCCPA, and to proceed in a comprehensive manner, the Commission as is the case in inquiries of this nature conducted a preliminary investigation to gain deeper understandings, nature, structure and dynamics of the market in which WhatsApp operates in Nigeria. Credible evidence and analysis demonstrated that WhatsApp is dominant in the defined market it operates in Nigeria.
- 3.3. Based on the Commission's assessment and findings, the Commission was satisfied that there was sufficient basis to potentially ultimately conclude that, in the absence of contrary evidence, WhatsApp's conduct could be violations of the FCCPA and NDPR.
- 3.4. In accordance with the Commission's regulatory, and investigative process, and in order that a target or subject of investigation is accorded the fullest opportunity to controvert, rebut, dispute, explain or clarify available evidence, on June 10th, 2021, the Commission issued an Order to Show Cause (OSC) pursuant to Section 17 FCCPA. The purpose of the OSC was to inform and present the target of investigation (WhatsApp and Facebook (now Meta)) with the Commission's initial findings based on evidence; and to invite responses in the rubric noted above.
- 3.5. The OSC required WhatsApp and Facebook to show cause why the Commission should not proceed in the manner identified in the OSC, more particularly, entering an order finding that WhatsApp and Facebook had infringed, and were infringing consumer rights, and engaging in conduct that constitutes abuse of dominance through their joint business practices and the Updated Privacy Policy,



specifically in contravention of Sections 72, 108(d), 124(1), and 127 of the FCCPA and Regulations 1.3(iii), 2.3, and 2.5 of the NDPR.

- 3.6. For completeness, Meta (previously known as Facebook) was included in the investigation because it is WhatsApp's parent company, and, exercises control over the business practices of WhatsApp. Additionally, evidence showed that Meta stands to benefit from particular updates in the Policy through various technical integrations.
- 3.7. On July 9, 2021, Facebook and WhatsApp (now jointly referred to as "Meta Parties") responded to the Commission's OSC. The Meta Parties by internal counsels indicated Meta Parties intention to respond to the OSC within 30 days from the day the OSC was received.
- 3.8. On July 23, 2021, the Commission received representation from external and local Nigerian counsel on behalf of the Meta Parties as their joint response and disputation of the OSC and the preliminary findings therein. Essentially, Meta Parties considered the regulatory intervention of the Commission unwarranted and based on a misapprehension of the purpose and effect of the Policy.
- 3.9. On August 19, 2021, the Commission responded to the Meta Parties reiterating its analysis, and providing detailed responses to the Meta Parties' joint presentation of July 23. The Commission clarified the core substantive issues including disparate treatment of consumers in different jurisdictions under similar regulatory frameworks and prevailing legal standards. Specifically, the protection afforded Nigerian users under the NDPR is similar to same for European users under the General Data Protection Regulation (GDPR), yet Meta Parties adopted different policies in both jurisdictions.
- 3.10. In addition, and in response to assertions made by the Meta Parties, the Commission requested further information to support or substantiate the position and assertions adopted by the Meta Parties. In particular, the Commission requested: Privacy Policies that were then currently in force; Privacy Policies that were no longer in force; technical white papers; identities of business solution providers (past, current, and prospective); and number of WhatsApp users in Nigeria that have accepted the Privacy Policy (including dates of acceptance).



- 3.11. On October 4, 2021, Meta Parties responded challenging the Commission's August 19 response arguing that the Commission's assertions and findings were baseless and lacked factual evidentiary support. In particular, the Meta Parties disagreed with the Commission's market definition, whether the Meta Parties were dominant, and questioned whether their conduct resulted in any harm to consumers.
- 3.12. In furtherance of the investigation, including to address issues raised by the Meta Parties, the Commission procured additional evidence from relevant institutional and regulatory sources including the National Information Technology Development Agency (NITDA).
- 3.13. The Commission received further evidence, including the differences between the prevailing Privacy Policies in Europe and Nigeria, regulatory interactions with Meta regarding the Policy, and scope of data points collected by Meta Parties with respect to the defined market.
- 3.14. In response to an expressed request, the Commission engaged Meta Parties in discussions regarding the subject of investigation. Discussions started on December 14, 2021; and culminated in a meeting on March 4, 2022².
- 3.15. At the March 4th meeting, Meta Parties were confronted with the evidence gathered, and the Commission's thoughts about the investigation. In response, and as further entrenchment of the Meta Parties position, Meta Parties again reiterated the intended purpose and effect of the Policy. In addition, Meta Parties responded to specific inquiries from investigators with respect to the scope, purpose, uses and sharing (including sharing with 3rd parties and such uses, including Meta); disparate treatment between European and Nigerian WhatsApp users; removal of particular provisions from the prevailing Privacy Policy; Meta's role/relationship as a Business Service Provider (BSP), and the manner in which the Privacy Policy was imposed in Nigeria.

² https://fccpcng-my.sharepoint.com/:v/g/personal/contact1_fccpc_gov_ng/ERrdR6Mnq1ROh2qeXUZ6X8YBn3URgk7Be1N4_Tih1EI9AA?nav=eyJyZWZlcnJhbEluZm8iOmsicmVmZXJyYWxBcHAiOiJPbmVEcmI2ZUZvckJ1c2luZXNzIiwicmVmZXJyYWxBcHBQbGF0Zm9ybSI6IldlYiIsInJlZmVycmFsTW9kZSI6InZpZXCiLCJyZWZlcnJhbFZpZXCiOiJNeUZpbGVzTGlua0RpcmVjdCJ9fQ&e=yE1m3D



- 3.16. Meta Parties expressed a desire to more robustly respond to the inquiries by augmenting their answers in a more comprehensive written presentation within 21 days. The Meta Parties' request for a more comprehensive response was granted, including the provision of additional perspectives addressing the issues identified by the Commission.
- 3.17. Meta Parties provided the written response in their comprehensive presentation of April 1, 2022.
- 3.18. In furtherance of the investigation, and to more empirically address points, and or refutations raised by Meta Parties, On May 18, 2023, the Commission authorized and conducted an independent market study to (i). Validate, corroborate or otherwise information provided and argument propounded by Meta Parties; (ii). Secure an even more recent survey or “state of the market” as well as landscape; (iii). Verify participants including any new entrants; (iv). Respective market shares/power; (v). Scope of services and usability/substitutability; and (vii). Other counterfactuals with respect to barriers and switching cost.
- 3.19. On May 24, 2023, the Commission requested that Meta Parties provide information with respect to location(s) where the data of data subjects/consumers in, and gathered in Nigeria in delivering service is stored. On June 5, 2023, Meta Parties responded informing the Commission that the data subject of regulatory inquiry is stored in Meta’ data centres at multiple locations: United States, European Union, and Singapore. The Commission’s request was to assess compliance with Clause 2.11 of the NDPR under the rubric of both regulatory compliance, and disparate treatment from users in Europe under the GDPR.
- 3.20. This investigation commenced by the OSC of June 23, 2021, and the repeated engagements and exchanges with Meta Parties, as well as evidence procured from other relevant sources. The Commission is satisfied with the sufficiency of evidence, and adequacy of inquiry, including scope, interrogation of issues, opportunity to, and for the Meta Parties to respond, refute and contribute to the investigation, and outcome. Accordingly, the Commission by this Report and any Orders under the FCCPA and other applicable instruments made pursuant to, or thereon closes the investigation.

4. SPECIFIC SUBJECTS OF ENQUIRY AND STANDARDS OF REVIEW

4.1. In considering the information and evidence received and evaluated, the Commission sought to determine whether there is evidence on the record to support or refute the existence of any fact relevant to the subject of the enquiry. From the totality of the evidentiary provided by Meta Parties and procured from other sources, including representations made at meetings or similar interactions under the investigation, the Commission sought to determine the following:

A. Whether WhatsApp's 2021 Updated Privacy Policy (Policy) and business practices with respect to its data collection and management processes are excessive, unscrupulous, obnoxious, or exploitative contrary to the FCCPA, including the mandate under Section 17(a) regarding enforcing other enactments on competition and consumer protection;

B. Whether WhatsApp's 2021 Updated Privacy Policy complied with applicable standards under the FCCPA and the NDPR; and

C. Whether WhatsApp is dominant under the FCCPA; If affirmative, whether its practices (particularly, but not exclusively) with respect to the Policy constituted an abuse of dominance.

4.2. In its evaluation, the Commission was guided by the following resolution codes on each subject of the investigation:

4.2.1. **Substantiated:** A finding that the subject is substantiated means that the subject is valid because the preponderance of the evidence standard has been met.

4.2.2. **Inconclusive:** A finding that the subject is inconclusive means that although the subject may be valid, additional information/evidence would be required or helpful to make a determination with respect to the alleged conduct or practice.



4.2.3. **Unfounded:** A finding that the subject is unfounded means that the subject is evidentiarily, and practically improbable, and/or is without a reasonable basis.

4.2.4. **Needs Further Investigation:** A subject which though presented, regardless of whether it is a core subject or otherwise, but is undeterminable. It may be reserved for further inquiry in the event that its determination is material and or cogent.

5. ANALYSIS AND FINDINGS

5.1. Based on the totality of the available evidence and information, including statements and documents procured and provided, the Commission's analysis and findings are:

5.2. **ISSUE A: Whether WhatsApp's 2021 Updated Privacy Policy (Policy) and business practices with respect to its data collection and management processes are excessive, unscrupulous, obnoxious, or exploitative contrary to the FCCPA, including the mandate under Section 17(a) regarding enforcing other enactments on competition and consumer protection:**

5.2.1. Sections 17, 124, and 127 of the FCCPA prohibit unreasonable, unjust, obnoxious, unscrupulous, and unfair exploitation or conduct towards consumers. Specifically, Section 124 prohibits the use of unfair tactics, undue influence or pressure in connection with the marketing and supply of services, as well as the negotiation, conclusion, execution, or enforcement of an agreement for the supply of services. Additionally, Section 127 (1) prohibits the supply of services on terms that are unfair, unreasonable, or unjust; or the entering into an agreement for the supply of services in a manner that is unfair, unreasonable, or unjust; or requiring a consumer to waive any rights on terms that are unfair, unreasonable, or unjust, as a condition to entering into a transaction.

5.2.2. Specific tactics employed by the Meta Parties implicated under law with respect to their trading and marketing practice include depriving users of the right and control over their personal data by denying a fair and transparent mechanism to consent, or otherwise to the processing of their data; depriving users of the right to choose; tying and bundling necessary data with non-essential and excessive data; discrimination against Nigerian users of WhatsApp services compared with European users; and misrepresentation. These are further analysed below *seriatim*.

5.2.3. Choice and Consent

5.2.3.1. Besides the above analysis on failure by WhatsApp to honour the rights of users to self-determine the use and processing of their data, the manner in which Meta Parties foisted the Privacy Policy on users is colourable under law.

- 5.2.3.2. Where users failed to accept the Privacy Policy, the functionality of the service began to degrade. Initially they were inundated with pop-ups with only an “update” button, and a back arrow to continue to use the service, however as it progressed, a consistent failure to accept the Policy meant that the pop-up appeared more frequently, and eventually functionality degraded even further, until there was no other option but to accept by clicking “update” due to the absence of the back arrow. This constant interruption of the service degraded the quality of the user experience while using the application.
- 5.2.3.3. Originally and as admitted by Meta Parties, WhatsApp communicated to its users that failure to accept the Privacy Policy (Policy) will lead to immediate loss of functionality. In spite of the fact that WhatsApp later departed from its stance on immediate loss of functionality on users’ refusal to accept the Privacy Policy, gradually, users began to notice that, they had limited functionality, such as, inability to read and respond to messages. It became harder to see chats and contact lists as the Privacy Policy occupied a substantial portion of the screen. Accordingly, many users were forced to accept the Policy in order not to lose more functionality or experience more degradation or disruption. As such, users were deprived of choice, quality service, and the right to consent freely.
- 5.2.3.4. Meta Parties’ tactic/method coerced users to accept the Policy. These included persistent, recurrent, and intrusive notifications pressuring users to accept the Updated Privacy Policy. This is evidenced by the nature, timing, and recurrence of the update which put undue pressure on users and limited the functionality and quality of the service to users.
- 5.2.3.5. Failure to provide users the opportunity to opt out or withdraw consent is essentially the same as a pre-ticked box, contrary to the intention, dictates, and stipulations of the NDPR. Without an opt-out function or ability to stop the recurrent prompts, users had no choice but to accept a Privacy Policy that essentially compelled them to waive their right to self-determination and control processing and use of their personal data, and object to the sharing of such data with third parties, including Facebook companies.
- 5.2.3.6. The Commission compared and analysed the metadata points collected by WhatsApp with those collected by other operators of similar services. In total, WhatsApp collects 44 metadata points, Signal collects 4, and Telegram collects

4.³ The question, then is, how much data is required to provide the associated services? To address this question, the Commission requested Meta Parties to provide a log of all data points collected, and the necessity or otherwise of such data. The Parties failed to provide the said information and rather responded in a generalized statement that consent was not a mandatory requirement, but rather all data collected was a necessity to meet other obligations including legal, public interest, and contractual obligations.

- 5.2.3.7. Conversely, and based on the information provided by NITDA, the Commission observed that certain data collected by Meta Parties were indeed necessary for the efficient provision of the service for which “consent” may be dispensed with; however, some other data collected were not necessary for the provision of WhatsApp services, and as such is excessive, optional, and unnecessary with respect to the service WhatsApp provides, neither was it necessary to comply with any legal/contractual obligation that may warrant a waiver of the user’s right to consent to processing.
- 5.2.3.8. Meta Parties were unable to substantiate their argument on “necessity.” Accordingly, WhatsApp’s data collection processes with respect to Regulations 2.2 of the NDPR regarding lawful processing of user data was an obnoxious exploitation of users, especially in the absence of express consent by the user/data subject, and fulfilment of other statutory requirement with respect to storage and transfer of data.
- 5.2.3.9. WhatsApp in an effort to either obfuscate the clarity of its regulatory non-compliance, or legitimise its conduct, bundled data that is necessary or required for providing its service such as, phone number, contact information and messages, with excessive data (i.e. optional data not required or needed or excessive, for the provision of its service), into its 2021 Updated Privacy Policy, without a function key to opt-out. The Commission concluded that this is an unfair and unscrupulous trading practice contrary to the FCCPA. Meta Parties went beyond what is necessary for service delivery, and such data including device fingerprinting may be shared with third parties and commercialised. Indeed, the Meta Parties admitted in the Updated Privacy Policy that the data collected may not only be shared with third parties and used by such third parties

³ Attached as Annexure 1



for their own purposes, but may also be used for profiling, and marketing purposes.

- 5.2.3.10. WhatsApp's conduct is even more unscrupulous and discriminatory when comparing Nigerian users to their counterparts in the Europe. As stated earlier, the NDPR considerably reflects the GDPR, however, users/consumers/data subjects in Europe were offered more protection and detailed information about the data points collected, why such data points were collected, what they will be used for, and in the event of a withdrawal of consent, how to effect same without losing functionality.
- 5.2.3.11. On March 14, 2022, the Commission engaged Meta Parties with this appearance of discrimination and perceived unscrupulous conduct. However, instead of addressing the disparate treatment against Nigerian citizens, in response, Meta Parties represented that WhatsApp Ireland Limited provides the service in Europe, whereas WhatsApp LLC provides the service to users elsewhere, and both entities attempt to maintain consistent global operations.
- 5.2.3.12. Meta Parties further argued that the differences between the Privacy Policies and terms of service for different regions are a consequence of difference in the broader legal and regulatory environments in which WhatsApp operates.
- 5.2.3.13. This representation underscores the disparate treatment and discrimination of Nigerian users. It is an admission that Meta Parties do not adopt a globally uniform policy, rather implement policies in a manner to conform with prevailing regulations and governance frameworks from jurisdiction to jurisdiction.
- 5.2.3.14. Findings:*
- 5.2.3.15. That the NDPR substantially mirrors the GDPR literally and intentionally – **Substantiated.**
- 5.2.3.16. That Nigerian users of WhatsApp services are disparately treated and not afforded similar protection when compared to a similar regulatory environment and framework (Europe) – **Substantiated.**
- 5.2.3.17. That Nigerian users, unlike the European users, are denied the right to self-determine the use and processing of their data, specifically in regard to giving, restricting, and withdrawing consent – **Substantiated.**



5.2.3.18. That Meta Parties' conduct is indeed discriminatory, unfair, unscrupulous, exploitative, obnoxious, manifestly unjust, unreasonable, and contrary to sections 17, 124, and 127 of the FCCPA – **Substantiated**.

5.2.4. Bundling and Consent

5.2.4.1. WhatsApp through its 2021 Privacy Policy conditioned the supply of its service to Nigerian users on the acceptance to provide data in excess of what is required for the operation of WhatsApp's service, with what is optional and non-essential to the provision of its service.

5.2.4.2. WhatsApp's Updated Privacy Policy did not obtain user consent under *bona fide* voluntary circumstances as analysed earlier. User consent is required to be unambiguous, intentional, and expressed. In the circumstances, such consent may not be inferred or implied. Users were coerced into accepting the new terms. Users did not receive or have a framework or opportunity to decline, reject, dispute, restrict, or contest the Privacy Policy. Meta Parties created and promoted, or at least endorsed and allowed a portrayal to users that they would lose their WhatsApp accounts, all associated data, and ability to use the platform if they did not accept the Policy in the manner presented without options or modifications. Indeed, language that conveyed this portrayal was expressly included in the initial notification from WhatsApp about the Policy. Continuing from then, Users were still not given the prerogative or choice to decline, restrict, withdraw, reverse or modify the terms, extent and scope of their acceptance.

5.2.4.3. Meta Parties' argument failed. Specifically, Meta Parties argue that the period provided to users to accept the terms was no longer industry standard. Without denying the conduct, Meta Parties argue that their adopted procedure was generally more transparent and engaging for users in comparison with competitors such as TikTok, Twitter, Snapchat, Google, Zoom, and Microsoft. Meta Parties however failed to address the issues based on the applicable standards pursuant to prevailing law or regulations, and did not provide any evidence that the said competitors had, or were engaging in similar conduct that is subject of investigation. Meta Parties also argued in defence of whether their conduct infringed the law, that no user in Nigeria had their accounts deleted, nor lost access to any functionality as a result of not accepting the terms. This

arguments, representations or defences are not only unresponsive, but disingenuous and reckless.

5.2.4.4. These arguments do not dispute, in fact on the contrary, admit while ignoring the fact that some users in Nigeria initially accepted the terms under circumstances which were coercive, and specifically, under an ultimatum. Meta Parties implicitly admit this by referring to a change in WhatsApp's strategy to remove the wordings in the notification to the effect that users would lose access to their accounts if they failed to accept the update.

5.2.4.5. WhatsApp was not transparent when it averred that no user in Nigeria lost access to any functionality. Evidence in the course of the investigation shows that some users in Nigeria experienced limited functionality and degradation. As can be seen in Figure 1, Figure 2 and Figure 3 below, the prompt covers over 95% of the user's screen, and inability to see chats or contact list.

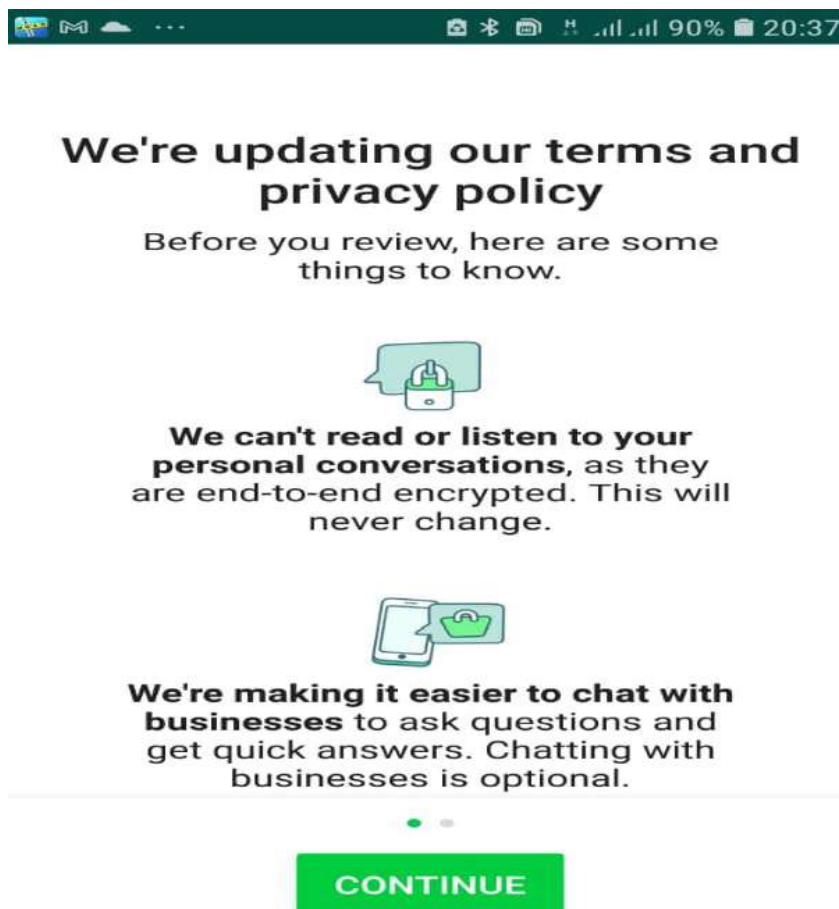


Figure 1



Figure 2



Figure 3



- 5.2.4.6. The coerced acceptance of the Policy is aggravated and even more egregious because the Updated Privacy Policy removes any reference to the right of users to withhold and or withdraw consent for WhatsApp to share their data with third parties and other Facebook Companies for their own purposes, while the operational policy prior to the questionable update included language to the effect: ***“The choices you have. If you are an existing user, you can choose not to have your WhatsApp account information shared with Facebook to improve your Facebook ads and products experiences. Existing users who accept our updated Terms and Privacy Policy will have an additional 30 days to make this choice by going to Settings > Account.”***⁴ (now deleted)
- 5.2.4.7. Essentially, once a user accepts the Updated Privacy Policy, they **automatically** grant permission for WhatsApp to share their data with other Facebook companies and third parties affiliated or associated with Facebook. Specifically, the Updated Privacy Policy provides: ***“As part of the Facebook family of companies, WhatsApp receives information from, and shares information with, this family of companies. We may use the information we receive from them, and they may use the information we share with them, to help operate, provide, improve, understand, customize, support, and market our Services and their offerings.”***⁵
- 5.2.4.8. WhatsApp argues that prior to the current update, its Privacy Policy enabled it to share user information with third parties including Facebook. While this may be true, the written acknowledgement of the user’s right to withhold and or withdraw consent for such sharing served as a useful safeguard for the consumer. The removal of that safeguard in the present Updated Privacy Policy renders WhatsApp’s arrogation of the right to share user data with third parties exploitative, unscrupulous, and brazen, and as such violates both the FCCPA and the NDPR.
- 5.2.4.9. Furthermore, WhatsApp appears to bundle the data points which are necessary for the functioning of its service, to data points which are non-essential, and conditions access to the service upon acceptance of the entirety of the Updated

⁴ Internet Archive, available at web.archive.org/web/changes/http://www.whatsapp.com/legal/privacy-policy/revisions/20191219 (accessed on February 17, 2022).

⁵ See, [here](#), from WhatsApp’s website detailing how the company works with other Meta Companies.



Privacy Policy. This is specifically contrary to the NDPR (particularly Regulation 2.3 (2) (b)) which insist that consent must be separate and clearly distinguishable from other matters, meaning that the provisions of the NDPR with respect to obtaining consent is a call to action, and failure to comply with the express provisions and intention of the NDPR demonstrates that WhatsApp users were already opted-in.

- 5.2.4.10. Meta Parties failed to provide an opt-out option or to give users the right to withdraw consent (as in Europe). Meta Parties also lumped all data points collected (necessary and non-essential/optional/unnecessary) in one contract. This conduct invariably forces users to accept a condition unrelated to object of the Updated Privacy Policy. As such, it is contrary to Sections 18(3)(e) and 119 (c) of the FCCPA because the Parties bundled necessary data with other data that should ordinarily require consent from the data subject into one contract.
- 5.2.4.11. The Commission at the meeting of March 4, 2022 conveyed this to Meta Parties, who in response sought additional time to address the Commission with justification for the purpose, and necessity of all data collected by WhatsApp.
- 5.2.4.12. Meta Parties provided certain responses by their correspondence of April 1, 2022. Meta Parties failed to specifically identify what data WhatsApp collects, specific purpose, criticality to functionality or the service, and the consent or clearly articulated alternative framework/exception to consent. Accordingly, and pursuant to Section 32(3) of the FCCPA, the evidentiary conclusions regarding the purpose of collection of the excessive data being unrelated to the service provided, that WhatsApp could act in this unilateral manner is attributable to its dominance, and that there was no consent to such collection are all evidentiarily established and substantiated. The combination and bundling of essential and non-essential data for operation or functionality without the option to restrict or withdraw as provided in Europe is also established, substantiated, and unrefuted.
- 5.2.4.13. Meta Parties also deleted or removed previous or historical versions of the Policy. The deletions or removals did not redound to user benefit. On the contrary, it imposed a higher burden of exposure, and less control of their personal data on users. As such, in addition to not obtaining user consent,



WhatsApp coerced users into a Privacy Policy that effectively degraded or lessened their protection or control over their personal data.

- 5.2.4.14. Recovered web pages reveal that the 2020, 2019, and 2016 Privacy Policies included a clause which was removed from the 2021 Privacy Policy: ***“Third-Party Providers: We work with third-party providers to help us operate, provide, improve, understand, customize, support, and market our Services. When we share information with third-party providers, we require them to use your information in accordance with our instructions and terms or with express permission from you.”***⁶
- 5.2.4.15. The removal of the provision above, especially the final phrase, constituted a degradation of the privacy protection offered to WhatsApp users under the 2021 Updated Privacy Policy. And this degradation was exacerbated by the fact that users were, in effect, coerced into signing an agreement that did not demonstrate a convenience over and above or outweigh their fundamental right to self-determine, right to choice, or any resultant benefit therein, especially in the decision to choose Facebook, its companies or affiliated third parties as service suppliers. Even though Meta Parties’ attention were directly and expressly drawn to these issues, they have failed to address same to any appreciable point to controvert the narrative.
- 5.2.4.16. In a submission of March 4, Meta Parties sought to contextualize the deletion or removal of the provisions identified above. They argue that the recent update narrowed the circumstances under which WhatsApp can share user data and the third-party recipients of said data may only use the information on behalf of WhatsApp. Meta Parties further submitted that it is impossible for users to consent to any use of information by third parties that does not comply with WhatsApp’s terms because all third-party providers are bound by WhatsApp. As such, the Parties argue that referring to ‘express permission’ was superfluous.
- 5.2.4.17. This response is a failing argument. Express consent is mandatory under the NDPR where data sharing with third parties is not with respect to a contractual obligation between the user and WhatsApp regardless of whether WhatsApp considers the requirement of such consent superfluous or not. Meta Parties are

⁶ <https://drive.google.com/file/d/1GslnCFHsGDBH211GA83PVRPlYR-1bK2E/view?usp=sharing>

not at liberty to dismiss a particular requirement of law, or construe such in a manner that allows them to dispense with the mandatory requirement for compliance. In any case, Meta Parties' conclusion that specific and express provisions strengthening, clarifying or portraying the importance and state interest in vesting unequivocal control of personal data in citizens, users or data subjects is not only flawed as a matter of settled law, it is also wrong because it truly does have the effect of diminishing or eliminating the crucial element of control and self-determination that the law and policy rightly intended to grant consumers as a legitimate fundamental right.

5.2.4.18. On the other hand, the Updated Privacy Policy that apply to users in Europe with respect to how users exercise their rights, provides “***Under applicable data protection law, you have the right to access, rectify, port and erase your information, as well as the right to restrict and object to certain processing of your information...This includes the right to object to our processing of your information for direct marketing and the right to object to our processing of your information where we are performing a task in the public interest, or pursuing our legitimate interests or those of a third party.***”⁷ (underlined for emphasis).

5.2.4.19. Meta Parties argument further fails when the evidence demonstrate that they adopted a broader and more robust compliance posture in a different jurisdiction under a similar written regulatory framework as Nigeria. As it were, WhatsApp users in Europe have the right to restrict and object to WhatsApp processing their data for legitimate interests, marketing, and even public interest. Accordingly, the Commission's identified infringement in this respect is substantiated.

5.2.4.20. Findings:

5.2.4.21. That WhatsApp's Updated Privacy Policy did not obtain user consent under *bona fide* voluntary circumstances – **Substantiated**.

⁷ See, [here](#), on WhatsApp's website how users based in the European Union are given detailed information on how to exercise their rights.



- 5.2.4.22. That Meta Parties tied or bundled data necessary for the provision of service with non-essential data which should be otherwise optional to the provision of its service into the Updated Privacy Policy – **Substantiated**.
- 5.2.4.23. That Meta Parties’ failure to provide an opt-out tick or give users the right to withdraw consent (as in the EU) and lumping all data points collected (necessary and optional/unnecessary or non-essential) in one contract; forced users to accept a condition unrelated to the object of the Privacy Policy Update Agreement, without demonstrating any economic benefit to the data subject; as envisaged and prohibited by the FCCPA pursuant to Sections 18(3)(e) and 119 (c) of the FCCPA – **Substantiated**.
- 5.2.4.24. That WhatsApp actively and intentionally degraded user privacy protection by removing salient and substantial privacy protection provisions in the previous operational policy of 2019 and misrepresented same as superfluous through and during the investigation – **Substantiated**.
- 5.2.4.25. That WhatsApp’s conduct is obnoxious, discriminatory, unscrupulous, and a deliberate/intentional device to secure and exploit the data of Nigerian user in a manner inconsistent with, and prohibited by law – **Substantiated**.

5.2.5. Discrimination

- 5.2.5.1. With respect to the question of the Updated Privacy Policy imposing dissimilar standards and obligation/protection on consumers in different locations, but similar circumstances, the evidence shows that in at least one instance, consumers who began using WhatsApp later vis-à-vis earlier users, on the one hand, and on the other hand, it applied to consumers based in Nigeria vis-à-vis those in Europe.
- 5.2.5.2. Evidence provided by Meta Parties in the course of the investigation suggests that, prior to January 4, 2021, WhatsApp had four Privacy Policies: July 20, 2020; December 19, 2019; August 25, 2016; and July 7, 2012.
- 5.2.5.3. Upon scrutiny, the Commission discovered similarities between the 2020 and 2019 policies. As such the Commission sought to evaluate and possibly determine the motivation for a new policy considering the fact that it appeared like no significant clarifications or updates were introduced in the new policy.

- 5.2.5.4. Recovered web pages reveal that the 2019 Privacy Policy, which Meta Parties provided to the Commission is materially different from the version that was operational during the period while the 2019 Privacy Policy was prevailing. These recovered web pages further revealed that, shortly after the current policy was introduced on January 4, 2021, changes were made to the online version of the 2019 policy in 2021. Precisely, an archived version of the 2019 policy dated January 12, 2021 is materially different from the version produced by Meta Parties (the archived version was obtained independently by the Commission).⁸ This rather suspicious conduct of revising a previous, (expectedly no longer applicable policy) after the Updated Privacy Policy of 2021 had become operational, is questionable.
- 5.2.5.5. Specifically, the material changes demonstrate the deletion of a key provision/clause from the prevailing 2019 policy to wit: ***"The choices you have. If you are an existing user, you can choose not to have your WhatsApp account information shared with Facebook to improve your Facebook ads and products experiences. Existing users who accept our updated Terms and Privacy Policy will have an additional 30 days to make this choice by going to Settings > Account."*** This is subsequently referred to as the 'Facebook opt-out'.
- 5.2.5.6. Meta Parties sought to explain this by arguing that the Facebook opt-out was only available to users who began using WhatsApp before the 2016 update, and thus had joined WhatsApp before WhatsApp began sharing data with its new parent. Shortly after the acquisition of WhatsApp by Facebook, the ability to opt-out was disabled in the WhatsApp settings and all users who joined WhatsApp after this period agreed to the 2016 terms, which involved the sharing of data between Facebook and WhatsApp.
- 5.2.5.7. According to Meta Parties, the Facebook opt-out was therefore removed because it was no longer relevant or applicable. The Parties also insist that they continue to honour the decision made by some users to opt out from sharing their data with Facebook; and accepting the 2021 Updated Privacy Policy did not override that choice - ***"The opt-out was available only to existing users, i.e., those who joined WhatsApp before the 2016 update, and thus had joined***

⁸ This information was obtained by the Commission using a publicly-accessible and purpose-built internet archive database. The database can be accessed [here](#).

before WhatsApp intended to share data with its new parent. The 2016 opt-out was offered to users for 30 days following the 2016 update and the option to do so in the app settings was disabled shortly thereafter. All new users who joined the WhatsApp service after the 2016 update agreed to those 2016 terms (which clearly set out the information around data sharing with Facebook) and so were proceeding to sign up to the service on that basis.”⁹

5.2.5.8. Assuming though not conceding that this argument is indeed true, it amounts to a discriminate treatment of consumers. Specifically, it discriminates between WhatsApp users who subscribed to the service before a certain date; or event and those who subscribed later, or after the event. Meta Parties explanations and argument demonstrate that different legal standards were applied to these two different classes of users. There is no rational explanation or reason for distinguishing between the privacy rights of users prior to a business combination or acquisition, and users after such an event. There is no evidence of any disclosures to users about this difference in privacy stands or the additional obligation imposed on new users. New WhatsApp users were not provided with the Facebook opt-out, especially because pre-acquisition users are able to maintain much of the same functionality of WhatsApp, while not having their data being shared with Facebook. This conduct and the associated lack of transparency questions and undermines Meta Parties’ representations that that the data sharing was justifiable on account of necessity. On the contrary, what is apparent from the conduct is that the business combination and the opportunity to access personal data that was not the case before the combination was the motivation. It demonstrates the intentionality of Meta Parties, including perhaps an objective in the acquisition which includes gaining control over user data by a device otherwise appearing as a merger or acquisition while depriving users of the autonomy and control that prevailing regulations and law intended, and did grant to users. That such a device was also discriminatory is an aggravating factor in the violation.

5.2.5.9. Another discriminatory practice of the Meta Parties is presented, this time, in a cursory comparison of the then prevailing standards under regulations between Nigeria and Europe. The word ‘consent’ in the non-European region (including

⁹ Paragraph 8.2, Additional Submission by Messrs. Udo Udoma & Belo-Osagie, April 1, 2022.

Nigeria) Privacy Policy is only mentioned once: ***"You can delete your WhatsApp account at any time (including if you want to revoke your consent to our use of your information pursuant to applicable law) using our in-app delete my account feature."***¹⁰ In other words, to withdraw users consent can only occur by deleting user WhatsApp account. The only way to dispute or decline WhatsApp's usage and sharing of one's data is by not using the app; a *de facto* "take it or leave it" approach. An action or stance that is unilateral in nature, and taken by an operator with overwhelmingly significant market power.

- 5.2.5.10. Compared to the prevailing European policy, the word 'consent' is mentioned a total of ten (10) times, and there is a specific section of the Privacy Policy devoted to user consent ("Your consent"). Similarly, 'your rights' also appears 10 times in the European policy, and there is also a specific section devoted to user rights ("How to exercise your Rights?").
- 5.2.5.11. The Commission especially notes, and has expressed this multiple time to Meta Parties, that this amounts to discriminatory and disparate treatment between WhatsApp users in Nigeria and those in Europe. It constitutes applying dissimilar terms or conditions to equivalent transactions despite the fact that users in Europe and those in Nigeria are in effect, protected regulatorily to the same degree and extent, by virtue of the similarities between the General Data Protection Regulation (GDPR) and the NDPR. Therefore, tangible policy differences, such as those identified here have neither rational basis, nor explanation.
- 5.2.5.12. The response of Meta Parties is ultimately unsatisfactory. They argue that WhatsApp Ireland Limited provides the service in Europe, whereas WhatsApp LLC provides the service to users elsewhere, and both entities attempt to maintain consistent global operations. Meta Parties further argue that the differences between the Privacy Policies and Terms of Service for different regions are a consequence of difference in the broader legal and regulatory environments in which WhatsApp operates. This point is defeated, and even internal inconsistent in the light of the fact that previous provisions or protections under same WhatsApp previous policies provided some protection

¹⁰ See, [here](#), on WhatsApp's website, information about how user information can be managed and retained under the Privacy Policy.



that subsequently, the Policy edited or removed including users' prerogative to revoke consent and control choice.

5.2.5.13. The response fails to identify any peculiar features of the European or the Nigerian data protection landscape which justifies the under-protection of WhatsApp users in Nigeria. As such, the Commission must conclude the response is insufficient to rebut the Commission's concerns and it is hereby rejected as unsubstantiated by WhatsApp.

5.2.5.14. Findings:

5.2.5.15. That Meta Parties' argument that data collected from Nigerian users was a matter of necessity is unsubstantiated and therefore rejected – **Substantiated**.

5.2.5.16. That Meta Parties intentionally deny data subjects in Nigeria the right to self-determine by its demonstrated tactic of '*de-facto* take it or leave it' provision with respect to restricting or withdrawal of consent – **Substantiated**.

5.2.5.17. That Meta Parties response with respect to the discriminatory treatment against Nigerian users that WhatsApp Ireland Limited provides service to Europe, while WhatsApp LLC provides for others, yet maintain consistent global operation is unsatisfactory and internally inconsistent – **Substantiated**.

5.2.5.18. That Meta Parties decision to share user data and not giving users the right to self-determine is illegal, obnoxious, unscrupulous, discriminatory, and an intentional tactic to deprive Nigerian users of their legitimate, fundamental right to self-determination as data subjects, contrary to law – **Substantiated**.

5.2.6. Misrepresentation

5.2.6.1. Section 112 of the FCCPA prohibits targets or subjects of investigation, or a request pursuant to, or in the course of an investigation from providing information that is known to be misleading or false. The Commission inquired into, and evaluated WhatsApp's representations, characterizations and information otherwise provided documentarily, or in support, as clarification or augmentation of evidence given to the Commission. The question of whether Meta Parties misrepresented its prevailing Privacy Policies to the Commission in violation of the FCCPA.



- 5.2.6.2. As noted above under the ***Bundling and Consent*** Theory of Harm, recovered web pages reveal that the 2019 policy, which was submitted to the Commission (upon request), is materially different from the version that was operational during the period that the 2019 policy was prevailing.
- 5.2.6.3. These recovered web pages further revealed that, shortly after the current policy was introduced on January 4, 2021, changes were curiously made to the online version of the 2019 policy in 2021.
- 5.2.6.4. Specifically, the material changes demonstrate the deletion of the following clause from the operational 2019 policy: ***“The choices you have. If you are an existing user, you can choose not to have your WhatsApp account information shared with Facebook to improve your Facebook ads and products experiences. Existing users who accept our updated Terms and Privacy Policy will have an additional 30 days to make this choice by going to Settings > Account.”***
- 5.2.6.5. Meta Parties sought to explain this by arguing that the Facebook opt-out was only available to users who began using WhatsApp before the 2016 update, and thus had joined WhatsApp before WhatsApp began sharing data with its new parent. Shortly after the acquisition of WhatsApp by Facebook, the ability to opt out was disabled in the WhatsApp settings and all users who joined WhatsApp after this period agreed to the 2016 terms, which involved the sharing of data between Facebook and WhatsApp. According to Meta Parties, the opt out was therefore removed because it was no longer relevant or applicable. Meta Parties also insist that they continue to honour the decision made by some users to opt out from sharing their data with Facebook; and accepting the 2021 Privacy Policy update did not override that choice. Furthermore, during the March 4th meeting, Meta Parties admitted to having presented a modified 2019 Privacy Policy to the Commission. However, Meta Parties claimed that the modification to the Privacy Policy was insubstantial.
- 5.2.6.6. However, this argument is ultimately unconvincing. It does not explain why the Privacy Policy that was submitted to the Commission as the 2019 Privacy Policy, was not in fact the Privacy Policy that was prevailing during that period as requested by the Commission. Instead, it merely contextualises why the Facebook opt-out was not necessary, which as noted above was unfairly discriminatory. Meta Parties’ obligation is to fully cooperate and be transparent

in disclosures. In this instance, Meta Parties are the authors of their Privacy Policies. They testified copiously and confidently through the course of the investigation about the different policies. At all material times, they demonstrated familiarity and exercise of control over creation, dissemination and enforcement of their Privacy Policies. Accordingly, and considering the length of time of the investigation, and the multiple engagements/opportunities for further engagement, (had the Meta Parties so requested), or to augment, clarify, modify or substitute any of the Meta Parties representations or documents, providing a 2019 policy with the intention of expecting the Commission to believe and accept that as the prevailing policy, when in actual fact, it was not the policy in force at the time of the request and in compliance with the request; Meta Parties knowingly and recklessly misled the Commission. Meta Parties understood the subject and scope of the investigation, and recognized a crucial and core object is its Privacy Policy and application. As such, Meta Parties knew that the totality of available evidence, and full and frank disclosure and compliance with document requests from the Commission were vital to a transparent investigation, as well as a fair and evidentially supported outcome. Regardless, Meta Parties misled the Commission, and continued in the perpetration of same without mitigation as the Commission only discovered the accurate context by other investigative tools and resources.

5.2.6.7. The Commission's conclusion, and the lack of transparency in Meta Parties' conduct is accentuated and underscored by Meta Parties response or lack thereof when confronted with a request to provide evidence or explanation of the purpose and need to edit the truly prevailing 2019 Privacy Policy at a time when it was supposed to be otherwise outdated and no longer applicable or operational. Meta Parties were, and have remained mute and unresponsive. Inexplicably, Meta Parties released the Updated Privacy Policy on January 4, 2021, repealing the 2019 Privacy Policy. However, as at January 12, 2021, the internet archived version discussed above still had this clause on 'consent' to wit: ***"The choices you have. If you are an existing user, you can choose not to have your WhatsApp account information shared with Facebook to improve your Facebook ads and products experiences. Existing users who accept our updated Terms and Privacy Policy will have an additional 30 days to make this choice by going to Settings > Account."*** However, by January 16, 2021, the clause was



removed, meaning that the prevailing 2019 Privacy Policy was edited sometime between January 12 and 16, 2021.

5.2.6.8. Findings:

5.2.6.9. That WhatsApp had limited the functionality of its service for users who did not accept its Privacy Policy update – **Substantiated**.

5.2.6.10. That following finding in 5.2.6.9 above, limiting the functionality of its service amounts to coercion, undue influence, or pressure by Meta Parties and denial of users/consumers right to fair dealing contrary to Sections 124 and 127 of the FCCPA – **Substantiated**.

5.2.6.11. That certain data collected by Meta Parties were indeed necessary for the efficient provision of the service for which “consent” may be dispensed with; however, some other data collected were excessive and unnecessary for the provision of the service or to meet any legal obligation that warrants the waiver of the user/consumer/data subjects right to give consent – **Substantiated**.

5.2.6.12. That Meta Parties’ collection of data in excess of what is required without the express consent of users is unreasonable, unfair, obnoxious and exploitative under law– **Substantiated**.

5.2.6.13. That following findings in *Paragraphs 5.2.6.11 and 5.2.6.12* above, bundling necessary and excessive data into its 2021 updated Privacy Policy, without a function key to opt-out; amounts to pre-ticked box, contrary to the intention, dictates and stipulations in the NDPR; and as such, an unfair and obnoxious trading practice contrary to the FCCPA especially where such data may be shared with third parties and potentially commercialised; as Meta Parties admit in the Updated Privacy Policy that the data collected will not only be shared with third parties, but may also be used for customising or profiling, and marketing purposes – **Substantiated**.

5.2.6.14. That the deliberate and intentional failure of Meta Parties to provide the same level of protection provided to European users to the Nigerian users is discriminatory and is an abuse of consumers’ right to information contrary to the FCCPA – **Substantiated**.



- 5.2.6.15. Further, the deliberate and intentional disparate and discriminatory treatment between European and Nigerian users amounts to an obnoxious practice contrary to Section 17(s) of the FCCPA – **Substantiated**.
- 5.2.6.16. That the unilateral conduct of failing to give consumers the choice to opt out of their data being shared with third parties under the Privacy Policy is a breach of Sections 124 and 127 of the FCCPA. Specific conduct includes the fact that user data is collected by WhatsApp without the prior and freely given consent of the data subject, and with no opportunity to opt-out or withdraw such consent (as is the case in Europe) without being denied the service – **Substantiated**.
- 5.2.6.17. That the failure to provide information requested by the Commission in a transparent manner is contrary to Section 112 of the FCCPA – **Substantiated**.
- 5.2.6.18. The Meta Parties misled the Commission by presenting a modified Privacy Policy, representing it as the prevailing Privacy Policy from 2019, despite alterations made between January 12 and January 16, 2021. – **Substantiated**.



5.3. ISSUE B – Whether WhatsApp’s 2021 Updated Privacy Policy complied with applicable standards under the FCCPA and the NDPR

- 5.3.1. The NDPR is an exclusive enactment for data protection in Nigeria. Its key objective, among others, is to safeguard the rights of natural persons to data privacy, foster safe conduct for transactions with respect to personal data, and ensure a just and equitable legal and regulatory framework for data protection.
- 5.3.2. The scope of the NDPR extends to natural persons residing in Nigeria and does not in any way operate to deny Nigerian citizens their rights to privacy under law in Nigeria or any other foreign jurisdiction (see Regulation 1.2 of the NDPR).
- 5.3.3. Specifically, the NDPR makes provisions with respect to how the data of Nigerian consumers (data subjects) is accessed, collected, stored, administered, managed, processed, disseminated, used, or breached/compromised in the operation of business/service by providers (data controllers).
- 5.3.4. A key objective of the NDPR is to protect and preserve the rights of data subjects to determine how their data is processed, and control whether they consent to any collection, use, storage, and sharing of their data.
- 5.3.5. The Commission became aware of WhatsApp’s Updated Privacy Policy which became operational on May 15, 2021. The Commission noted that the Updated Privacy Policy was initially accompanied by a condition of account deletion on consumers (‘users’ and or ‘data subjects’) if they failed to accept or agree to the Updated Privacy Policy. In the circumstances, the Commission in compliance with its mandate opened an inquiry with respect to the Policy and clauses therein.
- 5.3.6. A key concern for the Commission was the fact that user data can be shared with third parties, including Meta. Considering this is a privacy question and consumer rights/welfare issue, as well as a matter of regulation for compliance under the NDPR, these require a measure of control and consent by users, to comply with law, particularly, the NDPR. As such, the Commission requested Meta Parties to

provide information regarding the kind of data collected and the necessity for such collection.¹¹

- 5.3.7. In response, Meta Parties claimed that user consent in line with relevant provisions of law was not an absolute legal necessity. Essentially, consent is not the only legal basis for processing data under Europe’s General Data Protection Regulation (GDPR) and similarly under the NDPR. In doing so, they cite other basis for processing data, most of which revolve around necessity. For instance, necessity for the performance of a contract or necessity to comply with a legal obligation. In support of this assertion, the Meta Parties argued that their conduct did not harm users.
- 5.3.8. In analysing the information provided by Meta Parties, and Regulation 2.2 of the NDPR with respect to lawful processing of user data, the Commission considered Meta Parties’ responses with respect to other basis for processing user data. This response does not refute the collection of data. It also does not argue that Meta Parties procured or received the consent of users in Nigeria to process such data. The argument in support of necessity propounded by Meta Parties is an alternative to informed consent by users. If Meta Parties properly, and procedurally procured consent, it would not seek or propound an alternative argument that is potentially an exception to consent, where legitimately applicable. In essence, the Meta Parties’ ‘necessity’ argument falls flat when other services provide the same consumer benefits—messaging, video, call, voice memo etc. with only 4 metadata points. Necessity is an argument or basis for legality of conduct when the original, primary and underlying objective of prevailing law and principle that consent of data subjects is inviolate to processing their data.
- 5.3.9. The NDPR stipulates the rights of users as data subjects to give consent to the use of their data. It defines consent as ***“freely given, specific, informed and unambiguous indication of the Data Subject's wishes by which he or she, through a statement or a clear affirmative action, signifies agreement to the processing of Personal Data relating to him or her.”***¹²

¹¹ See as provided [here](#) in WhatsApp’s Privacy Policy for its users based in the European Union.

¹² Regulation 1.3 (iii) of the Nigeria Data Protection Regulation, 2019.

- 5.3.10. Regulation 2.2 of the NDPR also provides that, in the absence of informed consent as a requirement for lawful processing of user data, a data controller (in this case, Meta Parties) must demonstrate that the processing of such data was an absolute necessity. Regulation 2.2(b)-(e) identifies instances where justification (necessity) is acceptable and sufficient; (b) processing is necessary for the performance of a contract to which the Data Subject is party or in order to take steps at the request of the Data Subject prior to entering into a contract; (c) processing is necessary for compliance with a legal obligation to which the Controller is subject; (d) processing is necessary in order to protect the vital interests of the Data Subject or of another natural person, and (e) processing is necessary for the performance of a task carried out in the public interest or in exercise of an official public mandate vested in the controller.¹³ Accordingly, the Commission analysed the data points collected by WhatsApp as provided by NITDA and the necessity for collection of such data points.
- 5.3.11. Otherwise, or exclusive of the four instances previously identified and expressly provided by the NDPR, any processing of user data must be subject and pursuant to the express and informed consent of the user (data subject) as stipulated in Regulation 2.2 (a) and 2.3 of the NDPR. Meta Parties have failed to justify WhatsApp's sharing of user data with other Facebook Companies (for their own purposes) and third parties under any of the four accepted legal basis for necessity; or to successfully refute under law, the subject of investigation that the failure to obtain user expressed, informed and freely given consent for such sharing is a violation of the NDPR and an infringement of consumer rights under the FCCPA.
- 5.3.12. The arguments by Meta Parties are wholly unsatisfactory, and as such fail. As it were, WhatsApp, at all times, represented to users that consent was the main basis upon which it was processing user data. The entire Privacy Policy is premised on the fact that users must accept the new terms in order to consent to the data processing. To attempt recourse to other basis simply because the legality of the Meta Parties conduct had become subject of investigation is disingenuous, lacks candour and is an afterthought.

¹³ Regulation 2.2 (b) – (e) of the Nigeria Data Protection Regulation, 2019.

- 5.3.13. In addition, Meta Parties have failed to establish that all data collected from users are, in fact, necessary for the operation and provision of the WhatsApp service. Importantly, information collated by NITDA demonstrates that WhatsApp collects significantly more data points about users than other competitors such as Telegram and Signal. And remarkably, Meta Parties cannot establish there are any unique, or key features of the service that materially differentiates the services to a point where it is impracticable to provide the service offered without the collection of such additional data.
- 5.3.14. In essence, Meta Parties collected data in excess of what is necessary for the provision of WhatsApp service to users. Meta Parties bundled data considered necessary for the efficient operation and delivery of its service, with data that is optional, unnecessary, and in excess of what is required, into its 2021 Updated Privacy Policy, with neither the express consent of its users nor a function key to opt-out. For instance, there is no credible evidence that processing of user activity frequency or activity duration is necessary for efficient provision of the WhatsApp service, to meet a legal or contractual obligation, or for public interest.
- 5.3.15. The evidence also shows that such data can be shared with third parties and commercialised. Meta Parties admit in the Updated Privacy Policy, that the data collected may not only be shared with Facebook and third parties, but may also be used for profiling, and marketing purposes. This is of particular importance and concern because unlike in Europe, users of WhatsApp services in Nigeria are unable to restrict or withdraw their consent, especially as their data may be used for marketing and profiling. In all circumstances, using the personal data of data subjects for profiling that is beneficial to the data controller, and or marketing must necessarily, and all material times be the subject of informed and voluntary consent, and such consent, its scope, extent and duration must always be within the control of the data subject. As it were, the usability of the personal data of data subjects is not a necessary feature for the operation and delivery of WhatsApp services, and as such should be optional for users. This is more so as the service is one-sided, and has no targeted advertising side to it.
- 5.3.16. Meta Parties are aware of the GDPR and compliance obligations thereunder. They are also aware of the NDPR and compliance obligations. GDPR and NDPR to a large and interpretation extent mirrors each other with respect to consent.

There is no rational reason why withdrawal of consent will be applicable in under the GDPR, and not the NDPR. Such disparate treatment and discrimination is inexplicable, and Meta parties are unable to justify the departure in one instance from the other. Users in Europe were provided more information with respect to data points collected; why such data points are collected; what the data will be used for; and in the event of a withdrawal of consent, how to exercise that prerogative and option. Quite differently from the policy applicable in Nigeria, a specific provision of the European policy states: ***“When we process data you provide to us based on your consent, you have the right to withdraw your consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal. To withdraw your consent, visit your device-based or in-app settings.”***¹⁴ On the contrary, the only way Nigerian users could discontinue Meta Parties ability and prerogative to collect their data including for profiling and marketing was to delete their WhatsApp account.

- 5.3.17. Meta parties also ensured that Nigeria was geographically blocked from gaining access to the Privacy Policy that covers Europe.¹⁵ The Commission had to engage external tools and support to procure the said European Privacy Policy.

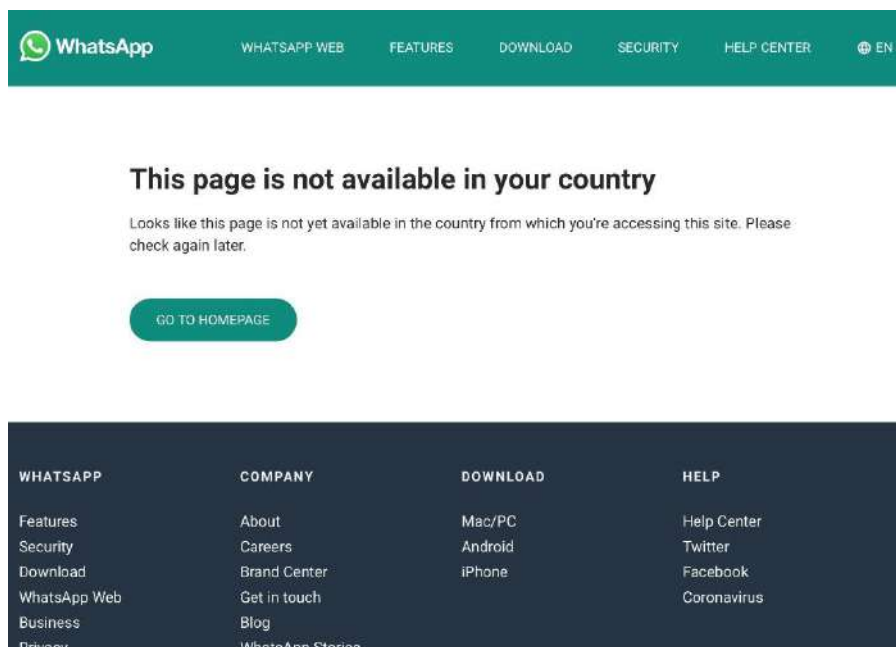


Figure 4

¹⁴ See footnote 110 above.

¹⁵ See Figure 4



5.3.18. The deliberate and intentional conduct of the Meta Parties not to afford the same level of protection and information (and indeed prevent access to relevant information) to the Nigerian users is discriminatory. Nigerian consumers are unaware of how their data is used or processed and their rights to withdraw their consent without deleting their WhatsApp account, compared to the European users of the same services. This constitutes infringements under the NDPR and FCCPA including failing to provide, and preventing consumers' rights to information. Indeed, Meta Parties treat Nigerian users unfairly, unjustly, exploitatively, discriminately, and unscrupulously and appear to view them only as a source for extraction while actively denying them their legal and fundamental protection under law.

5.3.19. Findings:

- 5.3.20. That the failure to provide an opportunity to consumers to give their consent was a breach of legal requirements as stipulated under Regulations 2.2 (a) and 2.3 of the NDPR, and Sections 17 (s), 17(m) 124, and 127. – **Substantiated**
- 5.3.21. That Meta Parties collects data in excess of what is necessary for the provision of the service – **Substantiated**.
- 5.3.22. That Meta Parties failed to procure express consent from data subjects or users in Nigeria in the specific circumstances of the Policy- **Substantiated**.
- 5.3.23. That Meta Parties bundled necessary data with data not specifically necessary or associated with the operation and delivery of WhatsApp service under Policy without the consent of data subject freely obtained – **Substantiated**.
- 5.3.24. That Meta Parties engaged in disparate treatment of users in different jurisdictions under similar governance frameworks with respect to privacy. Specifically, the NDPR to a large extent mirrors the GDPR, however, users in Europe were provided more information and protection with respect to data points collected, and the power to restrict/withdraw their consent, compared to Nigerian users which is discriminatory – **Substantiated**.



- 5.3.25. Meta Parties conduct constitute actual harm to the users. It undermines and proscribes data subjects’ prerogative to exercise control or self-determine the use and privacy of their data contrary to provisions of the NDPR– **Substantiated**.
- 5.3.26. Meta Parties, in furtherance of their Updated Privacy Policy, admit that the data extracted from Nigerian data subjects are stored outside Nigeria- **Substantiated**.
- 5.3.27. Meta Parties provide no evidence that they complied with the legal requirements governing cross-border transfer and storage of data collected, outside Nigeria. There is neither an Adequacy Decision from the appropriate authority, or an approval/agreement from the Attorney General of the Federation contrary to Regulation 2.11 of the NDPR-**Substantiated**
- 5.3.28. The purpose of the Adequacy decision in compliance with the NDPR is to ensure that the data harvested from Nigeria and transferred to data centers outside the Nigerian borders, is to protect Nigerian Data Subjects, and afford the Regulators the opportunity to assess and ensure protection of the data subject. For instance, Meta Parties informed the Commission that the data harvested from Nigeria is also store in the United States. The Commission observed that the United States at the time of this report, neither has a Federal data protection and privacy law nor a Data Protection Authority at the federal level – **Substantiated**.

5.4. ISSUE C – Whether WhatsApp is dominant under the FCCPA. If affirmative, whether its practices (particularly, but not exclusively) with respect to the Policy constituted an abuse of dominance.

- 5.4.1. In coming to its findings, the Commission’s investigation of harm is two pronged- anticompetitive conduct and consumer rights abuse. With respect to anticompetitive conduct, the Commission delineated the relevant market; determined the market participants, their market share, and considered the potential theory of harm based on the conduct of the Meta Parties. With respect to consumer abuse, the Commission considered the potential exploitation of consumer data and privacy contrary to law as analysed in issues A and B above.
- 5.4.2. Prior to defining the market and specific theories of harm under investigation, the Commission determined the relevance of this question on dominance is only to the extent that WhatsApp’s dominance is an aggravating factor. It is not a necessary component to establish the ensuing theories of harm which have been previously analysed as unfair, obnoxious, and an unscrupulous trading practices and breach of law - see issues A and B above.
- 5.4.3. In a counterfactual situation, if WhatsApp was not dominant, these practices would still constitute questions of violations of the FCCPA and other relevant instruments. This is because in addition to being anticompetitive, when perpetuated by a non-dominant undertaking, they are in themselves violations and exploitation of consumer rights under the FCCPA. WhatsApp’s dominance is therefore a matter of aggravation and tangential.

5.4.4. Market Definition

- 5.4.4.1. The Commission has defined the relevant product and geographical market as **“Contact-Based Instant Messaging Service”** in Nigeria.
- 5.4.4.2. This being the narrowest market with respect to substitutability, unique characteristics and features, and intended use of the service. The primary service offered in the identified market is real-time or instant communication with other users with phone numbers (usually family and friends) in various forms, such as voice and multimedia messaging, video chat, group chats, voice call, etc.



Importantly, it does not allow users to share posts for likes or comments, view a feed, follow or subscribe to particular accounts, or host webinars.

- 5.4.4.3. Other key features of this market are that it is usually one or single sided, in that there is usually no targeted advertising side; it relies on mobile data or other internet connection; it is available across all mobile operating systems; and in most instances, users use their mobile phone number as a means to contact, and be contacted by, other users.
- 5.4.4.4. From a broad independent market study, the main participants in this market are WhatsApp, Facebook and Telegram. Respectively, their market shares are: 65%, 28%, and 1%. Signal also exists as an alternative, but does not have a significant presence in the Nigerian market. Nevertheless, for completeness and full context, it remains and will be used in this Report as a useful comparator in the relevant market.
- 5.4.4.5. Contrary to Meta Parties' assertion and suggestion about the relevant market, the product market does not include all other social media/network or online services. Meta Parties prefer to overly broadly define the market as all these platforms competing for user attention such as, TikTok, Snapchat; or mainly voice and video communication such as Skype, Zoom, with instant messaging as add-on service, etc. These arguments and the identified comparators do not share sufficient homogeneity and substitutability with the services central to this market. Instead, "Contact-Based Instant Messaging Service" in Nigeria, as defined above, is the market identified by the Commission. The Commission has demonstrated that the market as identified prioritizes a higher level of privacy compared to the broader market argued by the Meta Parties. Notably, it's impossible to find users' WhatsApp messages or accounts on the web; unlike other social media platforms such as TikTok, Twitter, and Instagram, unless the user opts to make their account private. This clear distinction underscores the point that the WhatsApp platform operates in a different market from the aforementioned platforms.
- 5.4.4.6. Even if the market is defined broadly as Meta Parties argue, Meta Parties will still be dominant. However, as it were, the controlling factors in market definition are the features that tend towards homogeneity and substitutability. Essentially, whether services in that market are true functional equivalents in features and

services. Despite opportunities and multiple engagements with the Commission, Meta Parties have failed to provide any data, statistics or other evidence to controvert Meta Parties' dominance. In any case, the Independent Market Survey by the Commission¹⁶ adopted an even broader market definition and the Meta Parties are still dominant.

5.4.4.7. The geographic market definition is limited to Nigeria, consistent with the Commission's jurisdiction and the scope of the FCCPA. In addition, the entirety of the effects subject of analysis exists in Nigeria.

5.4.4.8. Specifically, Section 2(1), of the FCCPA defines the jurisdiction of the FCCPA and Commission to extend over undertakings and commercial activities geared towards the satisfaction of demand from the public and which have effect within Nigeria. The argument of the Meta Parties that the geographic market definition is global in nature, is rejected. Such argument dispenses with the entire notion and proprietary of geographic markets, and indeed the role of any sub-national, national, regional, continental, economic cooperation group or similar in regulating such otherwise clearly and well-defined markets. In any case, Meta Parties' argument about the geographical market being global, is not only disingenuous but intentionally misleading and internally inconsistent. Meta Parties by their practise and admission, impose or implement variations of, or different Privacy Policies across different markets, purportedly to comply with the different regulatory standards in the different jurisdictions. As it were, one of the key questions presented in this investigation is why the Meta Parties will adopt different approaches to compliance in two different jurisdictions with similar regulatory standards. Available evidence in the course of this investigation also clearly demonstrates that WhatsApp periodically modified or amended its policies in what appears to be a generally inconsistent manner; but which can be rationally explained by a desire or compulsion to comply with changing standards and provisions in regulations in different jurisdictions.

5.4.4.9. Furthermore, a globally accepted and recognised tool for defining the relevant market is the hypothetical monopoly test – Small but Significant Non-Transitory Increase in Price (SSNIP). Relying on the underlying principles, Meta Parties insist that the analysis of the Commission with respect to its finding of dominance is

¹⁶ Attached as Annexure 3

unfounded because the specific service is zero priced. Meta Parties as such insist there can be no small but significant non-transitory increase in price as applicable under the SSNIP test. This argument fails because the SSNIP test though an accepted mechanism of necessity, is neither exclusive nor exhaustive also under other accepted theories. In circumstances of a zero traditional price market, there are other tools and heuristics of regulatory analysis such as “Small but Significant Non-Transitory Decrease in Quality (SSNDQ)” or “Small but Significant Non-Transitory Increase in Cost (SSNIC)” that can be applicable in determining or defining a relevant market.

- 5.4.4.10. By applying the SSNDQ and SSNIC test, the Commission determined and delineated the market as “Contact-Based Instant Messaging Service” in Nigeria, being the narrowest market in accordance with tested and accepted principles, and as a matter of fact other regulatory actions under similar circumstances. Evidence demonstrates that WhatsApp is able to act in an appreciable manner without taking into account the reactions of its users and competitors, and without experiencing any concern for its substitutability, due to its considerable network effects.
- 5.4.4.11. Ultimately, the theory of harm is the most prolific and rightly important factor in regulatory analysis. In addition, privacy is an element of quality when it involves inadequate protection to data subjects using a service, or when inadequate data protection limits the ability of consumers to switch from one competitor to another, or when an undertaking obtains an unfair competitive advantage over other competitors because it does not fully comply with relevant and prevailing law.
- 5.4.4.12. Due to network effects (power of incumbency, huge contact/user base or interface, and strong technological links) WhatsApp users are unlikely to port to other competitors so easily in the defined market, so regardless of the lack of privacy protection and resultant decrease in quality and increase in cost (switching) against the user, they will still remain with the WhatsApp service, leading to a lock-in-effect (see pages 21-24 of the survey).
- 5.4.4.13. With respect to privacy violations, Meta Parties insist consumers in Nigeria are satisfied and not displeased with its services and policies (including the Updated Privacy Policy). Meta Parties make this assertion without any evidentiary

support. They fail to provide any basis for such conclusion. What is contrary on the other hand is available public commentary criticizing, questioning, or expressing concern with the policy. In addition, there is evidence of failed attempts or unstained migration to other services which failure is associated with WhatsApp network effect and dominance. In any case, even if Meta Parties were to be presumably correct, Meta Parties herein conflate compliance with complaint. Compliance, especially in the present circumstances is a mandatory measure to protect consumers, prevent exploitation and violation of their privacies. By the time complaints arise, it is an indication of either isolated failures of non-compliance, or systemic failures of both non-compliance, and non-enforcement. Mandatory standards created in and by the NDPR and FCCPA require unequivocal compliance, not discretionary or optional adoption. Meta Parties are not at liberty to determine which laws to comply with, or when to comply at all. Legal protective standards such as regulations and regulatory process are not determined or subject to consumer feedback. Meta Parties may proceed in or with their service options and offerings to users based on consumer feedback, only to the extent that the fundamental and foundational requirement that such already comply with the law have been satisfied. Illegality is not diminished or mitigated because conduct is otherwise well received by consumers.

5.4.4.14. Meta Parties dispute the Commission’s product and geographic market definition (and in some instances, they challenge the factual and evidentiary basis). Meta Parties however fail to present their proposed alternative which they consider more appropriate despite multiple opportunities to do so, either in writing or at the meeting of March 4, 2022.

5.4.5. Dominance

5.4.5.1. After delineating the relevant market, the Commission’s investigation concludes that WhatsApp is dominant in the “Contact-Based Instant Messaging Service” in Nigeria.

5.4.5.2. Dominance exists pursuant to Section 70 of the FCCPA, when an undertaking is able to act without taking account of the reaction of its customers, consumers or competitors or having the power to behave to an appreciable extent independently of its competitors and ultimately consumers.



5.4.5.3. With respect to WhatsApp's dominance in the defined market, the Commission took into account: WhatsApp's technological links; WhatsApp market share compared to other participants in the defined market; the key features with respect to homogeneity and substitutability of its service; the amount of data points collected by WhatsApp compared to its competitors in the same market; constraints posed to other competitors for expansion with respect to lock-in effects; and user's switching cost.

5.4.5.4. The Commission also relied on data provided by an Independent Market Survey, which revealed that WhatsApp is the most used instant messaging service across all 36 states in Nigeria and the Federal Capital Territory. In particular, WhatsApp was used by 65% of Nigerian users. The closest and next platform in terms of number of users by the Survey is Facebook Messenger, used by only 28% of users. The Commission also took into account the fact that Facebook Messenger and WhatsApp are owned and ultimately controlled by the same entity and jointly constitute components of the Meta Parties including by the preference and legal representation approach of the Meta Parties. Accordingly, Meta Parties control a market share of 93% in Nigeria. The totality of evidence overwhelmingly supports the unequivocal conclusion that WhatsApp is indeed dominant.

5.4.5.5. Meta Parties failed to rebut the Commission's finding that it is dominant. They did not provide any alternative or contrary position, or any evidence to refute the finding. What Meta Parties did in the place of its silence and failure to articulate any factual or legally appreciable facts or combination thereof was to reject the Commission's finding. The Commission being satisfied by the evidence available, the Independent Market Survey, and applicable provisions in the FCCPA (Section 32(3)) regarding evidence and decisions of the Commission is satisfied with the finding that WhatsApp is dominant in the relevant and defined.

5.4.5.6. As earlier articulated in this report, Meta's claim that it is not dominant based on its own identified geographic market- 'the entire world' is unavailing in this regard, because as noted, even at that (without conceding or accepting that Meta Parties erroneous classification is reasonable, rational or even practical) Meta Parties are globally dominant. Companies under Meta control account for



75.6%, and 4th of the top 10 social media apps by downloads in the world, as at December 2022¹⁷.

5.4.6. Theories of Harm

5.4.6.1. The Commission's analysis of WhatsApp's practices in the "Contact-Based Instant Messaging Service" in Nigeria, are evaluated under the following theories of harm: abuse of consumer rights to self-determination; exploitation of Nigerian users through excessive data collection; and bundling and tying one service and market to another. In all, these harms further entrenched the ability of Meta Parties to appreciably act without considering the rights of users or competitors, contrary to Sections 71(c), 72(2)(a), and 72(2)(d)(iii) of the FCCPA.

5.4.7. Abuse of Consumer Rights as Data Subjects

5.4.7.1. Privacy (including data) protection is a legal and fundamental right of citizens/data subjects- Section 37 Constitution of the Federal Republic of Nigeria 1999 (as amended). There is also an aspect of quality with respect to the use of a service. Consumers (data subjects under law) have a right to self-determine and control the collection, use, processing, and sharing or transfer of their personal data.

5.4.7.2. WhatsApp's unilateral conduct of failing to give consumers a choice to opt out and control the sharing of their data with Facebook and other third parties under the 2021 Updated Privacy Policy is illegal, and an abuse of its dominance.

5.4.7.3. Specific conduct includes the failure of WhatsApp to seek and obtain freely given consent of data subjects, prior to collecting, combining, and sharing/transferring such data. WhatsApp did not give users the opportunity to opt-out, restrict, or withdraw such consent. To the contrary, data subjects or users were under coercion of the threat of denied access which manifested as the undue influence associated with restrictions on disruption-free enjoyment of the service.

5.4.7.4. Meta Parties employed unfair tactics to unduly influence and coerce users to accept the Updated Privacy Policy. Some users experienced disruptive, persistent, recurrent, and intrusive notifications that pressured them into accepting the Policy. The nature, timing, and recurrence of such notifications put

¹⁷ <https://www.visualcapitalist.com/cp/most-popular-apps-by-downloads/>

undue pressure on users and limited the quality and functionality of the service to users. Moreover, because Meta Parties denied users the flexibility, choice and prerogative to control the use of their data by excluding an opt-out function or an ability to stop the recurrent intrusive prompts; users had no choice, and as such were forced to accept a Privacy Policy that essentially compelled them to waive their right to object to the sharing or transfer of their data with or to Facebook and other third parties.

5.4.7.5. Essentially, Meta Parties' failure to provide users the opportunity to opt out, restrict, or withdraw their consent is the same as a pre-ticked box, contrary to the intentions, dictates, and stipulations in the NDPR and FCCPA. These conducts infringe users' legal, legitimate, and fundamental right to self-determine and control how their data is processed, used, shared or transferred.

5.4.8. Excessive Cost to Consumers

5.4.8.1. The Commission determined that the defined market is one-sided and monetarily free for users, but not without commercial value. It is unquestionable that the data Meta Parties harvest from users is of significant financial value. The Commission also determined that WhatsApp collects data from points which are appreciably higher than those collected by other competitors of the same service (such as Signal and Telegram). As such, when considering the different data collected, there is no evidence that the scope and amount of data collected are crucial, or even necessary to providing the service users get on WhatsApp. This lack of linear or other connection between the volume of data collected including from additional data points constitute excessive cost imposed on consumers and therefore an abuse of dominance. To successfully controvert this, where possible, Meta Parties are required to justify the difference by reference to objective dissimilarities between the situation with its competitors and the situation prevailing in the relevant market.

5.4.8.2. In response to a regulatory request that WhatsApp provide information with respect to necessity of data collected, and as such possible justification, Meta Parties insisted consent is not mandatory, thereby admitting the failure of procuring consent; and vaguely claimed necessity in order to satisfy legal or contractual obligations, public interest, etc. Meta has not articulated any such necessity or exception other than a cursory reference to the doctrine.



- 5.4.8.3. Consequently, WhatsApp's inability or failure to show the necessity for the data collected as a pre-requisite for the provision of its services, demonstrates that the data collected is evidently excessive and comparable to overcharging data subjects for the service WhatsApp provides for which the consumer's consent must be sought and obtained freely. Failure of consent is an unfair and exploitative conduct or practice in violation of Sections 72(2)(a) with respect to charge, cost, and price against the consumer.
- 5.4.8.4. Further, the conduct of Meta Parties, and the unfair tactic deployed, in forcing data subjects to provide data in excess of what is required for the provision of its service, is also in violation of Sections 124 of the FCCPA, which provides for the right of consumers to fair dealing, with respect to the marketing, supply, and conclusion of an agreement, or the conduct of a legitimate business.
- 5.4.8.5. Section 127 of the FCCPA prohibits businesses from requiring consumers (in this case data subjects/users of service) to waive any right, on terms that are unfair, unreasonable, and unjust. The conduct of Meta Parties is implicated hereunder and inconsistent with law, specifically because Regulation 2.3 (2) of the NDPR provides that: ***"Data Controller (Parties) is under obligation to ensure that consent of a Data Subject has been obtained without fraud, coercion or undue influence."*** Meta Parties' conduct in not securing freely given consent; the fact that users had no choice besides the "update" option; the persistent disruption in experiencing quality service; the fact that users cannot restrict or withdraw any such consent, etc. all demonstrate the coercion, undue influence, and unfair tactic deployed by Meta Parties to compel users to waive their right to self-determination or control how their data is collected, used, processed, and shared or transferred.
- 5.4.8.6. The NDPR is clear on how to obtain consent. Regulation 2.3(2)(b) provides that ***"if the Data Subject's consent is given in the context of a written declaration which also concerns other matters, the request for consent shall be presented in a manner which is clearly distinguishable from the other matters, in an intelligible and easily accessible form, using clear and plain language. Any part of such a declaration which constitutes an infringement of this Regulation shall not be binding on the Data Subject."*** Accordingly, Meta Parties should have, and must clearly and unambiguously present every request for consent in a manner that is distinguishable, and under circumstances where data subjects have the liberty and flexibility to select what particular disclosure, processing, use, sharing

and transfer they consciously agree to permit in a way that makes the question of whether they provided free and express consent unquestionably clear. The failure to do this and secure users' express consent in an intelligible form violates both the NDPR and invariably, the FCCPA. Lumping different and potentially unrelated components of consent does not comply with applicable regulatory standards.

5.4.9. Tying & Bundling

- 5.4.9.1. Meta Parties have failed to provide any persuasive or compelling reason or basis to demonstrate that the data being collected from users is, in fact, necessary for the operation and provision of WhatsApp services. On the contrary, evidence on the record from information collated by National Information Technology Development Agency (NITDA) demonstrates that WhatsApp collects significantly more data points about users than its competitors, Telegram and Signal.
- 5.4.9.2. The evidence also shows that such data can be shared with third parties and potentially commercialized. In particular, Meta Parties admitted in the Updated Privacy Policy that the data collected may not only be shared with Facebook and third parties but may also be used for profiling and marketing purposes. This is particularly considered egregious, because unlike in Europe, users of WhatsApp services in Nigeria are unable to restrict or withdraw their consent, especially as their data may be used for marketing and profiling, which are optional, unnecessary, and not required for the operation and delivery of WhatsApp service in the defined market of "Contact-Based Instant Messaging Service" in Nigeria, particularly as the market is one-sided, and has no targeted advertising side to it. Moreover, consumers are forced to give consent to the sharing of their personal data with a product in a different market, despite lacking any interest or engagement in that specific market or product.
- 5.4.9.3. Invariably, Meta Parties have exploited their dominance to request and demand information from users which data is otherwise optional/non-essential/unnecessary for the functioning of its service. The abuse inherent in this conduct is underscored by the fact that competitors are unable to replicate this because users have the power and discretion to leave, or worse still, where applicable, able to do the same because the dominant player has set that as a



standard. The purpose of this advantage is only explained from the record as commercial interests of the Meta Parties. This advantage is regardless of the rights, and desires of users; and an advantage which is unfair and exploitative of Nigerian users.

5.4.9.4. In addition, the FCCPA prohibits undertakings from compelling consumers as a condition for offering a service, to enter into an agreement of service with a third party, unless that undertaking can demonstrate that bundling those services outweighs the consumer's right to choose, or that the bundling of the two services results in economic benefit for consumers. Meta Parties, by foisting the Updated Privacy Policy on users, bundled the data collected from some and functionally necessary data points for the service; with data collected from points which are optional/non-essential/unnecessary to the provision of its WhatsApp service, to another service, in this case the Facebook market.

5.4.9.5. By the conditions attached to the Updated Privacy Policy, Meta Parties attempt to tie the Facebook market with the WhatsApp Market, upon acceptance of the Updated Privacy Policy. This is contrary to the NDPR and FCCPA, which demand that consent must be separate and clearly distinguishable from other matters; and services which operate independently, should not be bundled together, as a condition for the use of the service.

5.4.9.6. Meta Parties were presented with the regulatory view and question of "necessity" articulated above with a request that Meta Parties address the Commission on these. This was clearly communicated to the Meta Parties operatives and their legal representatives, at the March 4, 2022 meeting. In response, the Meta Parties and their legal representatives noted that they would revert to the Commission; justifying the purpose and necessity of the data collected. The Commission received a joint response from Meta Parties in the letter of April 1, 2022. The correspondence failed to satisfactorily address the point. The letter fails to make disclosures requested by the Commission, and does not identify the data points WhatsApp gathers contrary to the specific request of the Commission.



- 5.4.9.7. As already analysed above, WhatsApp is a different market from Facebook. Specifically, considering key differentiating indicators with respect to its use and features. Also, WhatsApp is a single or one-sided market with no advertising side; meanwhile, Facebook is a multisided market with targeted advertisement on one side and users on the other side. Unlike Facebook, WhatsApp usage is contact based, while Facebook has a much broader audience. Also, unlike WhatsApp, users of Facebook can play games online, share feeds, like, and comment.
- 5.4.9.8. The Commission discovered that WhatsApp and Facebook are in two different products markets, meaning that WhatsApp's conduct of obligating users to accept its Updated Privacy Policy with conditions that such data collected may be shared with Facebook companies and other third parties is illegal, unfair, unjust, one-sided, unreasonable, obnoxious. and unscrupulous. This is because the nature and commercial usage of these markets are very different and have no connection to the nature and commercial usage in the relevant market, which as established is zero priced.
- 5.4.9.9. Contrary to Section 72 (2)(d)(iii) of the FCCPA, Meta Parties, by their Updated Privacy Policy, have made a condition, essentially a pre-requisite or requirement that is ostensibly unrelated to the object of the contract. The scope and extent of data gathered from users is not an object of the contract, as it is not material to providing the service. In addition, agreeing that their data be shared with Facebook or other third parties, and be used for the purpose of profiling, marketing and other activities was also not an object or a matter of materiality to the contract or provision of WhatsApp service. The Parties forced users to accept the condition of the liberty or prerogative of Meta Parties to share their data for profiling, marketing, etc. in an unrelated market, without consent being duly and legally obtained in compliance with relevant provisions of law with respect to how data must be collected, processed, stored, and transferred.
- 5.4.9.10. In essence, users of WhatsApp service are forced to consent to their data being transferred to Facebook companies and other third parties. WhatsApp users cannot use the WhatsApp service without consenting to Meta Parties exercising discretionary control over their data by them ceding such control to the Meta Parties. That Meta Parties created and enforced a policy that compels users to



allow the sharing or transfer of their personal information or data to Facebook companies or other third parties including for profiling or marketing is an infringement of the FCCPA, including with respect to abusing their dominant position. This is more so because it is possible to provide WhatsApp service without Facebook.

- 5.4.9.11. By this conduct, the Meta Parties seek to advance Facebook and/or maintain its dominance by forcing users to consent to being subjects of marketing and profiling in the Facebook market. This limits the right of consumers to self-determine the use of their data, and their choice to refuse to participate in a market that is irrelevant and unrelated to the usage of its preferred service, as well as a likely foreclosure of Facebook competitors in the market where Facebook operates.
- 5.4.9.12. WhatsApp's market share and power, as well as the optionless approach users had constitute serious aggravation with respect to the tying conduct of compelling users to be subject to a needless and unrelated responsibility or waiver of rights and prerogative. That exploitation occasioned, enabled, and emboldened by WhatsApp's market power in this tying is a textbook example of abusive conduct. This substantial market power is the strongest platform to enforce an otherwise illegal and unfair Updated Privacy Policy. Also, WhatsApp has been unable to demonstrate how bundling these product markets is of any economic benefit or convenience to users, or how the data collected is indispensable for the effective performance and use of its service. Clearly, the excessive data collected, combined, and transferred to another market for the purposes of marketing, profiling, etc. without the express, informed, and freely given consent of users is for benefit of Meta Parties, and ultimately maintain or even strengthen their dominance including the market where Facebook operates.
- 5.4.9.13. Furthermore, and as stated previously, the Commission rejects Meta Parties argument that the relevant market is broader and includes participants such as TikTok, Snapchat, Twitter, Zoom, Skype, etc.

5.4.9.14. To buttress this, the Commission initiated a study regarding the scope and definition of the relevant market, which features included participants, market power, consumer preferences, product substitutability, dominance, or otherwise of participants (see Annexure 3) for the report of the market survey). The outcome of the study is consistent with the regulatory position adopted by the Commission and validates the assessments, evaluations and findings in that regard, including that WhatsApp is dominant in the defined market; “Contact-Based Instant Messaging Service” in Nigeria.

5.4.9.15. In response to the query about willingness to switch from one instant messaging application to another, majority of respondents, accounting for between 60% and 81% of total responses across different states, including the Federal Capital Territory, indicated that they did not consider switching from one instant messaging application to another. This further demonstrates not just the network effect Meta Parties have, but also the lock-in effect.

5.4.9.16. Given the established dominance of Meta Parties, and the demonstrated degree of market power with respect to market shares, technological links, substitutability, unique characteristics, intended use, network and lock-in effect, Meta Parties is by its conduct more likely to harm competition in another market as well as exploit consumers in the defined market.

5.4.10. The Parties ability to act to an appreciable extent without considering the reaction of users

5.4.10.1. The Commission analysed the motivation of users to switch from one instant messaging platform to another, specifically, when asked “will you consider switching from one Instant Messaging Application to another?” 72% of respondents responded “NO.” This response was further interrogated, to understand the motivation for the response. A key reason for not switching is the large user base and familiarity with the WhatsApp instant messaging application.

5.4.10.2. When asked “which instant messaging App is most preferred”, WhatsApp was the most preferred App by approximately 60% of respondents. Further inquiry established that WhatsApp was mostly preferred because of its user interface and connectivity with friends and family. Accordingly, a combined analysis of the responses of users of WhatsApp demonstrate, WhatsApp is not only dominant,

but possesses the network effect that made it difficult for users to switch, leading to a lock-in effect.

- 5.4.10.3. Meta Parties abused their dominance and took advantage of the imbalance in power they possess compared to that of users. This was mainly through the Updated Privacy Policy, which presented no choice to users, particularly, those who do not want to switch from WhatsApp due to the high switching costs, but who value the limitation of the data collected and processed to the minimum necessary for the use of the WhatsApp platform.
- 5.4.10.4. The Commission considers the switching cost not in monetary terms, but rather the quality of the user's experience. Specifically, the Commission takes the following factors into account: the physiological, emotional, and convenience cost associated with moving media, contact, and memories curated on the WhatsApp platform; the time and effort deployed to encouraging other contacts to join a competing platform; and the technical restrictions such as possible inoperability issues.
- 5.4.10.5. Evidence of such high switching cost is further demonstrated by the recorded increase in subscription of other competing participants in the relevant market (Telegram and Signal) ascribed to the Updated Privacy Policy and demonstrating a desire to port to other competitors. Indeed, shortly after the Updated Privacy Policy was announced, Signal posted the following on its Twitter account: **"Verification codes are currently delayed across several providers because so many new people are trying to join Signal right now (we can barely register our excitement). We are working with carriers to resolve this as quickly as possible. Hang in there. ... We continue to shatter traffic records and add capacity as more and more people come to terms with how much they dislike Facebook's new terms. If you weren't able to create a new group recently, please try again, new servers are ready to serve you."**¹⁸

¹⁸ See, [here](#), for the Twitter Thread from Signal's official Twitter account.

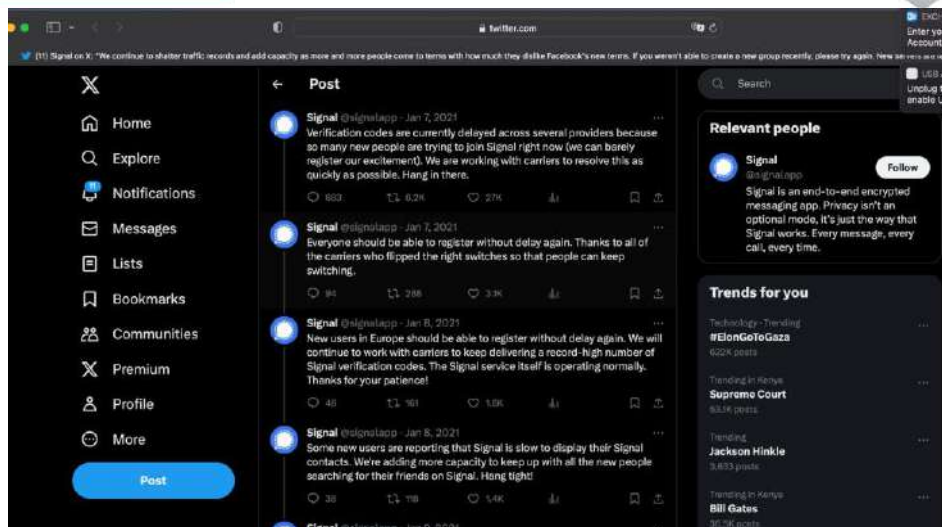


Figure 5

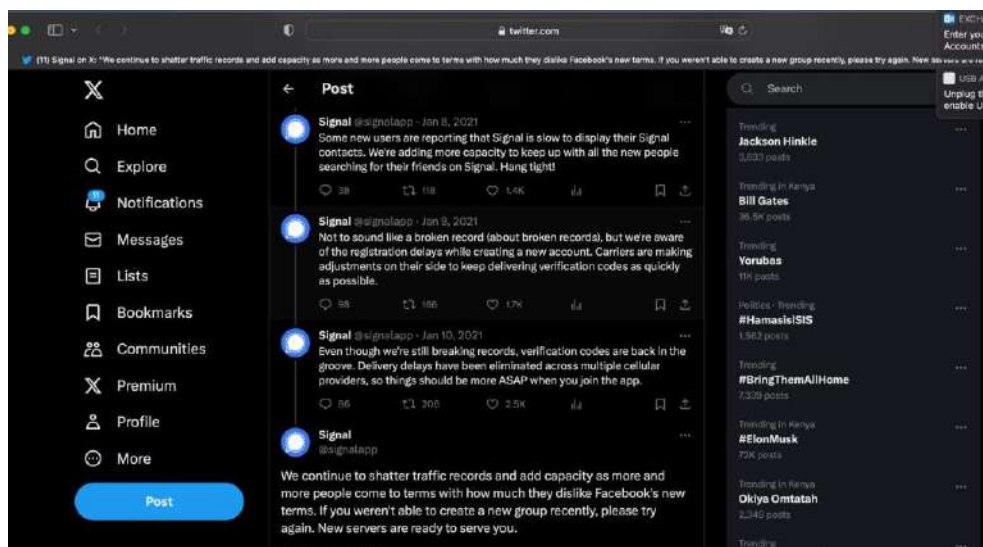


Figure 6

5.4.10.6. Conversely, and as admitted by WhatsApp, WhatsApp did not register a decline in subscription, which further illustrates that the switching costs are so high that it prevents other competitors from gaining the critical mass required to scale. This position is buttressed by the percentage of respondents in the Survey Report, who responded “No” when asked if they will consider switching. According to the said Survey Report, ***“The majority of the respondents, accounting for between 49% and 71% of the total responses across different states and the FCT indicated that they are not considering switching from one IM app to another because the current IM app they use has a very large user base.”***

5.4.10.7. While WhatsApp's dominance is a result of its network effect and value, consumers face substantial switching costs which deprives them of choice. As a result, consumers are forced to pay for a service (potential commercialization, profiling, marketing, and sharing of their data with third parties and Facebook) that they do not desire. Accordingly, consumers have no choice but to accept the updated Privacy Policy contrary to Regulations 2.3(2)(D) of the NDPR with respect to the requirement to protect the user's right to choose.

5.5. Findings:

5.5.1. That the relevant market definition is the market for "Contact-Based Instant Messaging Service" in Nigeria. – **Substantiated.**

5.5.2. That WhatsApp is dominant in the defined Market – **Substantiated.**

5.5.3. That Meta Parties abused their dominance with respect to its failure to protect and honour consumers rights to fair dealing, specifically in the use of undue pressure, coercion, and unfair tactic in its business practice of collecting, combining, processing and transferring of consumer's data for commercial or marketing purposes without seeking and obtaining the expressed and freely granted consent of data subjects/consumers contrary to Section 72 FCCPA – **Substantiated.**

5.5.4. That denying Nigerian users their rights to grant access, withdraw and or control their data, they demonstrated an unbalanced negotiation that points to WhatsApp's market power and dominance, as well as its abuse of consumer right to fair dealing, and right to self-determine the use, processing and transfer of their personal – **Substantiated.**

5.5.5. That WhatsApp collects customer and device-related data, combines these data and assigns/transfers them to the Facebook companies and third parties; the use of this information actually involves the processing of personal data, including special data categories and customizing/profiling – **Substantiated.**

5.5.6. That the data processing from WhatsApp and Facebook-owned companies, imposed by WhatsApp, breaches Nigerian data protection Rules pursuant to the



NDPR, in the absence of requisite consent from the data subjects; as well as the transfer and storage of data in data centers outside Nigeria – **Substantiated**.

- 5.5.7. That Meta Parties abuse their dominance by enforcing an illegal and unfair Updated Privacy Policy through its refusal, and failure, to comply with mandatory provisions of the NDPR with respect to data subjects fundamental right to self-determine the collection, processing, management, storage, combination and sharing of their data, contrary to Section 72 of the FCCPA – **Substantiated**.
- 5.5.8. That there is no sufficient justification pursuant to law for the imposition of the current updated Privacy Policy, to the exclusion of the consumer consent, as any proposed consent was neither sought nor obtained freely in accordance with the NDPR – **Substantiated**.
- 5.5.9. That WhatsApp's breach of data protection rules is a manifestation of its market power, therefore not just an abuse of consumer rights under law, and demonstrated discrimination against Nigerian Users of its service; the conduct also constitutes an abuse of WhatsApp's dominant position under the FCCPA – **Substantiated**.
- 5.5.10. That failure to provide users the opportunity to opt out, restrict or withdraw consent is essentially the same as a pre-ticked box, contrary to the intention, dictates and stipulations in the NDPR, hence not a valid form of consent – **Substantiated**.
- 5.5.11. That WhatsApp tied necessary data with non-essential data to enhance and or maintain Facebook companies' economic strength in another market. Tying necessary data with other data that should ordinarily require consent from the data subject into one contract; in this case, Meta Parties in failing to provide an opt-out option, or giving users the right to withdraw consent (as in the EU) and lumping all data points collected (necessary and optional/unnecessary) in one contract; are by such conduct forcing users to accept a condition unrelated to the object of the service and Privacy Policy agreement; and contrary to Section 124, and 127 of the FCCPA – **Substantiated**.

- 5.5.12. That WhatsApp, through its updated Privacy Policy, collected, combined and tied its WhatsApp Market with Facebook market, where such data collected can be used to profile/ fingerprint the user, without expressed, informed and freely given consent, while ensuring they have no ability to withdraw such consent – **Substantiated.**
- 5.5.13. That Meta Parties abused their dominance by requiring data subjects to waive their rights to self-determination of how their data is used, processed, combined and shared, contrary to Section 72 of the FCCPA – **Substantiated**
- 5.5.14. Meta Parties abused their dominance by tying and bundling its services and markets through the instrumentality of its Updated Privacy Policy, to boost its dominance and commercial advantage in it other markets aside the relevant market, without demonstrating that bundling those services outweighs the consumer’s right to choose, or that the bundling of the two services results in economic benefit for consumers, contrary to Sections 72 and 119 of the FCCPA – **Substantiated.**
- 5.5.15. Meta Parties abused their dominance by obligating users to accept its Updated Privacy Policy with conditions that such data collected may be shared with Facebook companies and other third parties is illegal, unfair, unjust, one-sided, unreasonable, obnoxious and unscrupulous as the nature and commercial usage of its Facebook and other third parties’ markets are very different, unrelated and have no connection to the nature and commercial usage in the relevant market, which as established is zero priced; contrary to Sections 72 and 119 of the FCCPA – **Substantiated.**
- 5.5.16. Meta Parties abused their dominance by enforcing its Updated Privacy Policy to the effect that WhatsApp users cannot use the WhatsApp service without consenting to Meta Parties exercising discretionary control over their data, that is, ceding such control to the Meta Parties, by forcing users to consent to being subjects of marketing and profiling in the Facebook market; contrary to Sections 72 and 119 of the FCCPA – **Substantiated.**

6. CONCLUSION & RECOMMENDATIONS

6.1. In conclusion, WhatsApp violated the rights of its users when it introduced its Updated Privacy Policy, in a manner that is a clear departure from regulatory provisions governing consent freely obtained, consent withdrawal, discrimination of Nigerian users, tying and illegal transfer of data outside Nigeria without the requisite permit.

6.2. Furthermore, given that Meta Parties are dominant, the series of conduct described above constitute abuse of dominance, due to the established network effect, lock in effects, and market power, as well as user interface that prevented consumers from switching.

6.3. Panel recommends corrective outcomes (Penalties for infringement is considered differently under the Administrative Penalties Regulations (APR) in circumstances where the Commission will not seek criminal prosecution or referral to the Office of the Honourable Attorney General for prosecution):

6.3.1. Whether WhatsApp's 2021 Updated Privacy Policy complies with the NDPR

6.3.1.1. The NDPR provides the basis and authority with respect to consumer's right to self-determine the use, processing and transfer or dissemination of their data. This is a legal and fundamental right of the data subject, except on grounds of necessity. Meta Parties had an obligation and several opportunities to, but failed to show that this fundamental and legal right of users was not violated, when Meta Parties provided information with respect to each data point collected and the basis for such specific collection, considering its failure to obtain users freely given consent.

6.3.1.2. Meta Parties should immediately and forthwith and in any case no later than 10 days from date of order provide the Commission and NDPC simultaneously with a comprehensive full and detailed information about what data it gathers including identifying exactly which is necessary for maintaining service and discontinuing gathering from those not so identified pending any further regulatory action.



- 6.3.1.3. Meta Parties shall immediately reinstate the rights of Nigerian users to self-determine and control the use, processing, sharing or transfer of their data, as well as their right to informed choice, and fair dealings by providing Nigerian Users an opportunity to restrict and withdraw their consent without losing functionality or deleting the application.
- 6.3.1.4. Meta Parties shall immediately ensure that their Privacy Policy complies with the Nigerian Data Protection Act (NDPA) with respect to its obligation to ensure data subjects consent freely to any Privacy Policies, by updating the Privacy Policy in an intelligible format, that allows Nigerian Users the opportunity to fully express their legitimate rights with respect to each data point collected.
- 6.3.1.5. Meta Parties shall immediately ensure its Privacy Policy is in compliance with the NDPR, and the Nigerian Data Protection Act, with respect to storage and transfer of user's data in data centers outside Nigeria.
- 6.3.1.6. Meta Parties shall immediately and forthwith stop the process of sharing WhatsApp user's information with other Facebook companies and third parties, until such a time when users have actively and voluntarily consented to each and every component of the liberties Meta parties intend to exercise with respect to the information of data subjects. Such proposed policy must be approved by the NDPC and or FCCPC prior to operationalization.
- 6.3.1.7. Meta Parties shall immediately revert to the data sharing practices adopted in 2016. Additionally, they are required to establish an opt-in screen that allows users to consent to or withhold consent for the sharing of additional personal data with third parties affiliated with the App, same to be approved in advance by the Commission and the NDPC.
- 6.3.2. Whether WhatsApp's 2021 Updated Privacy Policy and business practices with respect to its data collection and management processes are excessive, unscrupulous, obnoxious and a deliberate tactic to exploit Nigerian consumers, contrary to the FCCPA and NDPR
- 6.3.2.1. WhatsApp collects a lot more data than is required for the provision of its services to its users, than other operators of similar or same service. The data



collected by WhatsApp is more than necessary for efficient provision of its services as demonstrated by data points collected by providers of same or similar services. In addition, WhatsApp processes this data and shares with third parties of its choosing, including Facebook, its parent company; without the legal and necessary consent of its users. What is more egregious is the manner in which this data is demanded from the users. WhatsApp determined to compel users of its service to waive their right to self-determine how their data is used by degrading the quality of its service and limiting functionality against any user who fails to accept its current Privacy Policy. Finally, WhatsApp denies Nigerian users their right to restrict or withdraw their consent with respect to sharing their data with third parties and Facebook, in a discriminatory manner when compared with their European counterparts.

6.3.2.2. Meta Parties shall immediately and forthwith, and in any case, no later than 10 days from date of this Order, cease the tying and transfer of data from its WhatsApp market to its Facebook market, and other third parties' services without express consent sought and freely obtained from data subjects.

6.3.3. Whether WhatsApp is dominant in the defined relevant market and whether its business tactic with respect to its Privacy Policy update is an abuse of such dominance

6.3.3.1. Considering WhatsApp's market share, its market power with respect to its financial and economic strength and backing from its parent or affiliate company, its links to other technological operators, its network effect, lock in effects, and other factual barriers to entry and expansion (such as enormous user interface), the Commission determined it is dominant in the "Contact-Based Instant Messaging Service" in Nigeria. Following its determination of dominance, the Commission analyzed specific conduct by WhatsApp with respect to its unbalanced power with users of its service and competitors to determine that it had abused its dominance by failing to honor consumer rights to self-determine how their data is processed and disseminated, due to its lock-in-effect as a dominant service provider; collecting data in excess of what is required for the efficient provision of its service and tying both services and markets (necessary data with optional data) while denying consumers their right to give consent to the use of such data; is not only evidence of its dominance but also an abuse of



such dominance through its demonstrable discrimination and exploitation among others.

6.3.3.2. We recommend Penalties for infringement under the Administrative Penalties Regulations (APR) in circumstances where the Commission will not seek criminal prosecution or referral to the Office of the Honourable Attorney General for prosecution.



7. ANNEXURES

1. National Information Technology Development Authority's letter to Facebook dated June 25, 2021 titled "Re: Facebook Engagement with NITDA Regarding the WhatsApp Policy Update."
2. Internet Contact-Based Free Instant Messaging Service Market Survey.

Facebook Inc.

1 Hacker Way, Menlo Park,
California,
United States of America.

Attention: Kojo Boakye

**RE: FACEBOOK ENGAGEMENT WITH NITDA REGARDING THE
WHATSAPP POLICY UPDATE**

Refer to your letter dated 16th June 2021 on the above subject matter, please.

2. The National Information Technology Development Agency (NITDA) welcomes the convivial engagement between the Agency and Facebook for the overall interest of Nigerians. However, we wish to make it categorically clear that at no time before, during or after the meeting did NITDA acknowledge that the issued advisory is ambiguous, as stated in your letter.

3. You may recall that at the meeting, the Facebook team restated its position about the Whatsapp privacy policy update and mentioned aspects of the Advisory that it regarded as detrimental to its business model. In response, the NITDA team listed countries such as India, Brazil, South Africa and other European nations that had taken stiffer actions than Nigeria, and wondered why Facebook felt more offended with Nigeria's position. The team noted that the areas highlighted by Facebook are not directed particularly at the Company but as an advisory to all Nigerians on all social media platforms.

4. It was finally agreed that the Facebook team should put all their grievances in writing and forward same to the Agency. This conclusion accords with the established Standard Operational Practices (SOP) of the Agency.

5. Kindly note that our research leading to the issuance of the Advisory suggests serious disparities between the privacy rights accorded to Nigerians and other jurisdictions like Europe. For example, Whatsapp privacy policy applicable in Europe restrains Whatsapp from sharing any data with other members of the Facebook group except for the purpose of information

security, while the non-EU policy permits the sharing for the purpose of marketing (see Appendix A pg. 8). This negates the principle of consent to further processing as provided by the NDPR.

Also, we have reservation about the quantity of the metadata being collected by WhatsApp, which would now be transferable to other members of the Facebook group for marketing purposes. About forty-four (44) meta-data are collected by Whatsapp (see Appendix B page 3-4). Having compared WhatsApp with other similar platforms, we believe that Nigerians should be enlightened about the availability of choices. A table comparing the metadata collected by Telegram, Signal and Whatsapp, is attached herein to demonstrate our opinion.

6. Furthermore, please note that Facebook and its sister companies process over 30 million Nigerian citizens' data and yet the company has not deemed it necessary to comply with the Nigeria Data Protection Regulation. The company has failed to engage a Data Protection Compliance Organisation (DPCO), neither has it filed its NDPR audit report for two years running.

7. From the foregoing, you may wish to note as follows:

- a) The NITDA team did not make any concession as suggested by your letter.
- b) Our research as attached shows that the opinions expressed in our advisory are correct, accurate and fair.
- c) That Facebook has not complied with Nigerian Data Protection Regulation (NDPR) despite active processing of Nigerian citizens' data, a flagrant violation of Nigerian law.

8. Consequently, we would like to reiterate as follows:

- i) The Advisory issued by NITDA to Nigerians is within our regulatory remit, well-intentioned and true to the protection of Nigerians and Nigeria.
- ii) Facebook should comply with the NDPR and extant laws as required of every responsible multinational company.
- iii) NITDA is willing to partner with Facebook to help improve Facebook's privacy practices and further your interests in Nigeria.

9. Please accept the assurances of my esteemed regards.

Kashifu Inuwa Abdullahi, *CCIE*
Director-General/CEO

CC

The Honourable Minister,
Federal Ministry of Communications and Digital Economy,
Federal Secretariat Complex, Shehu Shagari Way, Abuja.

EU vs Non-EU Privacy Policy Comparison

EU Residents	Non-EU Residents	References
<p>"Messaging Metadata". Messaging Metadata consists of information that we process to convey your messages or calls and it includes information such as your user ID and the time you send a message. We use Messaging Metadata to transmit the communication, to operate our Services (including general traffic management and the prevention, detection, investigation and remediation of failures), to ensure the safety and security of our Services (which includes their availability, authenticity, integrity and confidentiality, and in particular the prevention, detection, investigation and remediation of security incidents, spam, vulnerabilities, malware, and unauthorised use or access to the Services), for billing (where applicable), and to comply with legal obligations under applicable law."</p>	<p>Nonexistent in Non-EU Policy</p>	<p>Appendix A page 6</p>
<p>Any information WhatsApp shares on this basis cannot be used for the Facebook Companies' own purposes.</p>	<p>"As part of the <u>Facebook Companies</u>, WhatsApp receives information from, and shares information (see <u>here</u>) with, the other <u>Facebook Companies</u>. We may use the information we receive from them, and they may use the information we share with them, to help operate, provide, improve, understand, customize, support, and market our Services and their offerings, including the <u>Facebook Company Products</u>. "</p>	<p>EU-: Appendix A PAGE 8</p> <p>Non-EU: Appendix B-Page 8</p>

How You Exercise Your Rights	Non-existent.	Appendix A page 13
Deletion of Messaging Metadata. Messaging Metadata is deleted or anonymized when it is no longer needed for transmitting the communication, operating our Services, ensuring the safety and security of our Services, for billing (where applicable), or to comply with legal obligations under applicable law.	Non-existent.	Appendix A page 14
You have the right to lodge a complaint with WhatsApp's lead supervisory authority, the Irish Data Protection Commission, or any other competent data protection supervisory authority.	Non-Existent	Appendix A page 13

META DATA COMPARISON

Signal	Telegram	WhatsApp	References
<ul style="list-style-type: none"> • Phone number • Contacts • User support • Cookies to customize services 	<ul style="list-style-type: none"> • Email • Phone Number • Messages (Encrypted) • Location 	<p>Usage and Log Information:</p> <ul style="list-style-type: none"> • Activity Time • Activity Frequency • Activity Duration • Log files • Diagnostic • Crash • Website • Performance • Registration date • Use of Messaging • Use of Calling • Status • Groups (name, photo, description) • Payments or business features • Profile photo • "About" information • Online status • Last seen • Last updated "about" 	<p>Appendix B Page 3-4</p> <p>https://telegram.org/privacy</p> <p>https://telegram.org/privacy</p>
		<p>Device and Connection Information:</p> <ul style="list-style-type: none"> • Hardware model • Operating system • Battery level • Signal strength • App version • Browser information • Mobile network • Phone number • Mobile operator • Language • Time zone • IP Address • Device Operations information 	

		<ul style="list-style-type: none"> Identifiers (including identifiers unique to Facebook Company Products associated with the same device or account) 	
		Location Information: <ul style="list-style-type: none"> IP Addresses Phone Area Code Location Sharing 	
		Account Information: <ul style="list-style-type: none"> Mobile Number Profile name 	
		Messages: <ul style="list-style-type: none"> Undelivered messages (encrypted on server for 30 days) Media Forwarding (encrypted and stored temporarily) 	
		<ul style="list-style-type: none"> Contacts Status Information All Transactions and Payment Data Customer Support Data 	

Internet Contact-Based **Free Instant Messaging** Service Market Survey

Conducted by
Codextel Limited
for the FCCPC



Internet Contact-Based
Free Instant Messaging
Service Market Survey

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LIST OF ACRONYMS

CATI:	Computer-Assisted Telephone Interviewing
DM:	Direct Message
FCCPA:	Federal Competition and Consumer Protection Act
FCCPC:	Federal Competition and Consumer Protection Commission
FCT:	Federal Capital Territory
GSM:	Global System for Mobile
IM:	Instant Messaging
NBS:	National Bureau of Statistics
SMS:	Short Message Service
UI	User Interface



EXECUTIVE SUMMARY

The survey on Internet Contact Based Free Instant Messaging (IM) Service in Nigeria aimed to explore market definition, consumer preferences, product substitutability, and the dominance of specific services or providers. The findings shed light on the current state of the market and its impact on competition and consumer protection.

The survey revealed that the Nigeria IM App Market encompasses a wide range of options, including popular platforms such as WhatsApp, Facebook Messenger, Instagram Direct Message (DM), Twitter DM, TikTok, Snapchat, Telegram, WeChat, and iMessage. Among these, WhatsApp emerged as the most widely used IM app across all thirty-six states of Nigeria and the Federal Capital Territory (FCT), followed closely by Facebook Messenger.

Consumer choices within the IM market were found to be influenced by their preferences, needs, and the overall market landscape. The survey identified User Interface (UI) and Connectivity with family and friends as the primary drivers behind consumers' selection of IM apps in Nigeria.

While the IM App market continues to evolve and introduce new innovations, WhatsApp has established a significant dominance in Nigeria. It enjoys widespread popularity, massive penetration, and extensive market share. However, this dominance raises concerns regarding innovation and competition within the IM market, as consumers display high levels of satisfaction and loyalty towards the top IM apps.

To attract and retain users in the Nigeria IM Market, a seamless and enjoyable interface, as well as robust privacy and data protection measures, were identified as critical factors. Ensuring a positive user experience and safeguarding user data emerged as key priorities for both new user acquisition and user retention.

The survey highlighted the versatility of the IM market in Nigeria, efficiently meeting diverse communication needs, ranging from business and personal connections to work-related collaborations. The convenience, speed, and connectivity offered by these platforms contribute to enhancing communication experiences and enabling individuals to connect, collaborate, and share information more effectively.

Additionally, the survey affirmed that IM plays a significant role in the lives of the majority of the users in Nigeria, thus posing a strong likelihood of dominance for IM in the realm of communication and coordination.

In conclusion, the Nigeria IMmarket presents a dynamic landscape, with WhatsApp emerging as the dominant player. The market survey's findings emphasise the importance of innovation, competition, and consumer protection within this sector. As the market continues to evolve, addressing user preferences, providing enhanced interfaces, and robust privacy measures will be crucial for sustaining growth and ensuring a positive user experience in the Nigerian IM App Market.



SECTION 1: BACKGROUND

The Federal Competition and Consumer Protection Commission (FCCPC) is entrusted with the responsibility of upholding regulatory provisions aimed at promoting fair competition and protecting consumer interests. The FCCPC operates under key statutory provisions such as sections 2, 17, 18, 72, 108, 124, and 127 of the Federal Competition and Consumer Protection Act (FCCPA), along with Regulations 1.2, 1.3(iii), 2.1, 2.2, 2.3, 2.5, and 3.1 of the Nigerian Data Protection Regulation, among other relevant laws. These provisions empower the FCCPC to conduct investigations and market studies/surveys when necessary.

In line with its commitment to understanding and regulating the digital market, the FCCPC has recognised the need for a comprehensive market survey pertaining to the Internet Contact Based Free IM Service market in Nigeria. The aim of this survey is to

gather and analyse data on consumer preferences, scope, options, and any limitations associated with these services, as well as assessing the dominance (or limitations thereof) of any particular service(s), product(s), or provider(s) within the market. The survey seeks to define the market in terms of consumer inclination towards specific features or characteristics of Internet Contact Based Free IM Services.

Scope and Objectives of the Survey

This survey aims to investigate the market structure of the Internet contact-based free IM service industry. The specific objectives include:

1. Market definition with respect to consumer preferences, scope, options, (or limitations thereof), substitutability of the product, and;
2. Explore the dominance or otherwise of any particular service(s), products(s) or provider(s).

The objective of this market survey is to gather empirical evidence to enhance the understanding of market dynamics within the Internet contact-based free IM service industry. The survey will provide valuable insights into consumer preferences and behaviour, helping the FCCPC make evidence-based findings and decisions where applicable.

Overall, this market survey on Internet Contact Based Free IM Service in Nigeria will play a vital role in supporting the FCCPC's mission of promoting fair competition, safeguarding consumer interests, and ensuring that regulatory actions are informed by a thorough understanding of the market landscape.

An Overview of Internet-Based IM Applications In Nigeria

The rapid rise of Internet-Based IM applications in the last decade has revolutionised contemporary communication in Nigeria and around the world. Like many other countries, Nigeria has witnessed a significant increase in the use of IM applications as they provide an alternative to Short Messaging Service (SMS) and incorporate more social features, making them more accessible to users¹. This trend is owed to several factors, including the development of innovative communication technologies and the rising demand for efficient and cost-effective communication means. However, there

¹ Caro-Alvaro, Sergio et al. (2022, March 16). Examining Potential of Scents for Enhancement of User Performance with Mobile Apps. *Mobile Information Systems*, 2022, 1-11. <https://doi.org/10.1155/2022/8776994>

is still a lack of comprehensive understanding regarding the market definition of Internet-Based IM applications.

IM is a form of real-time communication that enables text-based interaction among two or more individuals or a group using personal mobile phones, computers, or other devices via shared clients². While this definition primarily focuses on text-based communication, it is important to recognise that IM apps have evolved to incorporate voice messaging capabilities. Voice messaging allows users to send recorded audio messages, adding a more dynamic and expressive element to the conversation. However, one key characteristic of IM is the need for users to be aware of each other's presence on the same platform to initiate a messaging session. This presence awareness feature ensures that users can send and receive messages in real-time, facilitating immediate and responsive communication. Without knowing the presence of the intended recipient, it may not be possible to engage in an IM session. The availability status, online indicators, or "last seen" features in IM applications contribute to this presence awareness.

Furthermore, another study provided further insights into the distinguishing features of IM applications. Alert mechanisms, such as popups, sounds, or vibrations that immediately notify users of incoming messages, play a significant role in setting IM apart from other social apps³. IM platforms have evolved to incorporate various alert mechanisms to enhance the real-time nature of communication. Popups, typically in the form of message notifications, are displayed prominently on the user's device screen, ensuring immediate attention and facilitating quick response. These notifications often include message previews or sender information, allowing users to prioritise their communication effectively.

Typical IM applications offer various functions including group chats, audio/video chats, file sharing, real-time location sharing, and exchange of nonverbal graphics such as emoji and stickers⁴. In another argument, IM is a mobile communication tool. That is, it is developed specifically for mobile devices, which means users can carry the applications easily in their pocket⁵. Thus, the word "instant" has the connotation that easy accessibility of a mobile device is available in the communicative process. To explain, the message notification of a mobile phone alerts a receiver whenever a new message arrives.

² Prinkal, V. (2020), "Analysis of Instant Messaging Applications", *International Journal for Modern Trends in Science and Technology*, 6(12): 414-417.

³ Christoph Pimmer and Patient Rambe (2018), "The Inherent Tensions of "Instant Education": A Critical Review of Mobile Instant Messaging", *International Review of Research in Open and Distributed Learning* 19(5).

⁴ Tang, Y., Hew, K.F. Effects of using mobile instant messaging on student behavioral, emotional, and cognitive engagement: a quasi-experimental study. *Int J Educ Technol High Educ* 19, 3 (2022). <https://doi.org/10.1186/s41239-021-00306-6>.

⁵ Unuth, N. (2020). Why whatsapp is so popular? LifeWire. Retrieved Dec 8, 2021 from <https://www.lifewire.com/reasons-why-whatsapp-is-popular-3426372>

However, there is still a lack of comprehensive understanding regarding the market definition of IM applications. In contrast to prior work, this analysis offers a nuanced and precise definition of IM in social and business settings. What follows from the initial literature review above are the distinguishing features of IM, which, while beneficial, bring about considerable definition and categorisation gaps that need to be better understood. Accordingly, this survey formulated a research question to know what IM is in the Nigerian market? Thus, the goal of this research was not to describe the features of IM applications, which has been carried out elsewhere. Instead, we sought to better understand and conceptualise the market definition in the Nigerian context. Hence, a cross-sectional survey was conducted to collect and analyse data to fill the identified gaps.

SECTION 2: METHODOLOGY

This section provides an overview of the methodological approach adopted to identify, select, process and analyse information from the survey.

2.1 Research Design

This study adopted a Cross-Sectional Survey research design. Cross-Sectional surveys are studies aimed at determining the frequency (or level) of a particular attribute, such as a specific exposure, in a defined population at a particular point in time⁶. This research design was considered the most appropriate for this research because of its broad capability to study a large population and because of the flexibility of administering the questionnaires in many modes, including online surveys, social media surveys, email surveys, paper surveys, telephone surveys, and face-to-face interview surveys. Meanwhile, the anonymity of the surveys allows respondents to provide honest and unambiguous answers. Thus, to obtain the most accurate data, survey research was conducted anonymously to provide respondents with complete confidentiality for more candid and valid answers to the survey questions.

2.2 Population of the Survey

The population of this study comprises individuals in Nigeria who have access to the Global System for Mobile Communications (GSM), possess smartphones, and have data connectivity, as these criteria are necessary for users to utilise IM applications. Therefore, the total number of GSM subscribers with smartphones and data in Nigeria is considered as the basis for population identification.

According to the National Bureau of Statistics (NBS), as of the end of the 4th quarter of 2021, there were over 190 million active voice subscribers across all networks in Nigeria. Hence, for the purpose of this study, the official figure provided by the NBS, which is the total number of active voice subscribers in Nigeria as of December 2021 (190,854,069), is adopted as the population size for this study⁷.

⁶ International Agency for Research on Cancer Government agency, (n.d.), Cross-sectional surveys, https://publications.iarc.fr/_publications/media/download/4117/a785fb75cfd39903fc2d6ed89f2a28890db72dd9.pdf

⁷ https://www.nigerianstat.gov.ng/pdfuploads/Telecoms_Sector_Data_%E2%80%93_Q1_2021.pdf

2.3 Sampling Technique and Sample Size

Extant literature has described sampling as the process of selecting a portion of a targeted population with the intention of representing the entire population. This is because it is impossible to study the entire population for a particular period, as in the case of this study. Based on the foregoing, it is practically impossible to observe or interview 190,854,069 (One Hundred and Ninety Million, Eight Hundred and Fifty-Four Thousand, and Sixty-Nine) people within the timeframe and available resources for this study.

Thus, to obtain an actual sample of respondents per State, the probability sampling technique of the stratified variant was adopted to select a portion of the study population to elicit relevant and first-hand information on their opinions and experiences as users of different IM applications in Nigeria. The Stratified sampling technique involves dividing the entire population into groups, where each group member possesses similar characteristics before being selected from each group. In this case, the population is divided across the thirty-six (36) States and the FCT using the percentage of active voice subscribers in each State to determine the portion of the 50,000 sample to be allocated to each State. The final sample size was determined using a probability selection approach. Below is the allocated sample size of the thirty-six states and the FCT, based on the aforementioned criteria and approach.

Table 1: Sample Size

	Active GSM Subscribers as at Q4 2021	%	National Sample Size	State Sample Size
Abia	3,522,579	2%	50000	923
Adamawa	3,416,208	2%	50000	895
Akwa-Ibom	3,607,795	2%	50000	945
Anambra	5,367,859	3%	50000	1406
Bauchi	3,726,705	2%	50000	976
Bayelsa	1,373,590	1%	50000	360
Benue	4,696,430	2%	50000	1230
Borno	3,697,826	2%	50000	969
Cross-River	2,648,147	1%	50000	694
Delta	6,552,041	3%	50000	1717
Ebonyi	1,697,942	1%	50000	445
Edo	6,880,683	4%	50000	1803
Ekiti	1,731,803	1%	50000	454
Enugu	4,012,327	2%	50000	1051
FCT	8,903,191	5%	50000	2332
Gombe	2,346,992	1%	50000	615
Imo	4,319,527	2%	50000	1132
Jigawa	2,481,606	1%	50000	650
Kaduna	8,699,050	5%	50000	2279
Kano	11,590,149	6%	50000	3036
Katsina	4,996,202	3%	50000	1309
Kebbi	2,780,486	1%	50000	728
Kogi	3,786,447	2%	50000	992
Kwara	4,376,105	2%	50000	1146
Lagos	23,286,164	12%	50000	6101
Nasarawa	3,728,746	2%	50000	977
Niger	5,900,959	3%	50000	1546
Ogun	11,241,005	6%	50000	2945
Ondo	4,119,346	2%	50000	1079
Osun	4,427,916	2%	50000	1160
Oyo	9,724,133	5%	50000	2548
Plateau	3,663,530	2%	50000	960
Rivers	6,957,168	4%	50000	1823
Sokoto	3,257,341	2%	50000	853
Taraba	2,535,471	1%	50000	664
Yobe	2,500,946	1%	50000	655
Zamfara	2,299,654	1%	50000	602
Total	190,854,069			50,000

2.4 Data Collection Method

The survey drew upon two (2) data collection methodologies, namely:

a) Desk-based Research: This method was employed to gather information that has already been collected by other sources (secondary data), i.e., researchers, institutions and the government for the same or related purposes as the current survey to guide the design of the survey data collection instrument. A desk review of the key IM platforms in Nigeria, key factors that could influence the choice of an IM user, uses of IM app among Nigerians among other areas of interest.

b) Telephone Survey: A 50-man Call Centre was set up for data collection. A team of Data Collectors was assembled to serve as Call Centre Data Agents and was provided with Computer-Assisted Telephone Interviewing (CATI) software installed with the database of phone numbers obtained from the different service providers for random calls up to the sample size allotted to each state and FCT. Through these calls, Data Collectors were able to ask respondents structured questions that were relevant to the survey and populate responses into a backend data reporting sheet provided to each data collector.

2.5 Method of Data Analysis

For the purposes of presentation, interpretation, and analysis of the data collected, a frequency distribution table and a simple percentage method were employed. The simple percentage statistical method used to analyse the data entails that the data collected according to the occurrence of different results in each category are collated in tabular form with the frequencies and percentages of responses received from the field survey alongside the interpretation of the dataset.

Following the analysis, the data is presented in graphs, including bar charts and pie charts, to aid readers in understanding the content of the survey, sustain their interest, and effectively present large quantities of complex information.

2.6 Quality Control

To ensure the quality and accuracy of the data being collected using the methodologies chosen for the survey, an integrity test was carried out on the different sources of literature to ascertain the authenticity of the information gathered from secondary sources. Afterwards, the calls from the Call Centre were launched using SurveyCTO

Collect, using Collect's built-in audio audit feature to record and randomly listen to phone calls made by data collectors.

2.7 Process Flow

The approach and methodology consist of a myriad of activities that are interconnected for the success of this study, the diagram below depicts the sequential flow of the activities deployed for the survey.

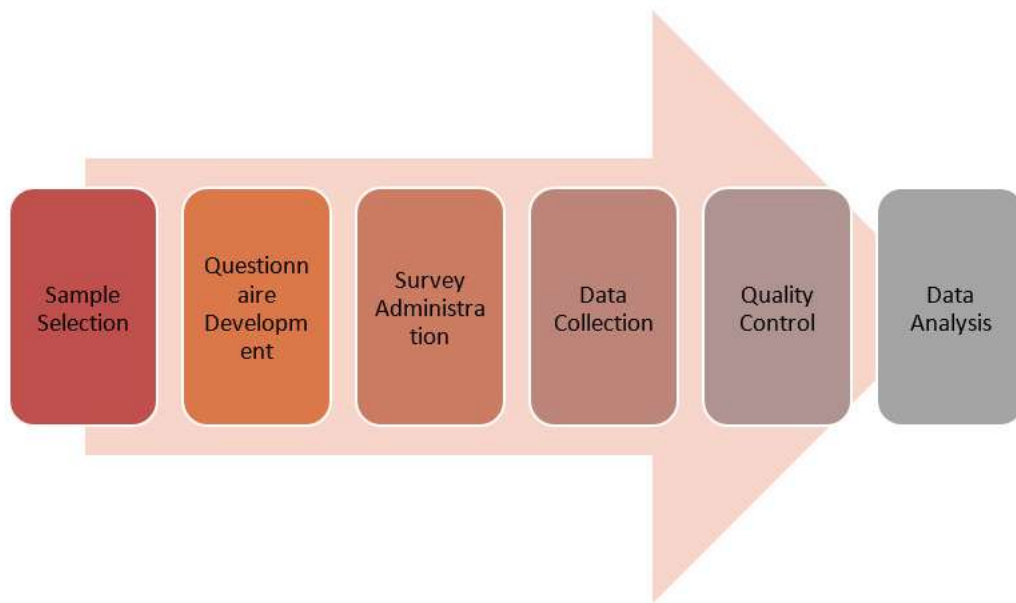


Fig. 1: Process Flow

2.8 Limitations of the Survey

Meanwhile, the study was challenged by an unpredictable limitation; thus, the identified limitation is outlined as follows:

There was a language barrier between the Data Collectors and some respondents, which was eventually mitigated by allocating Data Collectors with an understanding of the local languages of particular States to administer the survey in that state.



SECTION 3: DATA ANALYSIS

This section presents the dataset from the survey, analysed, and interpreted from the study. For ease of conceptualisation and reflection, the data gathered through the survey was subjected to frequency counts. In other words, responses for each question were added together to find the highest frequency of occurrence (i.e., the number of times that a particular response occurs). These responses to the questions, which are quantified, are then presented in percentage form.

Of a total of 50,000 surveys carried out on respondents for this study, only 44,520 responses were relevant and valid for computing the results. A total of 4,684 surveys were conducted on individuals who did not possess smartphones capable of running IM applications. From the overall sample size, 796 survey responses with a significant amount of incoherent and missing data were excluded. This means that Five Thousand Four Hundred and Eighty (5480) out of Fifty Thousand (50000) surveys conducted were completely discarded from the analysis. The rest (44,520 survey responses) were used to interpret the results. This analysis of the dataset is presented in the form of charts, as captured in the analysis.

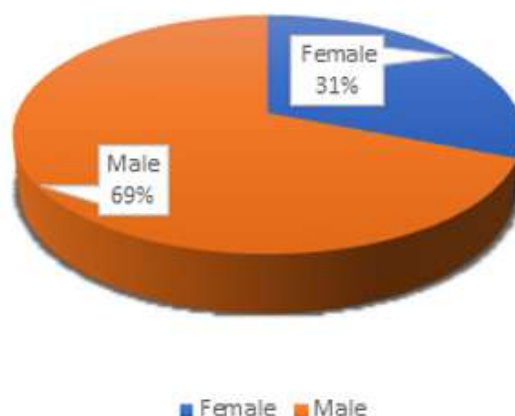
3.1 Gender of the Respondents

To analyse the distribution of respondents and understand the composition of the research sample, it is important to clarify that the survey did not set out to sample any particular demographic group from the onset. However, in order to gain insights into how gender may influence individual choices, the survey included a question to determine the gender distribution of the respondents.

Based on the data collected from the survey on market research for IM applications in Nigeria, the results indicate that 69% of the respondents identified as male, while 31% identified as female. These findings suggest a higher representation of male respondents in the survey sample compared to female respondents. It is important to consider that the observed gender distribution in the survey findings could be influenced by various factors specific to Nigeria's cultural, social, and technological landscape.

Furthermore, it is crucial to note that Nigeria, like many other countries, may experience varying levels of gender disparities in terms of access to and usage of IM services and applications. Therefore, the gender distribution observed in the survey results should be interpreted within the context of these potential disparities.

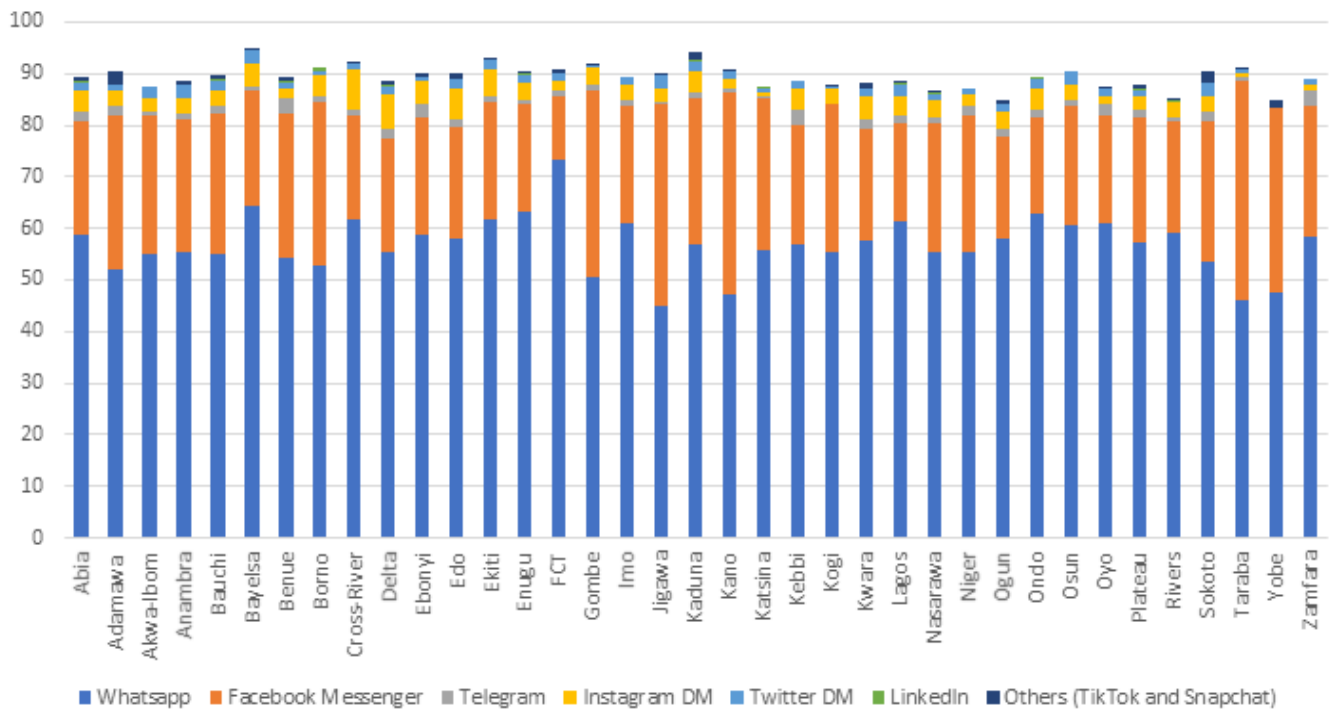
Fig. 2: Gender representation of respondents



3.2 Instant Messaging Application Usage

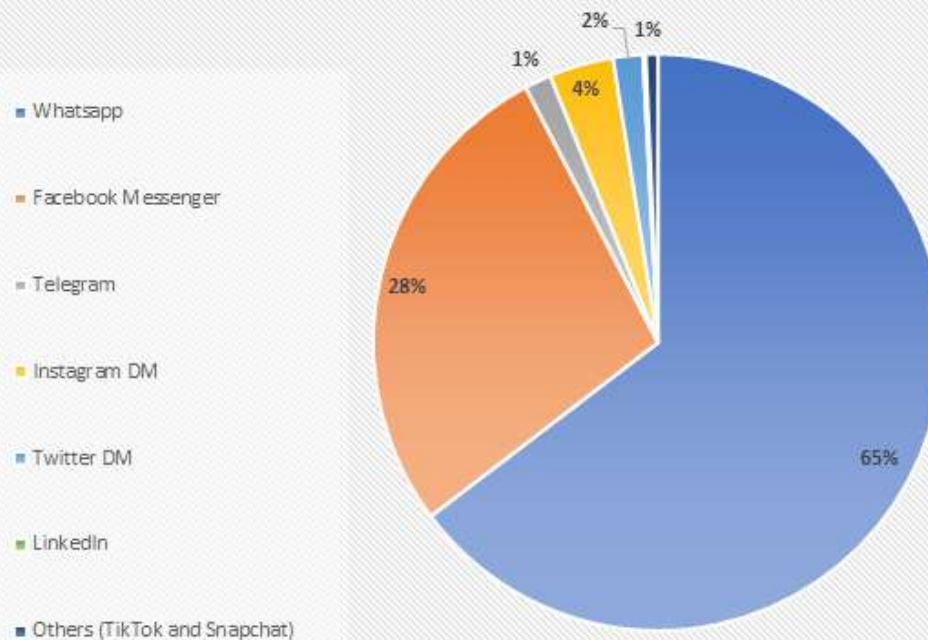
To gain insights into the current market landscape, an understanding of which app is the most widely used is highly essential and can help to effectively and efficiently educate consumers and protect their privacy and safety regarding the usage of different IM applications in Nigeria. The chart below shows the representation of the responses of respondents to the survey question, "Which Instant Messaging App do you use the most?"

Fig. 3: Instant Messaging App Usage 1



The chart above depicts the ranking of the usage of IM applications by respondents across the Thirty-Six (36) States of Nigeria and the FCT. As shown in the chart, WhatsApp, Facebook Messenger, Instagram DM, Twitter DM, Telegram, LinkedIn, and others like TikTok and Snapchat are the different messaging applications that the respondents affirmed to be the most used IM Applications at different frequencies. A cursory look at the chart shows that of all the 44,520 samples, WhatsApp had the highest responses as the most used IM Application among the respondents across all the thirty-six states of Nigeria and the FCT. followed by Facebook Messenger, which came in second based on the responses of the respondents. In all the states, WhatsApp was ranked as the most used IM application by more than half of the total respondents in the thirty-six states of Nigeria and the FCT, except in Jigawa, Kano, Taraba and Yobe, where the total responses to the question in favour of WhatsApp were slightly below 50%.

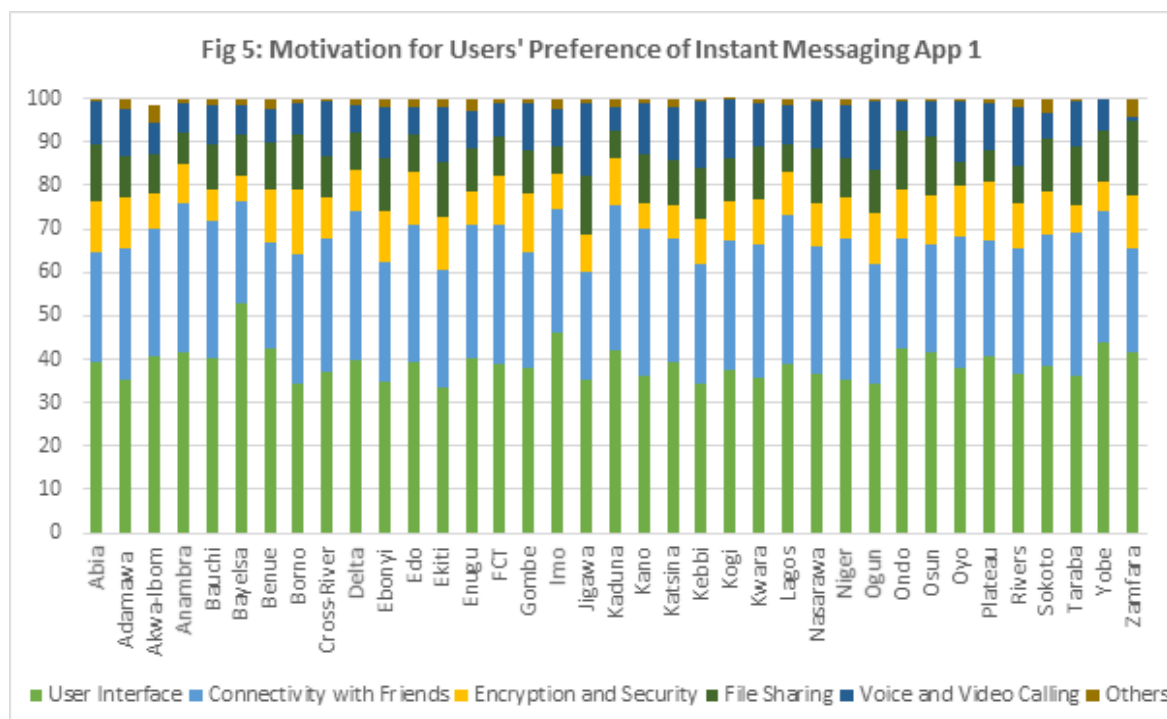
Fig. 4: Instant Messaging App Usage 2



The survey indicates that the majority of respondents, accounting for 65%, reported WhatsApp as their most used IM app. This suggests that WhatsApp is widely preferred among the surveyed population for communication purposes. Following WhatsApp, 28% of the respondents indicated that Facebook was their primary IM app. This finding suggests that a significant portion of the surveyed population relies on Facebook for IM. A smaller percentage, 4% of respondents, reported Instagram as their most used IM app. This suggests that Instagram's messaging functionality is used by a minority of the surveyed population. Interestingly, 2% of respondents indicated Twitter DM as their most-used IM app. This finding suggests that a small percentage of the surveyed population use Twitter for direct messaging purposes. Furthermore, 1% of respondents mentioned both Twitter and others (TikTok and SnapChat) as their most used IM apps. This implies that these platforms are less commonly used for IM compared to the other options mentioned in the survey. The survey results provide insights into the preferences and usage patterns of the Nigerian population, helping to understand consumer behaviour and address potential issues related to the usage of these messaging apps.

3.3 Motivation for Users Preference of Instant Messaging Apps

The survey posed a follow-up question that sought to understand why respondents liked the IM App they chose as their most used. The chart below shows the representation of the responses of respondents to the survey question, "What do you like about this App?"



As evident from the above chart, the UI option has the highest number of responses from respondents across the thirty-six (36) states of the country and the FCT. UI garnered between 31% and 52% of the responses across different states of the federation, making it the highest-ranked motivation for users' preference of IM apps in the survey, followed by Connectivity with Friends, which has between 21% and 33% of the responses across the thirty-six (36) states of the country and the FCT. While file sharing, voice, and video calling, as well as encryption and security, almost fall within the same range of 5% and 17% across the different states and FCT, other options that include speed, affordability, news feeds, and entertainment got the least responses in all the states of the federation.

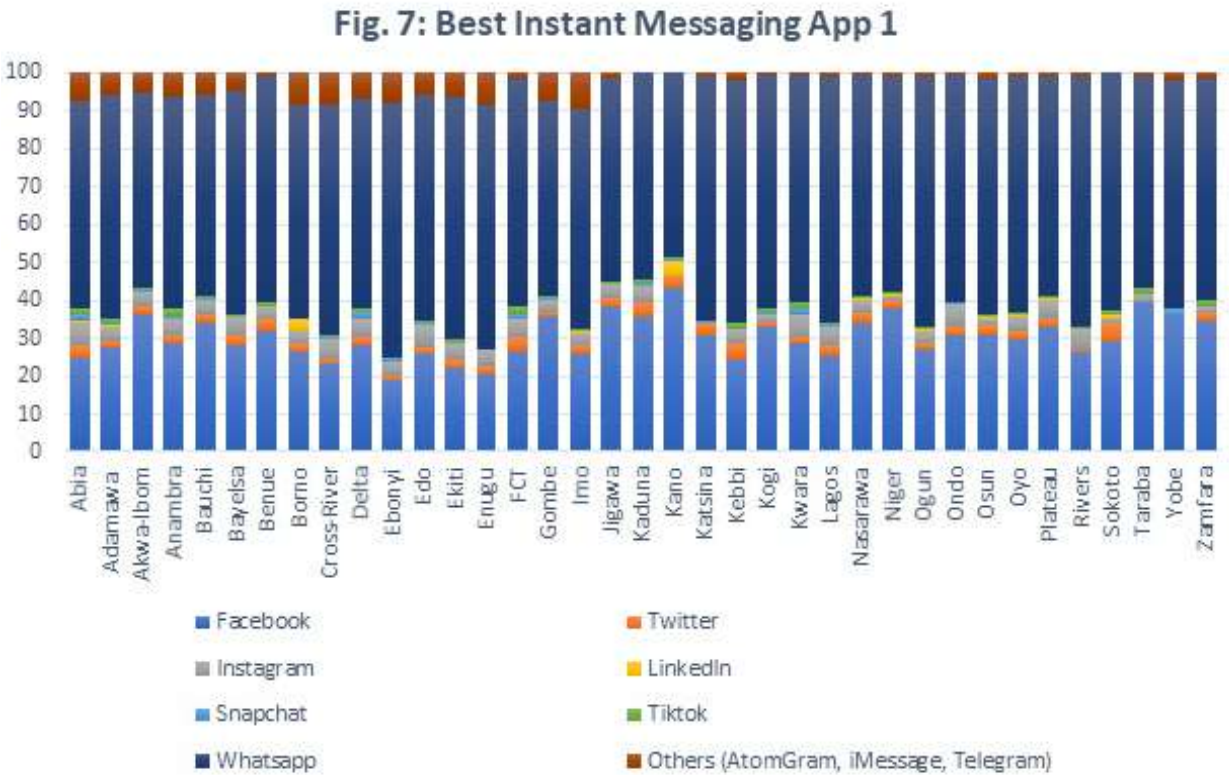
The chart indicates that the majority of respondents, i.e., 39%, like the UI of the IM app they use. This shows that a significant portion of users find the UI of the app



user-friendly, visually appealing, and intuitive. The second most common reason mentioned by respondents was connectivity with friends, which was cited by 30% of the respondents. This suggests that users value the ability to connect and interact with their friends seamlessly and efficiently. Encryption and security were mentioned by 10% of the respondents, indicating that some users are concerned about the privacy and security of their conversations and appreciate the encryption and security features provided by the app. The option of file sharing was cited by 9% of the respondents, indicating that the ability to share files, such as images, videos, and documents, easily and quickly within the app is a feature that many users appreciate. Another 10% of the respondents mentioned voice and video calling as their preferred feature of the IM app, indicating that the option of making high-quality voice and video calls within the app is valued by a considerable proportion of users. Finally, a small percentage of respondents (1%) mentioned other features, such as speed, affordability, entertainment, and news feed, as their favourite aspects of the IM app.

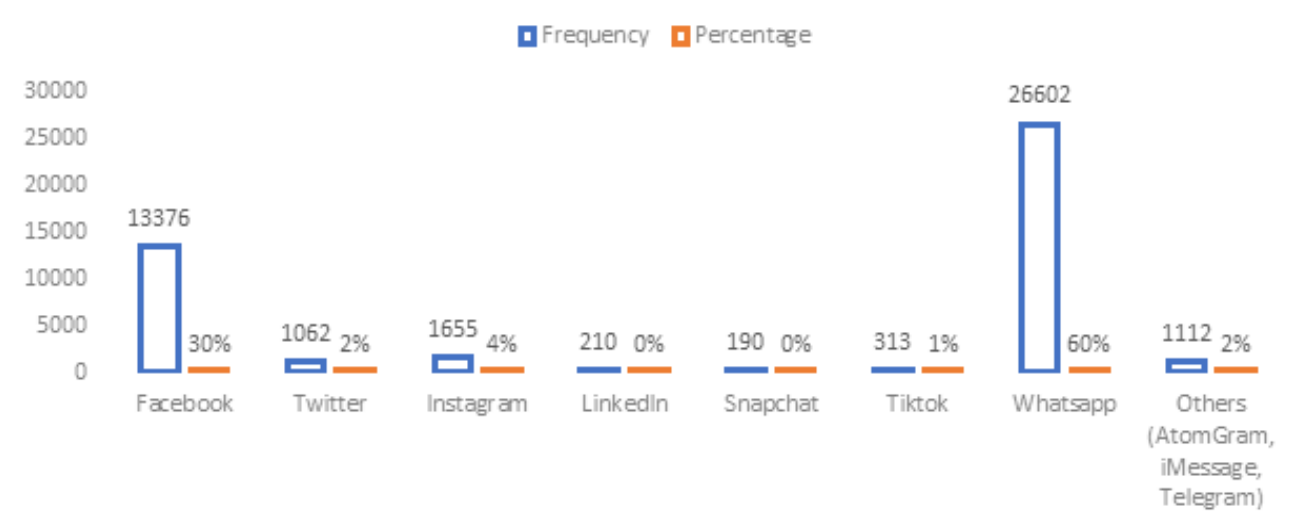
3.4 Most Preferred Instant Messaging App

Determining the most preferred IM app is to provide guidance and recommendations to consumers, helping them make informed choices and protect their rights as users. The chart below shows the representation of the responses of respondents to the survey question, “Which Instant Messaging App is the most preferred overall?”



The responses to this question on which IM app is the the most preferred overall, as reflected in the chart above, show that WhatsApp was indisputably voted as the most preferred IM app with over 50% of the responses in all the states and the FCT. While Facebook garnered at least 20% of the responses in all the thirty-six (36) states of the country and the FCT, Instagram, Twitter, and Tiktok shared the remaining responses among themselves. It is noteworthy to infer that the dataset indicates a clear preference for WhatsApp as the most preferred IM app, followed by Facebook across the different states and the FCT. The high percentage of respondents favoring WhatsApp suggests its widespread acceptance and reliability. The presence of Instagram, Twitter, and TikTok also highlights their significance in the messaging app market, albeit with relatively lower response rates.

Fig 8: Most Preferred Instant Messaging App 2

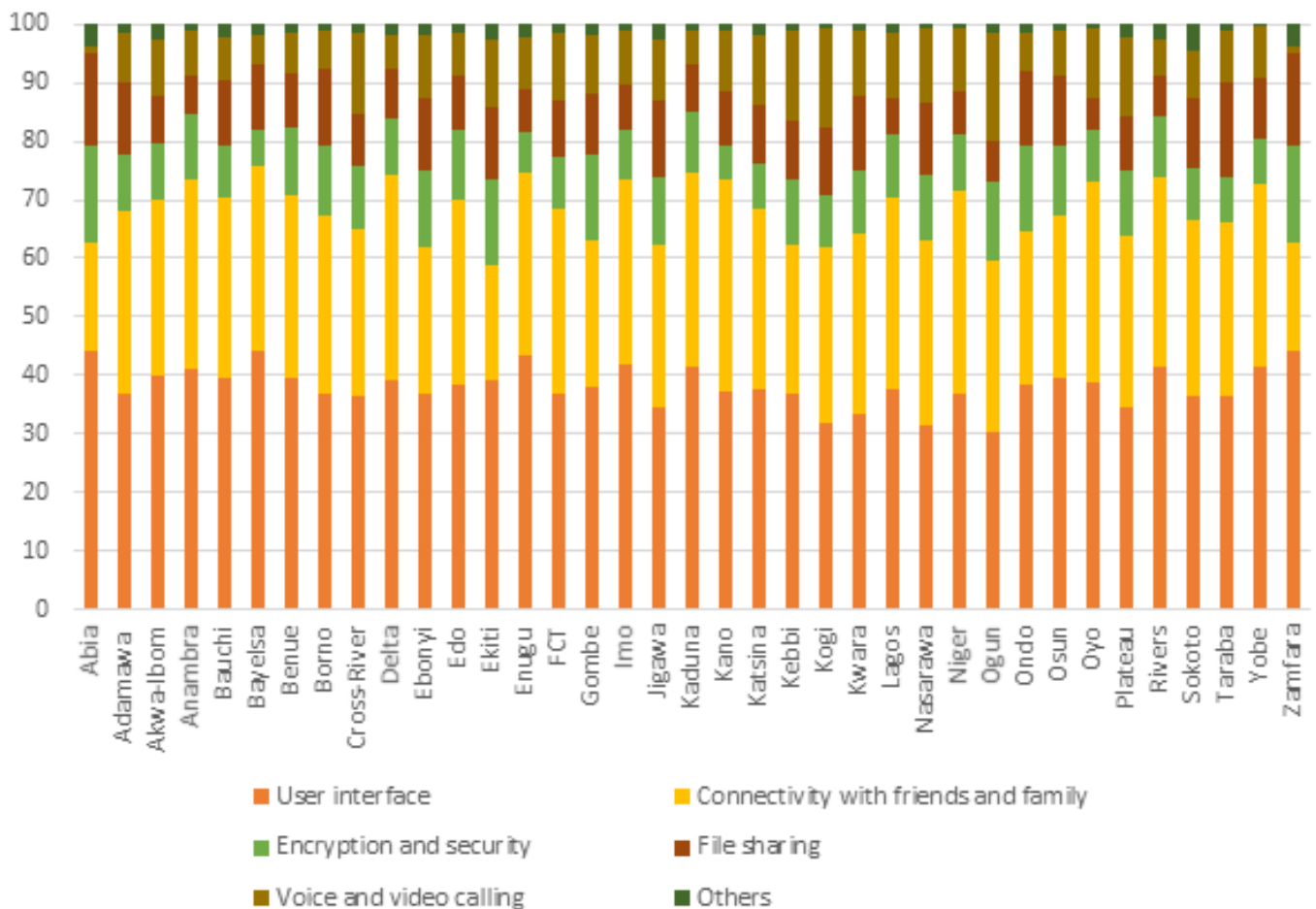


The chart above shows the cumulative responses of the respondents from all the thirty-six (36) states and the FCT on which IM App is the best overall. Of the 44,520 respondents to the survey, 26,602 (60%) indicated that WhatsApp is the most preferred IM app, forming the most popular opinion among respondents. Coming in a distant second are 13,376 (30%) responses affirming Facebook as their most preferred IM App. The remaining 10% of the responses were shared as follows: 1655 (4%), 1112 (2%), 1062 (2%), 313 (1%), 210 (0%), and 190 (0%) among Instagram, Others (AtomGram, iMessage, Telegram), Twitter, TikTok, LinkedIn, and Snapchat, respectively, as the lowest opinion in that order. The interpretation of this dataset indicates a clear preference for WhatsApp across the different states and the FCT. The high percentage of respondents favoring WhatsApp suggests its widespread acceptance. The presence of Facebook, Instagram, Twitter, and TikTok also highlight their significance in the messaging app market, albeit with relatively lower response rates.

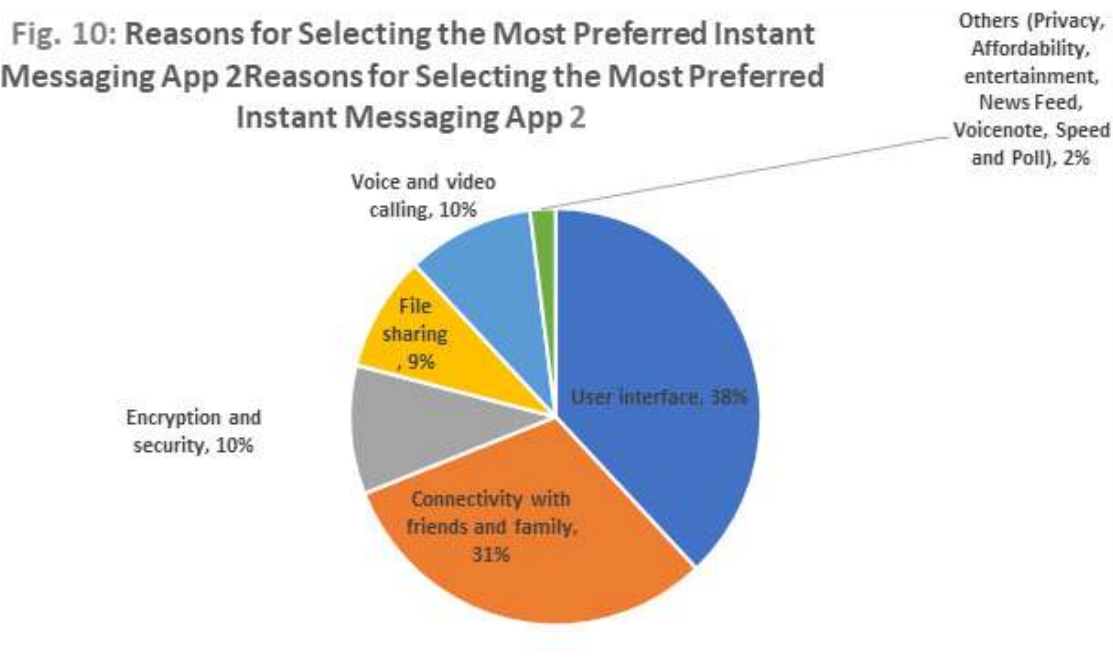
3.5 Reasons for Users Choice of their Most Preferred Instant Messaging Apps

Understanding why users choose a particular IM app as their most preferred is essential for gaining insights into user preferences, needs, and the factors that contribute to their decision-making process. This data interpretation aims to delve into the reasons behind respondents' selection of a specific IM app as their most preferred overall. Therefore, the chart below shows the representation of the responses of respondents in all the thirty-six (36) states and FCT to the survey question on "Why their Instant Messaging App of Choice is the Most Preferred?"

Fig. 9: Reasons for Selecting the Most Preferred Instant Messaging App 1



As shown in the chart above, it is evident that UI and Connectivity with friends and family are the most popular factors of consideration in users' selection of the most preferred IM app. From the dataset of the different states, UI gathered between 30% and 44% of the responses across different states, which makes it the opinion with the highest responses. Closely followed by connectivity with friends and family, with a response of between 18% and 37% of the total responses across different states and the FCT. The encryption and security, file sharing, and voice and video calling factors fall within the same range of responses, and they attracted between 1% and 17% of the responses from the different states and the FCT. Meanwhile, other factors like privacy, affordability, entertainment, news feeds, voice notes, speed, and polls are favored by the smallest percentage of the respondents.

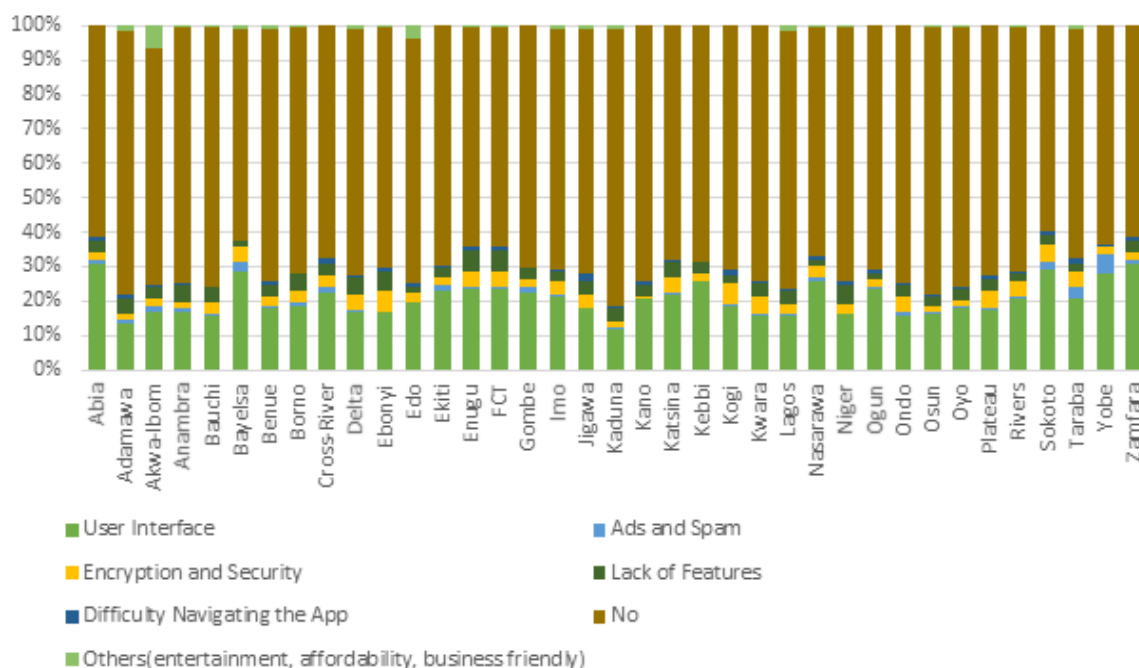


Furthermore, as depicted by the chart above, the aggregate responses of respondents across the thirty-six states and FCT show that UI attracted the highest responses, with 36% of the respondents indicating that their choice of the most preferred IM App is informed by an assessment of the UI of the different IM Apps available. Another 31% of the respondents indicated that connectivity with friends and family was their factor of consideration in the selection of the most preferred IM App. Encryption and Security and Voice and Video Calling factors gathered 10% responses each as factors of consideration in the selection of the most preferred IM App. File sharing factor was considered by 9% of the respondents, while the remaining 2% of the responses were shared by other factors like privacy, affordability, entertainment, news feeds, voice notes, speed, and polls. The result of this survey question has established that users' consideration in the selection of the IM App largely depends on the UI and connectivity with friends and family on the App while other factors like encryption and security, voice and video calling, file sharing, privacy, affordability, entertainment, news feeds, voice notes, speed, and polls are also relevant considerations with little significance.

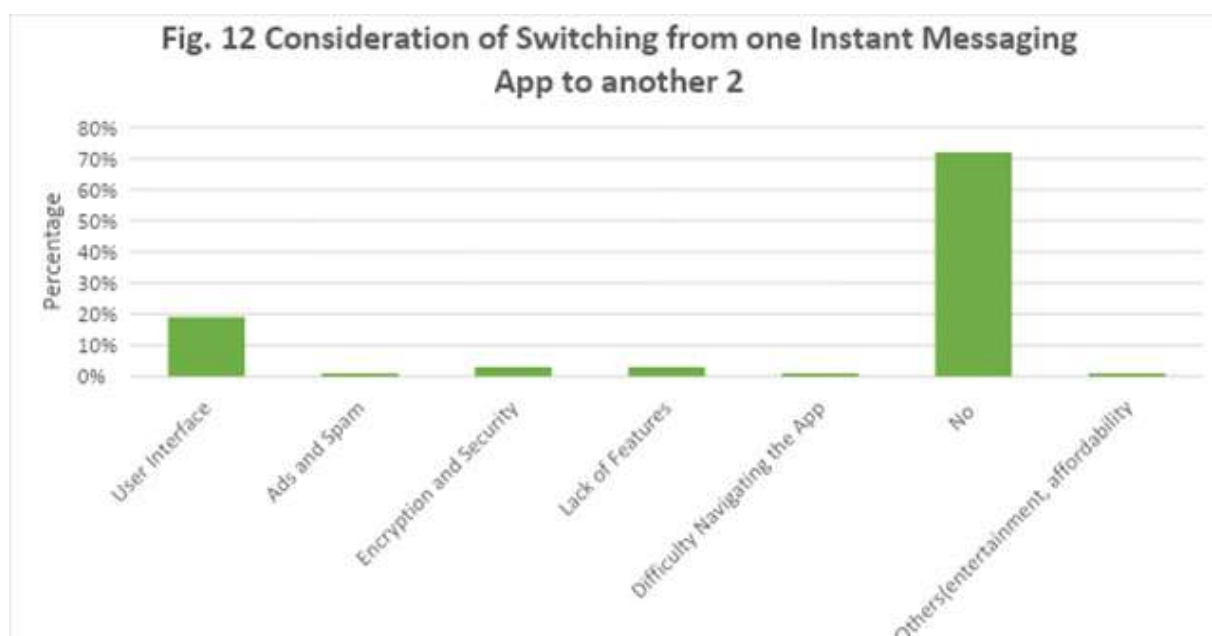
3.6 Consideration of Switching from one Instant Messaging App to another

As much as it is important to know the preferences of users and their choices of IM apps, it is also essential to explore the motivations and considerations that could drive users to consider switching from their current IM app to an alternative option. Thus, the chart below shows the representation of the responses of respondents in all the thirty-six (36) states and FCT to the survey question, “Would you consider switching from one Instant Messaging App to another? If yes, why?”

Fig. 11 Consideration of Switching from one Instant Messaging App to another 1



A cursory look at the chart above shows that the majority of respondents, accounting for between 60% and 81% of the total responses across different states and the FCT indicated that they are not considering switching from one IM App to another while the remaining 19% and 40% of the respondents indicated their consideration of switching from one IM app to another. The largest percentage of those considering switching from one IM app to another, comprising between 19% and 40% of the respondents, indicated their consideration to switch from one IMApp to another, wherein the largest percentage of those considering switching from one IM App to another, comprising between 12% and 31% of the total responses, identified UI as the reason for considering a switch to another IM App. The remaining responses of between 1% and 6% of those considering a switch are shared between those who identified ads and spam, encryption and security, lack of features, difficulty navigating apps, and others like high cost and limited entertainment as the factors influencing their consideration to switch



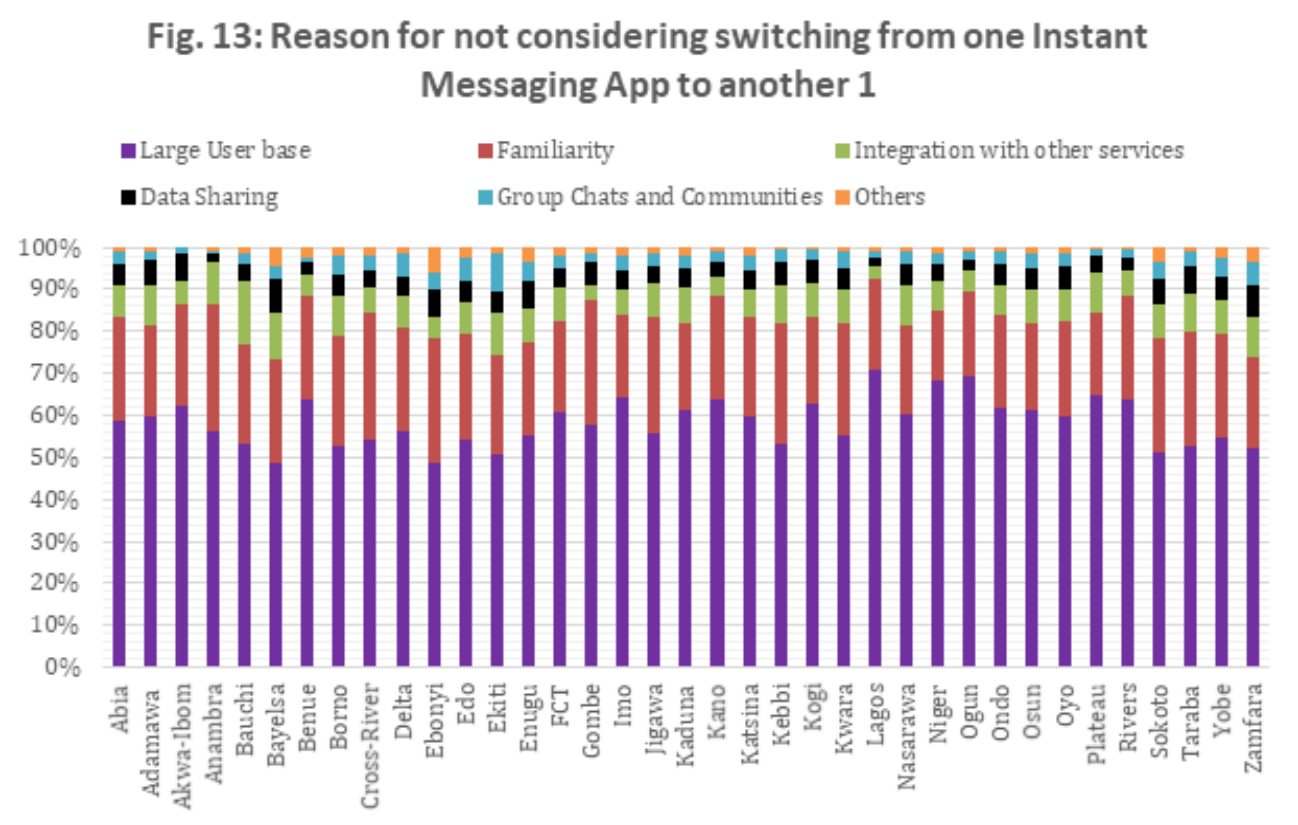
Based on the dataset depicted in the chart above, a significant portion of the aggregated survey responses from all the thirty-six (36) states and FCT, accounting for 72%, show that respondents are not considering switching from one IM App to another indicating that the current app meets their needs and expectations adequately. Of the remaining 28% of respondents that indicated their consideration of switching from one IM App to another, 20% identified the UI as a significant influencing factor in considering a switch to another app. A small percentage (3%) of respondents expressed consideration of switching due to the lack of features in their current IM app. This suggests that some users are seeking enhanced functionality. Another 3% of respondents identified encryption and security as critical factors influencing their decision to switch. However, the majority of respondents did not prioritise encryption and security in their decision-making process. This suggests that for many users, privacy and data protection may not be considered important factors when choosing IM apps. Nonetheless, it still underscores the importance of providing robust encryption and security measures to attract and retain users who do value these aspects.

Furthermore, only a small percentage (1%) of respondents cited ads and spam as factors motivating their decision to switch. This suggests that intrusive advertising or an excessive influx of spam messages is not a significant deterrent for the majority of users. However, it does highlight that for some users, better ad management or spam prevention features in alternative apps might be appealing. . The remaining 1% of respondents mentioned factors such as high costs and limited entertainment as reasons for potentially switching to an alternative IM app. This suggests that while affordability and a diverse range of features, including entertainment options, hold some importance to users, they are not significant deterrents that would prompt the majority of users to seek alternatives. Overall, the interpretation of this survey data reveals that a significant portion of respondents are satisfied with their current IM app.

However, for those considering a switch, factors such as UI, lack of features, encryption and security, ads and spam, , and other cost- and entertainment-related considerations are influencing their decision-making process. These insights can be utilised to achieve a highly competitive IM app market in Nigeria.

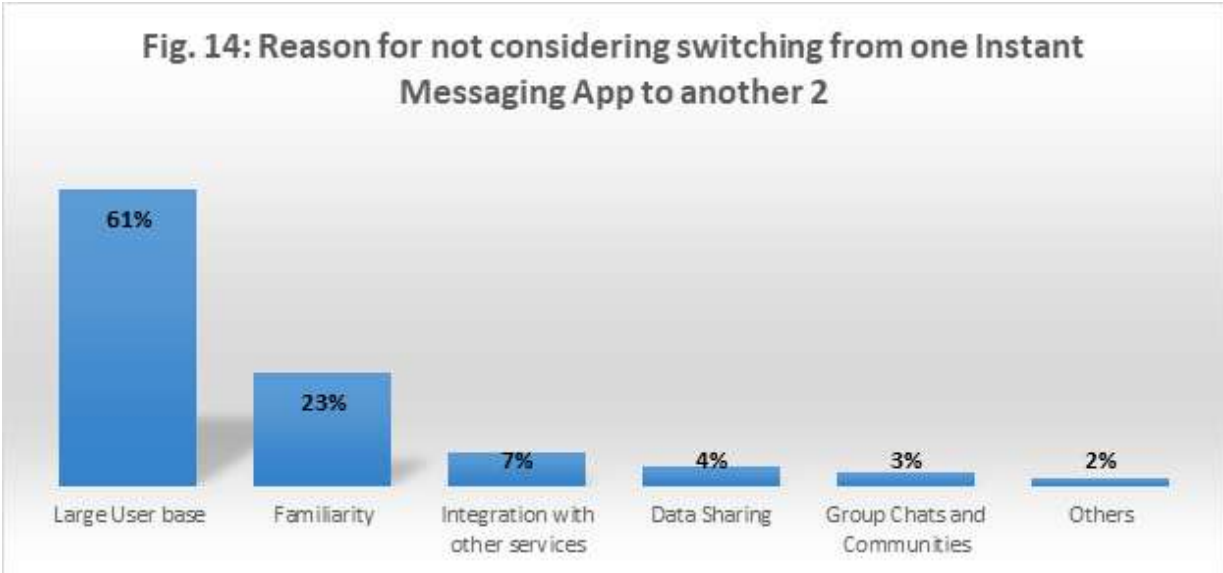
3.7 Reason for not considering switching from one Instant Messaging App to another.

Furtherance to the interrogation of the position of a significant number of the respondents on non-consideration of switching from their most preferred IM App to another, the chart below shows the representation of the responses of respondents in all the thirty-six (36) states and FCT.



The chart above depicts the responses of respondents across the thirty-six (36) states and FCT regarding the reason for the lack of consideration of a significant number of IM app users from switching from their most preferred IM app to an alternative one. The majority of the respondents, accounting for between 49% and 71% of the total responses across different states and the FCT indicated that they are not considering switching from one IM app to another because the current IM app they use has a very large user base. The second most popular opinion is that between 17% and 30% of the respondents affirmed that the familiarity they have built with their most preferred IM app is the reason they do not consider switching to other alternative options.

The remaining 1% to 9% of the respondents ascertained that integration with other services, provision for data sharing, group chats, and communities as well as others (satisfaction, security) are the reasons they do not consider switching from their current IM app of usage to another one.



The chart above presents the cumulative responses of respondents from all States and the FCT on the factors that contribute to the reluctance of a significant number of respondents to switch from their most preferred IM app to another. The most prominent reason, selected by 61% of respondents, was the large user base of their current IM app. This suggests that many people in the user’s social circle are on their current IM app, and it becomes challenging to switch to a different platform because the user would lose the ability to easily communicate with their contacts. The responses show that respondents value the ability to connect and communicate with a wide range of people, indicating that they perceive a higher value in the size and reach of their existing app’s user community.

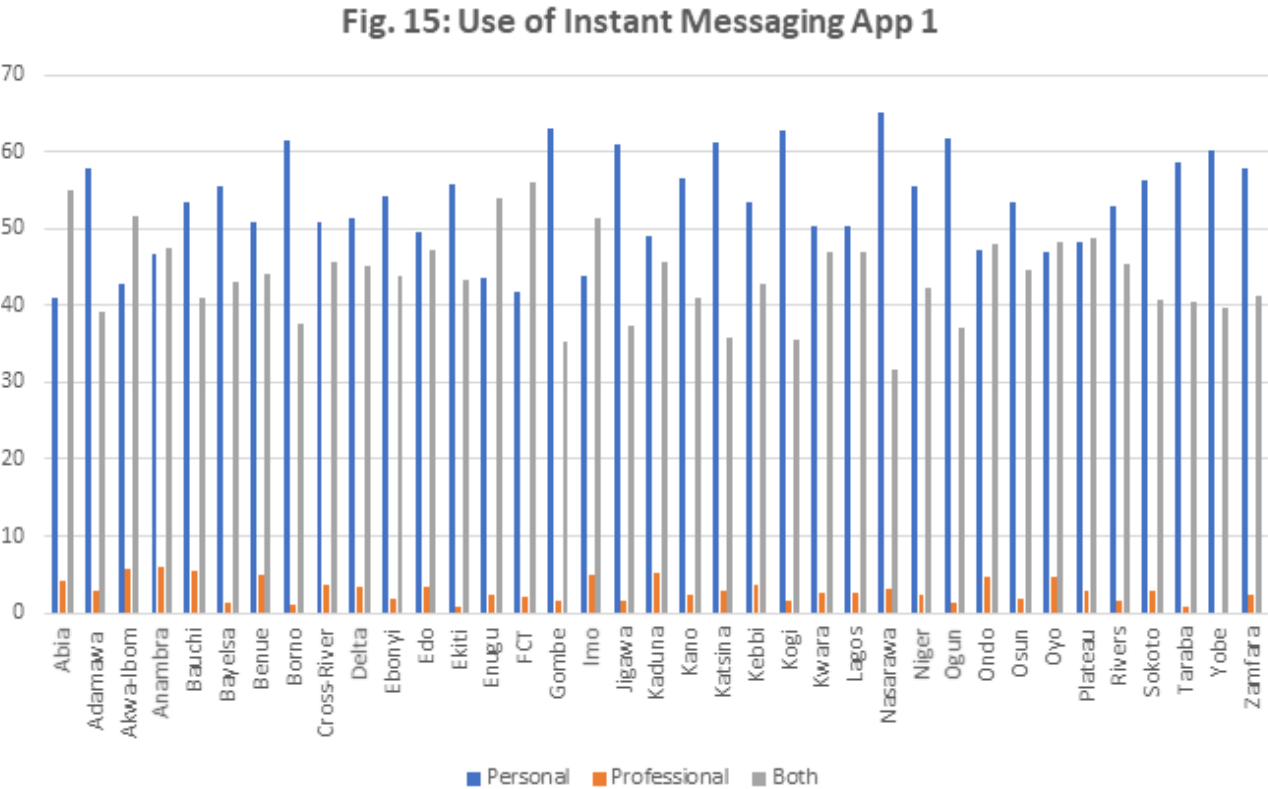
Another critical factor mentioned by 23% of respondents is comfort with their most preferred IM app. This finding suggests that users may have grown accustomed to their preferred app’s interface, features, and overall user experience. Familiarity can create a sense of comfort and efficiency, making users less likely to investigate alternative options. Integration with other services was cited by 7% of respondents as a major reason for not considering a switch. This indicates that they value the convenience and seamless connectivity provided by their most preferred IM app, most likely due to its ability to integrate with other platforms, applications, or services that they use on a regular basis.

A smaller proportion of respondents (4 %) mentioned data-sharing provisions as a factor influencing their decisions. This implies that they are concerned about the

privacy and security of their personal information and prefer to stick with their current app, which potentially offers better control over data sharing practices. The availability of group chats and communities was mentioned by 3% of the respondents. This suggests that these users highly value the social aspects and ability to engage in group discussions, collaborations, or shared interest communities within their current IM app. Finally, 2% of the respondents mentioned other reasons, such as satisfaction with the current app's features and functionality, as well as considerations related to security. While this category is less specified, it indicates that a small proportion of users are content with their current IM app and feel satisfied with its performance and security measures.

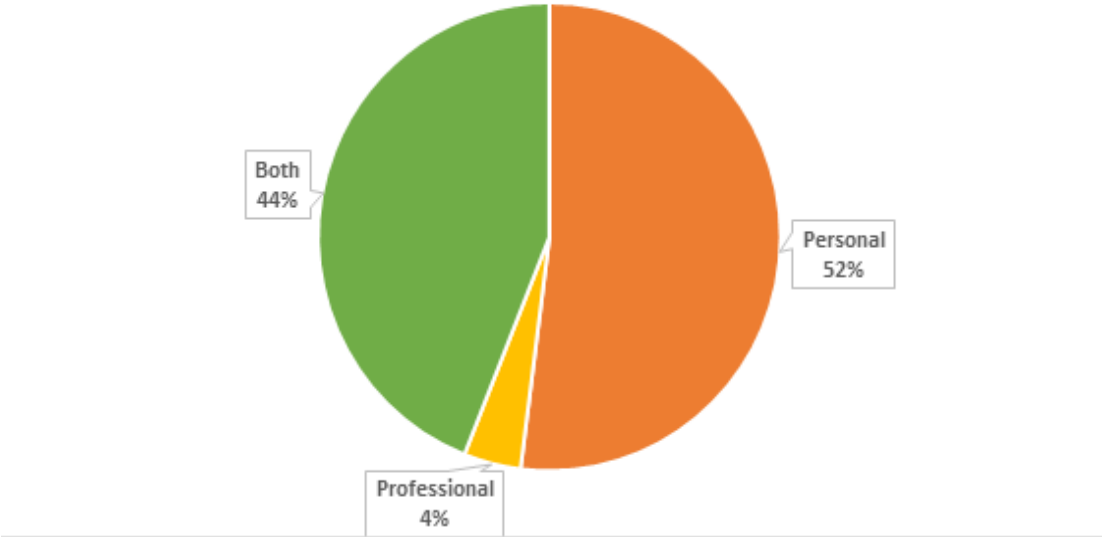
3.8 Use of Instant Messaging App

This survey question posed to respondents on “Do you use Instant Messaging for personal or professional purposes?” sought to discern whether respondents primarily employ IM for personal communication, such as connecting with friends and family, or if they utilise it for professional purposes, such as work-related collaboration and communication with colleagues. Thus, the chart below shows the representation of the responses of respondents in all the thirty-six (36) states and the FCT.



The responses to this question on whether respondents use the IM App for personal or professional purposes in the chart above show that a significant percentage, accounting for between 41% and 63% of the respondents across the thirty-six (36) states and the FCT affirmed the usage of IM App solely for personal purposes. Between 32% and 56% of the respondents across the thirty-six (36) states and the FCT indicated that they use IM App for both professional and personal purposes, while the remaining responses of between 1% and 6% of the respondents across the thirty-six (36) states and the FCT indicated that they use messaging apps for only professional purposes.

Fig 16: Use of Instant Messaging App 2



As shown in the chart above, the majority of respondents, 52%, indicate that their usage of IM platforms revolves around personal interactions. This suggests that these individuals primarily utilise these apps for connecting with friends, family, and other personal contacts. It implies that IM serves as a convenient tool for staying in touch with loved ones and maintaining personal relationships. On the other hand, a relatively small percentage of respondents, specifically 4%, state that they primarily use IM for professional purposes. This suggests that these individuals predominantly employ IM apps in a work-related context, such as communicating with colleagues, clients, or business partners. The low percentage indicates that a smaller portion of the respondents rely on IM as their primary communication tool in their professional endeavors.

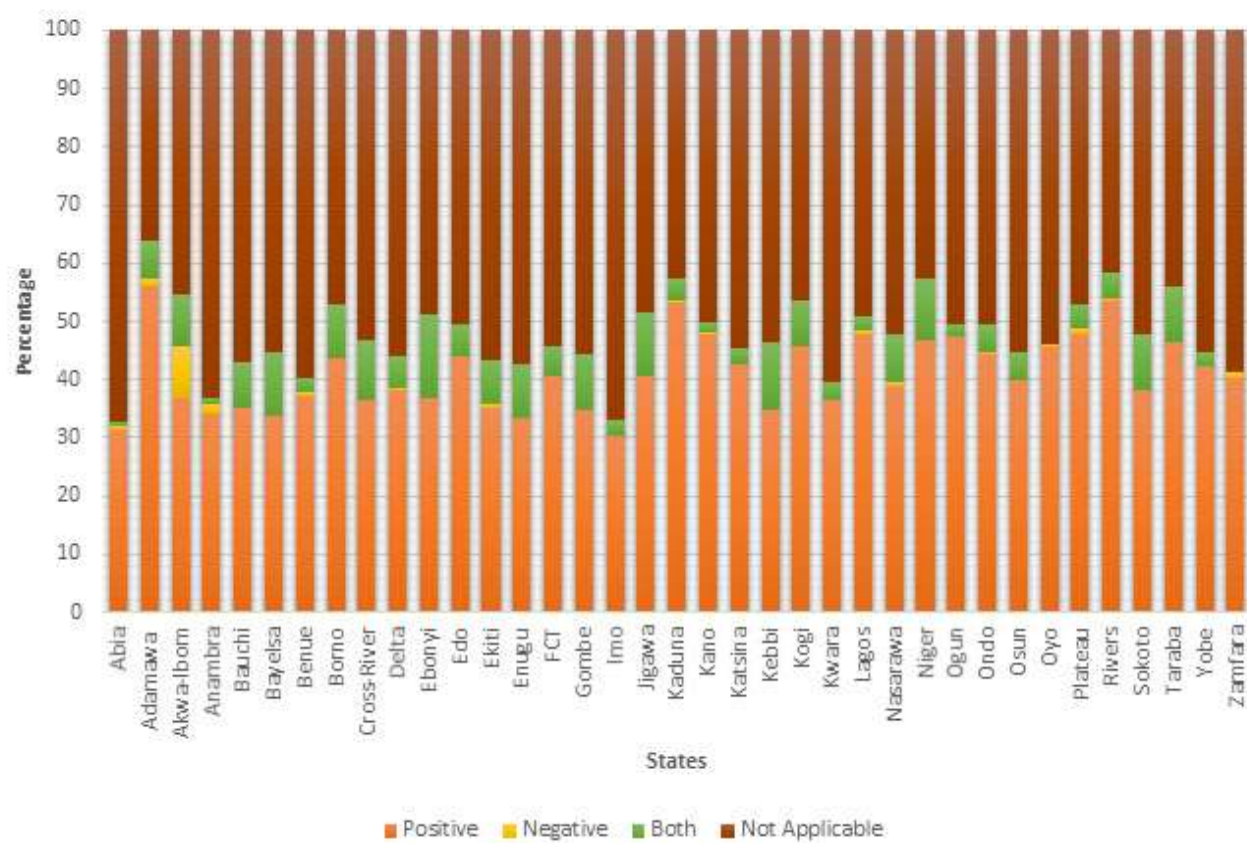
A significant proportion of the respondents, accounting for 44%, indicate that they use IM platforms for both personal and professional purposes. This particular group of individuals derives value from using these apps across different aspects of their lives, leading to a convergence of personal and professional communication boundaries. This suggests that for a substantial number of respondents, iIMserves as a versatile

tool that caters to their communication needs across different domains. Summarily, the data highlights the widespread adoption of IM platforms, with a significant emphasis on personal usage. While a smaller fraction of respondents primarily use IM for professional purposes, a substantial portion employ it for both personal and professional communication. These findings indicate the importance of IM apps in facilitating both personal connections and work-related collaborations, emphasising their versatility in meeting diverse communication needs. This interpretation of the dataset provides valuable insights for product developers, marketers, and organisations, enabling them to better understand the varied ways individuals utilise IM platforms. It can inform the development of features, functionalities, and strategies that cater to the preferences and requirements of users engaging in personal and professional communication.

3.9 Impact of Instant Messaging on Business

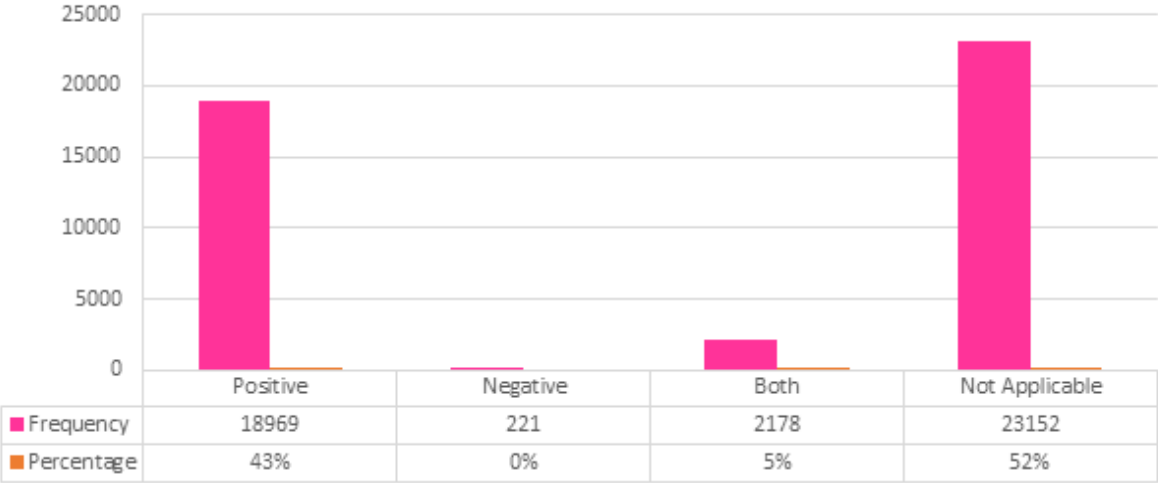
This survey question was posed to respondents, “Do you think Instant Messaging has positively or negatively impacted your business?” sought to discern whether IM positively or negatively impacts respondents’ businesses, the chart below shows the representation of the responses of respondents in all the thirty-six (36) states and the FCT.

Fig. 17: Impact of Instant Messaging on Business 1



The chart above depicts the responses of respondents across the thirty-six (36) states and FCT on the impact of IM on their businesses. Between 33% and 67% of the respondents across the states and FCT responded that the question was not applicable to them, as they indicated in the previous question that their usage of IM App is solely for personal purposes. As such, this question is not applicable to them. Meanwhile, between 30% and 56% of the respondents across the states and FCT indicated that IM has impacted their business positively. Of the remaining responses, between 1% and 14% of the respondents affirmed that IM has impacted their business positively and negatively. And a small portion of the responses, between 1% and 9% of the respondents stated that IM has only impacted their business negatively.

Fig. 18: Impact of Instant Messaging on Business 2

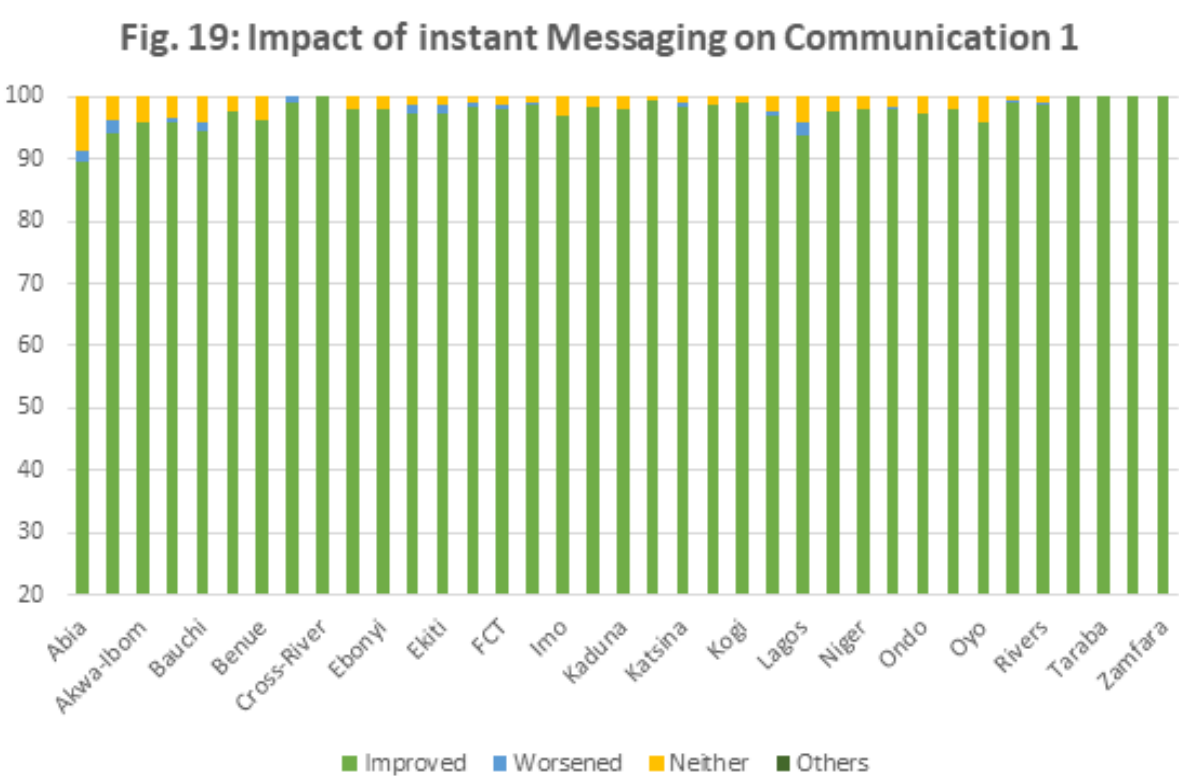


The chart above presents the cumulative responses of respondents from all States and the FCT on the impact of IM on business. The chart shows that a majority of respondents, accounting for 23,152 (52%), indicate that the question is not applicable to them, as they do not use IM for professional purposes. This implies that a considerable number of respondents either lack businesses that utilise IM platforms or their businesses use these platforms infrequently. Among the respondents who considered the impact of IM on their businesses, 18,969 (43%) believed it was positive. This indicates that a significant proportion of respondents find value in utilising IM as a communication tool for their business operations. Furthermore, a small fraction of respondents, comprising 2178 (5%), expressed that IM had both positive and negative effects on their business. This suggests that these businesses have observed a mixed impact, experiencing benefits in certain areas and facing challenges or drawbacks in others. Meanwhile, a very small portion, specifically 221 (0%), believe that IM has negatively impacted their business. While this percentage is low, it highlights the possibility that some businesses may have experienced the challenges or drawbacks associated with the use of IM platforms.

In summary, the dataset reflects a diverse range of perspectives on the impact of IM on businesses. While a significant proportion of respondents perceived a positive impact, the substantial number of participants who did not use IM for professional purposes indicates that it may not be universally adopted in all business settings. The presence of respondents who believe it has had a negative or mixed impact suggests that careful consideration and management are necessary to leverage the benefits of IM while mitigating any potential drawbacks.

3.10 Impact of Instant Messaging on Communication among People

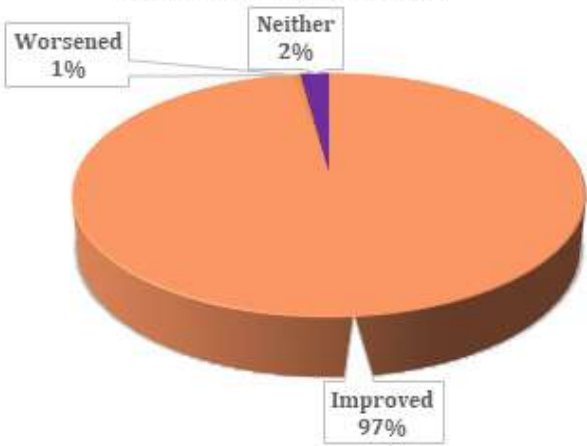
The survey question posed to respondents on “Do you think Instant Messaging has improved or worsened communication among people?” sought to gather insights into how people perceive the effects of IM on the quality, efficiency, and overall experience of communication. Thus, the chart below shows the representation of the responses of respondents in all the thirty-six (36) states and the FCT as a reflection of the perceptions of individuals regarding the impact of IM on interpersonal communication.



As shown in the chart above, it is evident that the majority of respondents opined that IM improves communication among people. According to the dataset from different states and FCT, between 89% and 100% of responses across the thirty-six (36) states and FCT show that a significant portion of the respondents believe that IM has

improved communication among people. Meanwhile, the dataset also revealed that those who believed that IM neither improved nor worsened communication among people garnered between 1% and 9% of the responses across the thirty-six (36) states and FCT. The remaining portion, between 1% and 2% of the responses across the thirty-six (36) states and FCT, indicated that respondents within this category believe that IM has worsened communication among people. The responses provided a fair view of individuals’ perceptions of the impact of these platforms on interpersonal connections.

Fig. 20: Impact of instant Messaging on Communication 2

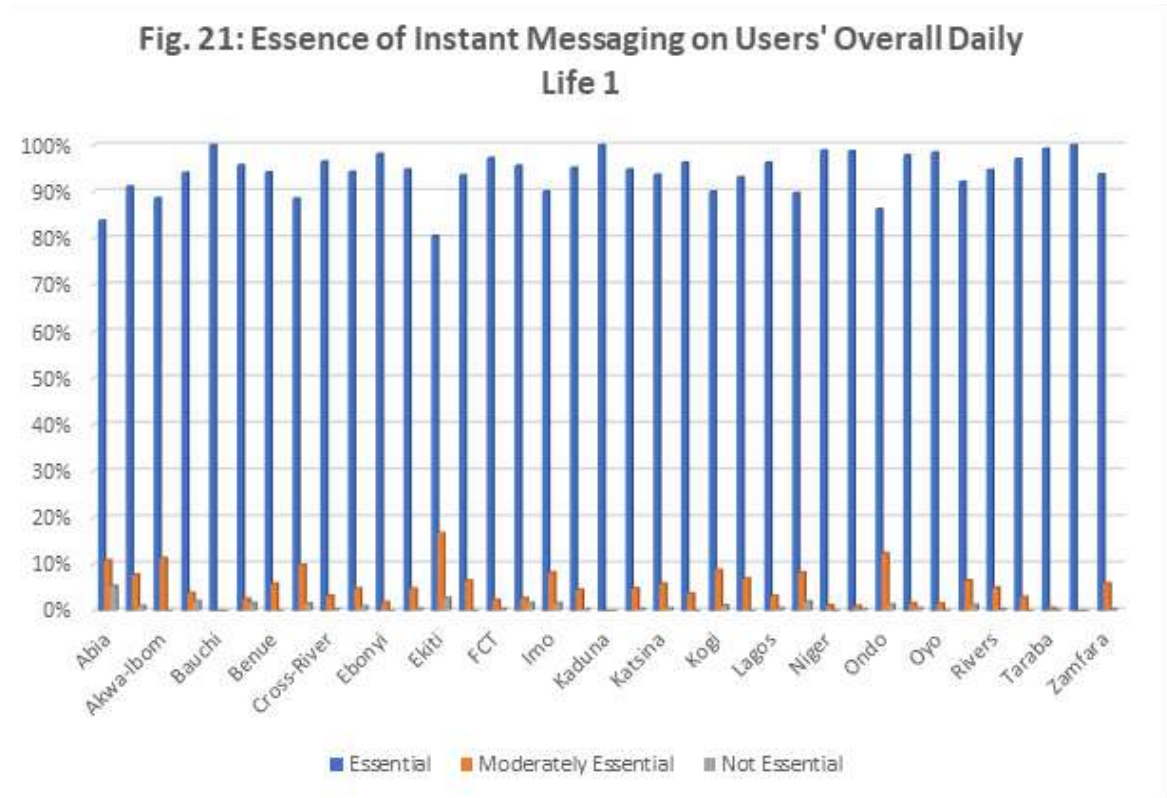


The chart above depicts the aggregate responses of respondents on the impact of IM on communication from the thirty-six (36) states and the FCT. An overwhelming majority of respondents (97 %) expressed the belief that IM improves communication among people. This indicates a widespread positive sentiment towards the impact of IM platforms on interpersonal interactions. The perception of improvement suggests that individuals find value in the speed, convenience, and connectivity offered by IM, which enables more efficient and effective communication with others. However, a small fraction of respondents (1 %) indicated that IM worsened their communication. Although this percentage is low, it highlights the presence of individuals who perceive the negative consequences associated with IM platforms. A minority of respondents (2 %) stated that IM did not improve or worsen communication. This suggests a neutral or ambivalent stance toward the impact of IM on interpersonal interactions. Overall, the dataset reflects the strong belief that IM improves communication among people. This underscores the positive impact of IM platforms as perceived by a significant majority of participants. The convenience, speed, and connectivity offered by these platforms contribute to enhanced communication experiences, enabling individuals to connect, collaborate, and share information efficiently. While a small fraction of respondents expressed a perception of worsened communication or a neutral stance, their perspectives provided valuable insights into potential challenges and individual

preferences surrounding IM. Addressing these concerns and understanding the specific contexts in which these negative or neutral perceptions arise can help optimise the use of IM platforms and tailor communication strategies to better meet the diverse needs and preferences of individuals.

3.11 The Essential Role of Instant Messaging in Users' Daily Lives

The examination of the extent to which IM impacts individuals' daily routines can provide valuable insights into the relationship between the usage of IMapps and the overall interest of the Nigerian public. Thus, the chart below shows the representation of the responses of respondents in all thirty-six (36) states and the FCT on the survey question, "How essential is instant messaging to your overall daily life?"

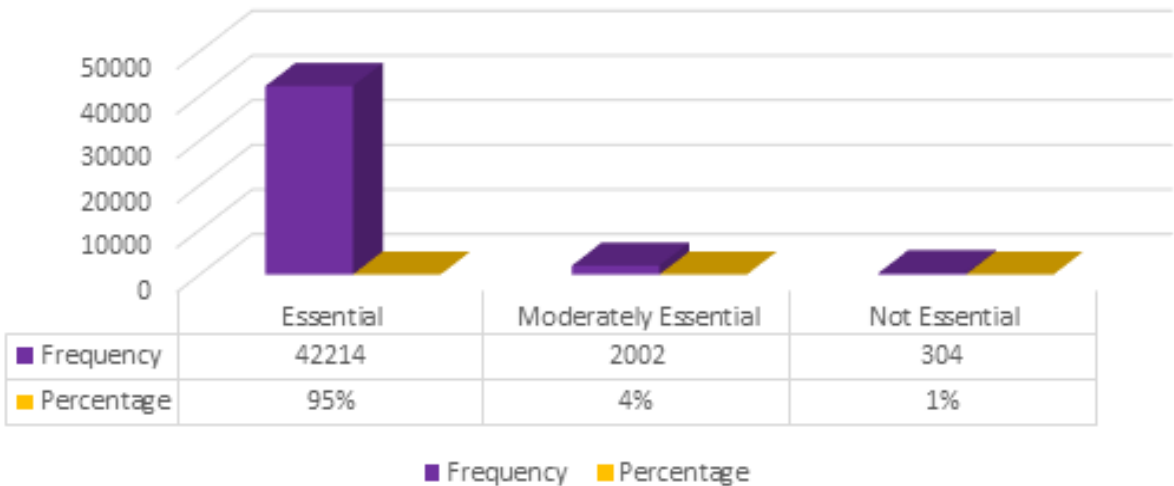


As shown in the chart above, it is evident that the majority of respondents opined that IM is essential to their overall daily lives. According to the dataset from different states and FCT, between 81% and 100% of responses across the thirty-six (36) states and FCT show that a significant portion of the respondents affirmed that IM is essential to their overall daily lives. Meanwhile, the dataset also revealed that those who believed that IM is moderately essential to their overall daily life garnered between 1% and 17% of the responses across the thirty-six (36) states and FCT, while the remaining responses, ranging between 1% and 5% of the responses across the thirty-six (36) states and FCT, expressed their view in support of the position that IM is not essential

to their overall daily life. The deduction from the responses shows that there is a significant relationship between the usage of IM and the overall interest of the Nigerian public, as it echoes the role of technology and communication tools in contemporary society as they are capable of permeating dominance and monopoly.

Fig. 22:Essence of Instant Messaging on Users' overall daily life

2



The survey question regarding the essentiality of IM in individuals’ overall daily lives received a substantial response, with a total of 44,520 participants providing their input. The findings indicate that IM plays a significant role in the lives of the majority of respondents. This result suggests a strong likelihood of dominance for IM in the realm of communication and coordination. An overwhelming 95% of participants rated IM as essential to their daily routine. An indication that IM is deeply ingrained in their communication and coordination practices, serving as a vital tool for staying connected and organised throughout the day. The high percentage of individuals who consider IM essential highlights its importance as a preferred mode of communication and its widespread adoption in modern society.

Approximately 4% of respondents described IM as moderately essential. Although a smaller proportion, this group still recognises the significance of IM in their daily lives, utilising it regularly for various purposes. While they may not rely on it as heavily as the essential category, they acknowledge its usefulness and incorporate it into their communication routines to a notable extent. Only 1% of participants responded that IM is not essential to their overall daily lives. This minority indicates that there are individuals who do not heavily depend on IM for communication or coordination. They likely have alternative means of staying connected or prefer other forms of communication outside the digital realm.

The high percentage of individuals who view IM as essential aligns with the widespread public interest in this communication tool. It emphasises the significance of IM in facilitating modern-day interactions, reinforcing its role as a fundamental aspect of daily life for the majority of respondents. These findings may have implications for the competitiveness of communication technologies and the design of future platforms to enhance the experiences of IM platform users.



SECTION 4: FINDINGS AND RECOMMENDATIONS

This section presents the key findings from the survey and recommendations for necessary actions.

4.1 Survey Findings

As mentioned in the background of this study, the survey aims to provide insight into the usage patterns, preferences, and behaviors of Internet Contact-Based Free IM Service market in Nigeria. This understanding is crucial for consumer protection authorities to protect and promote the interest and welfare of consumers by ensuring that the IM market is competitive and prevented from sharp practices that ensconce market dominance or monopoly by individuals or groups/companies.

Against this backdrop, the survey made key findings in vital areas like; consumers preferences, factors that influence consumers' preferences, IM Apps' usage patterns, the impact of IM on business, and communication among people. In essence, the outcome of the survey suggests that:

- i) **IM Apps Usage in Nigeria:** The Nigerian IM app market consists of many options, such as WhatsApp, Facebook Messenger, Instagram DM, Twitter DM, Tiktok, Snapchat, Telegram, WeChat, and iMessage. However, WhatsApp is the most widely used IM app in all the thirty-six (36) states of Nigeria and the FCT, followed by Facebook Messenger.
- ii) **Consumer Choices:** Consumers' choices in the IM Market are shaped by their preferences, needs, and overall market landscape. However, the trend identified by the survey was that UI and Connectivity with family and friends are the key drivers of consumers' choices of IM apps in Nigeria.
- iii) **Nigerian IM Market:** The Internet Contact-Based Instant IM Service market is growing by the day with the introduction of different innovations to provide rich experiences for consumers; however, WhatsApp has significantly dominated the Nigerian IM app market with widespread popularity, massive penetration, and extensive market share.
- iv) **Consumer Complacency:** There is a high level of consumer satisfaction and loyalty towards the top IM apps in Nigeria, as indicated by the majority of the responses which strongly suggests consumer complacency. This complacency poses a significant challenge to innovation and competition within the IM market.
- v) **Versatile IM Service Market:** The IM service market in Nigeria is versatile in efficiently and effectively meeting the diverse communication needs of users, ranging from facilitating personal connections to work-related collaboration.
- vi) **Enhanced Communication Experiences:** The Nigerian IM market has the potential to enhance communication experiences by enabling individuals to connect, collaborate, and share information more efficiently through its convenience, speed, and connectivity.
- vii) **Essential Means of Communication:** IM plays a significant role in the lives of the majority of Nigerian users, thereby indicating a strong likelihood of IM dominating the realm of communication and coordination.

4.2 Recommendations

Based on the finding from the survey, the following recommendations emerged as essential strategies to improve the experiences of IM platform users and mitigate anti-competitiveness within the market:

- i) The FCCPC should collaborate with relevant stakeholders in the Internet Contact-Based Free IM industry to introduce policies that promote fair competition, protect consumer interests, and foster innovation in the IM market.
- ii) The FCCPC should strengthen its regulatory framework on the transparency and Information Disclosure of IM companies, wherein IM entities would be more transparent about their privacy policies, data collection practices, and terms of service.
- iii) The FCCPC should consider educating users on their rights, privacy protection measures, and safe online practices. By empowering users with knowledge, they can make informed decisions and protect themselves from the potential risks associated with addictive patterns and data security.
- iv) The FCCPC should, within its regulatory mandate, establish guidelines to combat cyberbullying and harassment on messaging platforms. This can involve mechanisms for reporting and blocking abusive users as well as implementing measures to detect and discourage harmful behavior. By creating a safer environment, consumer protection measures can mitigate the negative impacts of online harassment and foster healthier communication.
- v) The FCCPC should encourage IM platforms on more investment in innovation that would provide consumers with a more seamless and enjoyable interface experience as well as assurance of security of data to create a worthy and excellent alternative for users of IM.
- vii) The FCCPC should regularly audit and monitor compliance of IM platforms to consumer protection regulations as well as establish penalties for non-compliance and encourage platforms to proactively address any identified issues associated with high dependency on IM.

