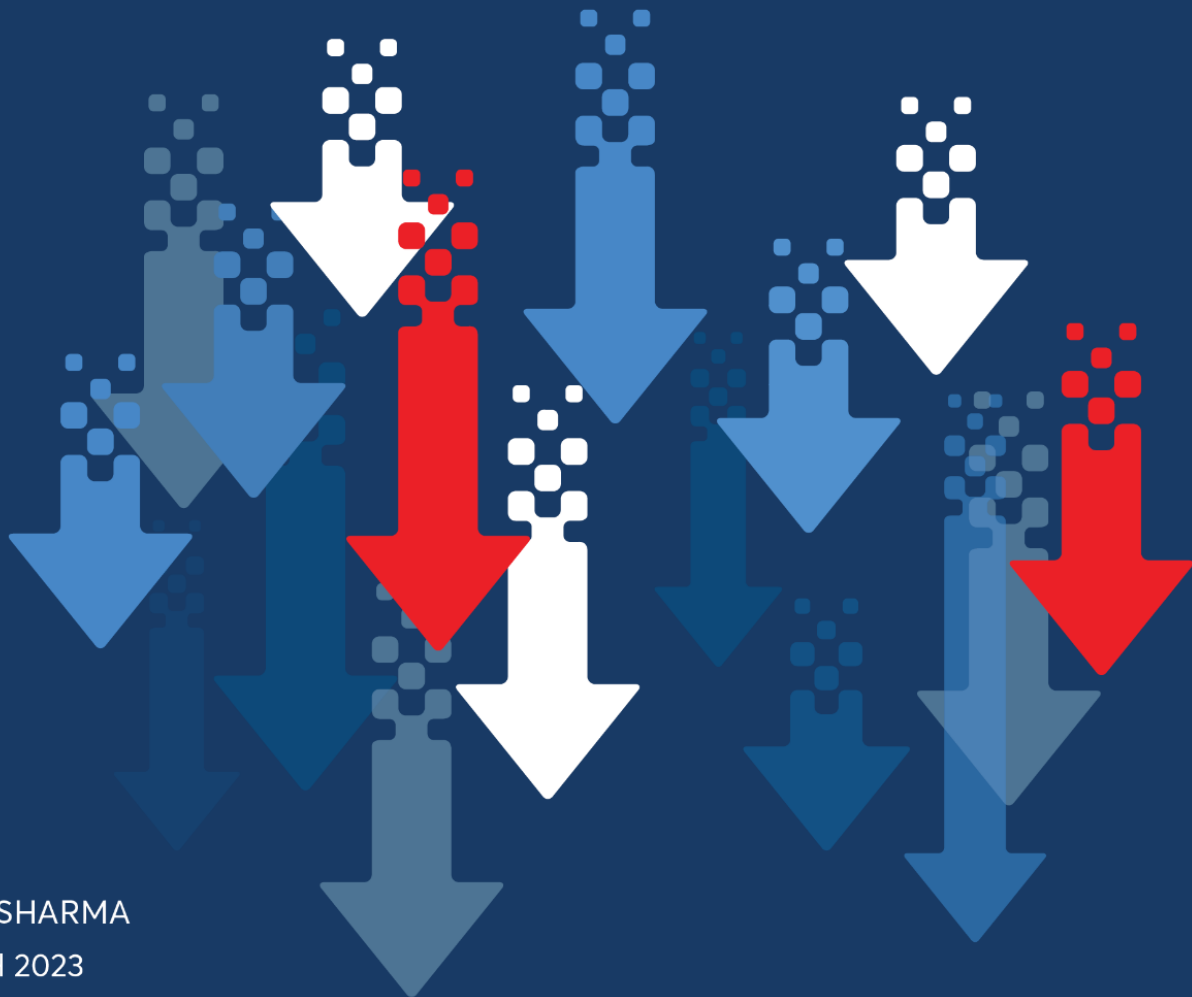


# A Raw Deal for US Consumers

Online platforms will make changes to better serve European Consumers but not US Consumers



SUMIT SHARMA  
MARCH 2023

# Table of Contents

<b>1. How did we end up here?</b>	<b>3</b>
<b>2. Smartphones and Apps</b>	<b>4</b>
2.1 Examples of potential diverging developments – leaving US consumers and businesses behind – smartphones and apps	5
<b>3. Connected devices and services</b>	<b>6</b>
3.1 Examples of potential diverging developments – leaving US consumers and businesses behind – connected devices and services	7
<b>4. Online shopping and e-commerce</b>	<b>8</b>
4.1 How Amazon’s market power can lead to worse outcomes for consumers	8
4.2 How the Digital Markets Act will constrain Amazon’s conduct and lead to better outcomes for EU consumers but not US consumers	10
<b>5. Looking forward</b>	<b>11</b>

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# 1. How did we end up here?

The 117<sup>th</sup> Congress failed to vote on bipartisan legislation with broad support that would have set fair market rules for giant online platforms like Facebook (Meta), Google (Alphabet), Apple, Amazon, and Microsoft. Representative David Cicilline one of the main sponsors of the legislation recently told the Washington Post:<sup>1</sup>

*It was always the expectation and was a representation made to [Sen. Amy Klobuchar] and even publicly that these bills would come to the floor. I've never heard a good explanation as to why bills which are wildly popular with the American people didn't get a vote.*

Both the [American Innovation and Choice Online Act](#) and the [Open App Markets Act](#) passed the Senate Judiciary Committee with strong bipartisan support. But as momentum for these bills increased so did lobbying and misleading advertising against these bills.<sup>2</sup> Companies and their proxies reportedly spent hundreds of million dollars in this effort and succeeded in sowing some skepticism in both parties on Capitol Hill and ran the clock out on substantial reforms.<sup>3</sup>

The same tactics were attempted but not successful in Europe and the Europeans passed the **Digital Markets Act (DMA)** in November 2022 and these rules will start to apply in May 2023.<sup>4</sup>

Following the application and implementation of the DMA in Europe we expect to see a growing divergence in the products and services offered by the largest online platforms to European consumers compared to US consumers. In many cases the result may be that European consumers, but not US consumers, could benefit from more choices and control when it comes to online services and connected devices. We also expect more innovation in Europe spurred by a more competitive online marketplace.

In this paper we set out some possible examples of how US consumers could have fewer choices, degraded functionality, worse privacy, and pay higher prices when it comes to smartphones and apps (Section 2); connected devices and services (Section 3); and online shopping and e-commerce (Section 4).

*These possible examples are not meant to be exhaustive* but illustrate why policy action is required so that US consumers are not left behind, and the US is a participant in setting rules for online markets and services and not just a rule taker.

We discuss the way forward in Section 5.

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<sup>1</sup> Rep. [David Cicilline interview with Cristiano Lima for The Technology 202](#), Washington Post.

<sup>2</sup> See for example the [Op-ed by Marta L. Tellado in the Times Union](#) explaining various Big Tech attacks on these pro-consumer bills.

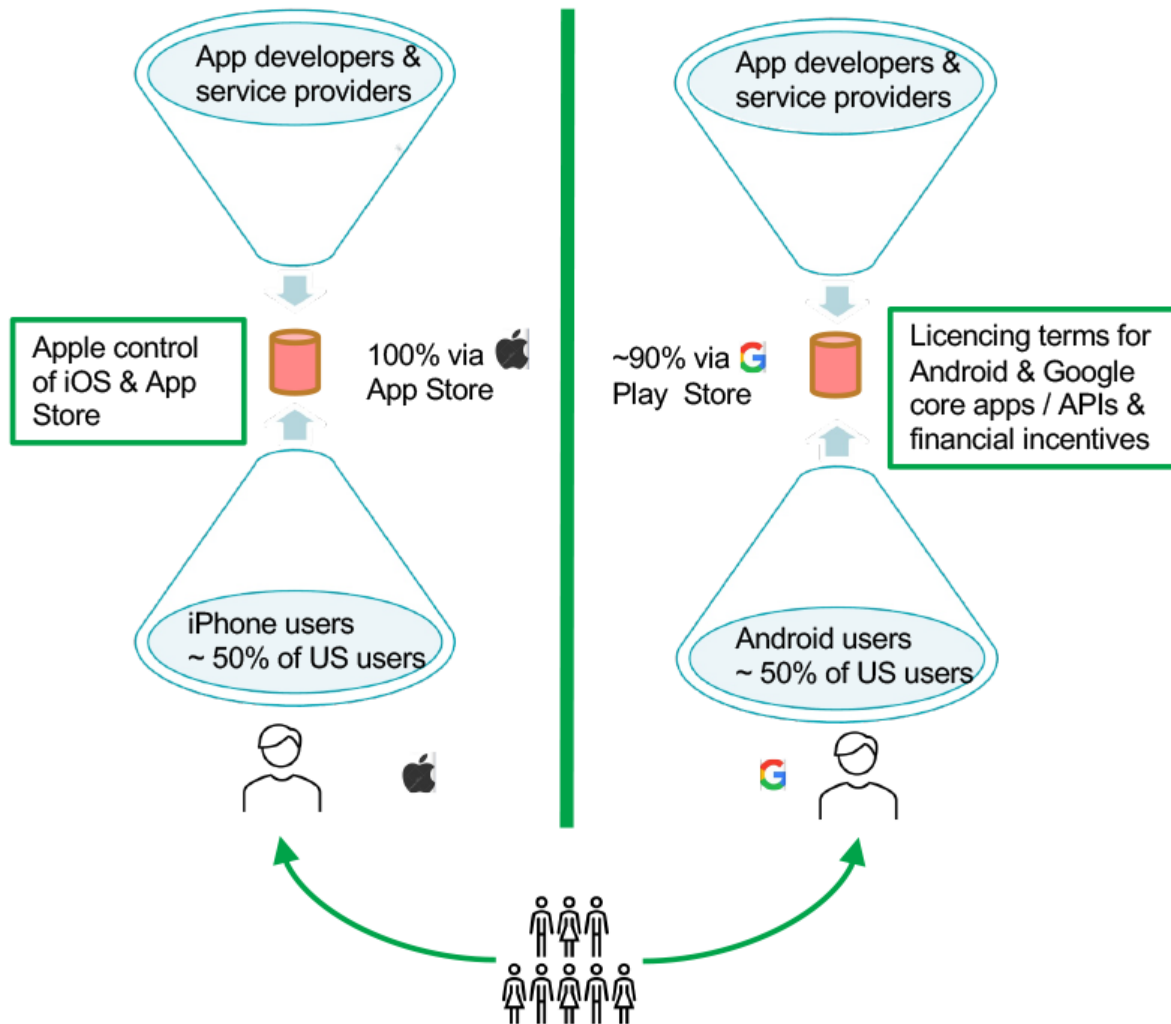
<sup>3</sup> See for example reporting by Bloomberg on how [Big Tech Divided and Conquered to Block Key Bipartisan Bills](#).

<sup>4</sup> Regulation (EU) 2022/1925 of the European Parliament and of the Council as of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 ([Digital Markets Act](#))

## 2. Smartphones and Apps

When it comes to mobile phones and the apps that make these phones 'smart' – two companies – Apple and Google – control the market. Moreover, because a consumer typically uses either an iPhone controlled by Apple or a phone using Android controlled by Google, these companies effectively have a monopoly within their respective ecosystems.

*Consumers have few choices when it comes to smartphones /mobile operating systems*



This allows Apple and Google to impose rules and commercial terms at the expense of users, innovation, and the development of a competitive marketplace via restrictions on app development, distribution, and discovery.

Starting in May 2023 Apple and Google will have to start introducing changes to comply with the DMA that will address some of these restrictions.<sup>5</sup> These changes will benefit European

<sup>5</sup> See for example, 'Apple moves to open up App Store as tough EU laws loom', Patrick McGee, Tim Bradshaw, and Javier Espinoza, Financial Times, December 16, 2022. (<https://www.ft.com/content/0c2d56f7-a402-45ea-8aa6-0e05e6260b68>)

consumers but not US consumers as there is no obligation on companies to introduce similar changes in the US. The table below lists some such possible examples.

## 2.1 Examples of potential diverging developments – leaving US consumers and businesses behind – smartphones and apps

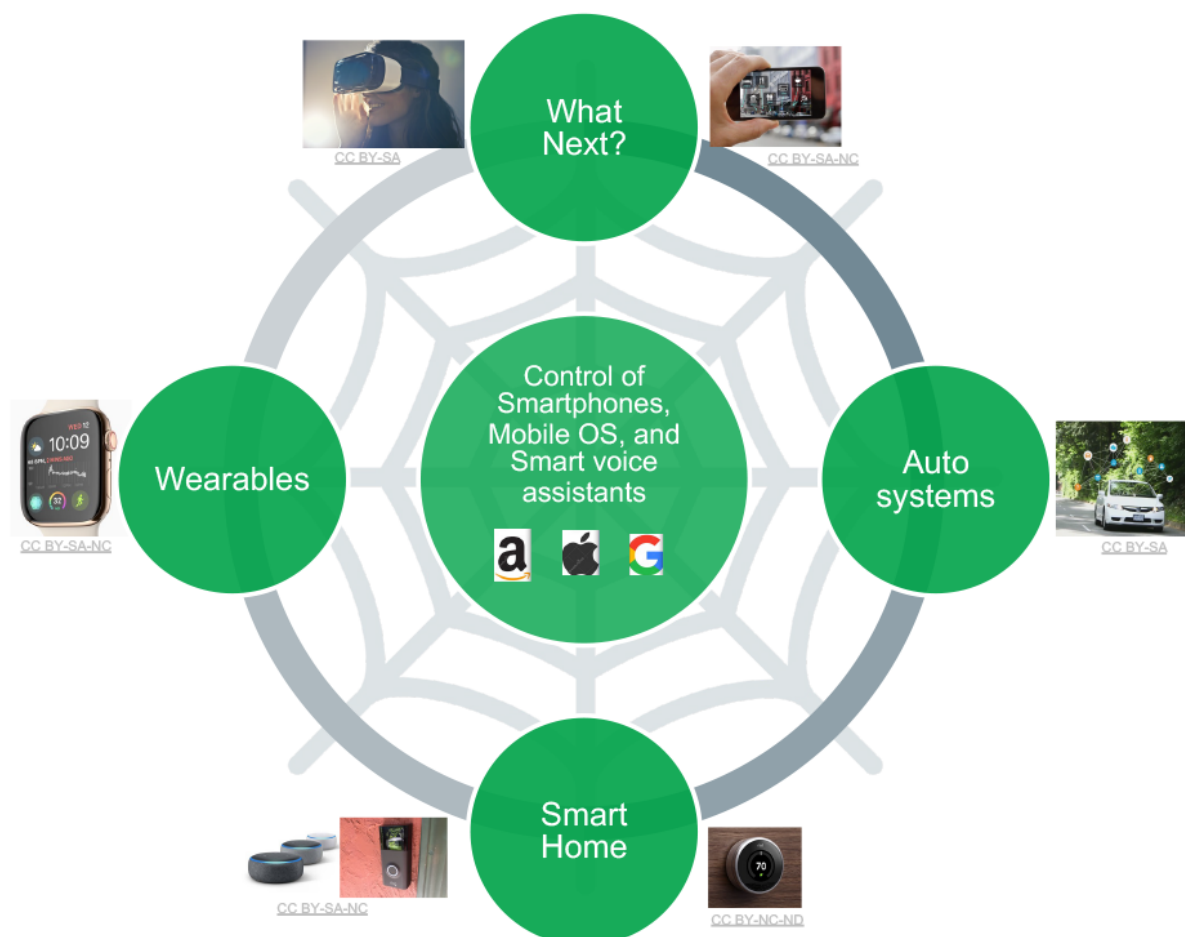
US Consumers	European Consumers	How will European consumers be better off
<p>US consumers pay more for services like <a href="#">Twitter Blue</a> and <a href="#">Facebook Verified</a> on their smartphones compared to the Web.</p> <p>US consumers cannot subscribe to Spotify Premium or buy Kindle books on their smartphones.</p>	<p>EU consumers pay lower subscription fees for Twitter and Facebook on their smartphones.</p> <p>EU consumers can subscribe to Spotify Premium or buy Kindle books on their smartphones.</p>	<p>Alternative payment systems, the ability to freely tell consumers about these systems, and alternative app stores will enable consumers to buy directly from service providers.</p> <p>This increased competition will force Apple and Google to reduce the commissions they charge for selling services via their app stores.</p> <p>Ref: DMA Articles: 5(4); 5(5); 5(7); 6(4); 6(12)</p>
<p>US iPhone users have inferior privacy and security features on web browsers like Mozilla and cannot access innovative services like cloud gaming.</p> <p>US iPhone users also do not have access to competing gaming subscription services provided by Microsoft or EPIC.</p>	<p>EU iPhone users have better web browser privacy and security and can access innovative services like cloud gaming.</p> <p>EU iPhone users can access many gaming subscription services.</p>	<p>Apple allows alternative browser engines and app stores on iOS which allows for greater differentiation and innovation of web services and app stores on iPhones.</p> <p>Ref: DMA Articles 5(7); 6(4)</p>
<p>US smartphone users cannot or cannot easily change and choose new defaults for key services on their smartphones like voice assistants, web browsers, and app stores.</p>	<p>EU users can easily change these defaults and try new innovative services providing more choice for EU consumers and a boost to innovation in Europe.</p>	<p>Apple and Google make it easier to change defaults and uninstall apps. This means consumers are more likely to try new services which increases the incentives for competitors to develop innovative services.</p> <p>Ref: DMA Articles 6(3); 6(4)</p>

### 3. Connected devices and services

The pro-competitive, innovation, and consumer benefits of the DMA will extend beyond smartphones. This is because smartphones and voice assistants are also key to integrating many connected devices such as smart speakers, watches, thermostats, and home security systems.

Amazon, Apple, and Google through their control of the most popular mobile operating systems and voice assistants act as crucial intermediaries between consumers and smart device ecosystems. This allows Amazon, Apple, and Google to set standards and rules that increasingly determine how competition and consumer choice develops in Consumer IoT<sup>6</sup> and potentially beyond like the automotive sector<sup>7</sup> as illustrated in the figure below.

*Google, Apple, and Amazon's web of control extends to various connected devices*



The DMA by enabling better connectivity and functionality among smart devices and services provided by different suppliers will enable more competition. This will benefit European consumers but not US consumers as there is no obligation on companies to introduce similar changes in the US. The table below lists some such possible examples.

<sup>6</sup> [European Commission publishes final report on consumer Internet of Things sector inquiry](#)

<sup>7</sup> [Warren Urges FTC and DOJ to Conduct Increased Oversight of Big Tech Companies' Expansion in Automotive Industry | U.S. Senator Elizabeth Warren of Massachusetts](#)

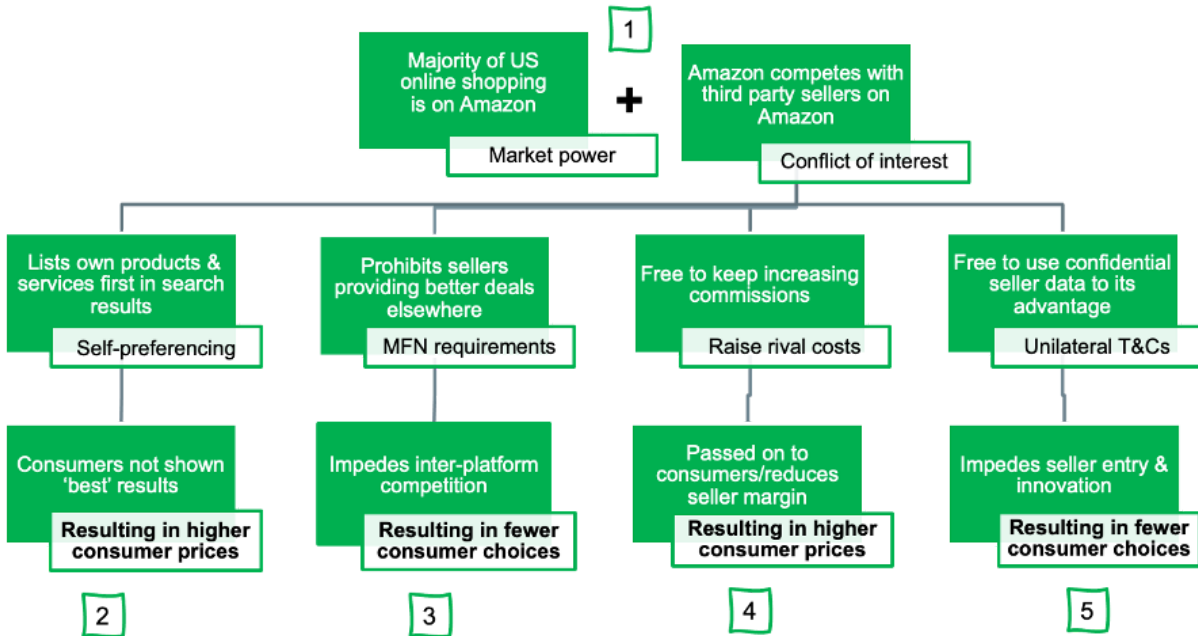
### 3.1 Examples of potential diverging developments – leaving US consumers and businesses behind – connected devices and services

US Consumers	European Consumers	How will European consumers be better off
<p>Most US consumers find it easier to live in an ‘Apple World’ or a ‘Google World’ or an ‘Amazon World’ – using wearables and smart home devices from the same large platform provider.</p>	<p>EU consumers can easily mix and match products and services from different companies – saving them money and giving them the ability to better choose and construct their ideal connected life.</p>	<p>Apple, Google, and Amazon allow greater interoperability with their operating systems and virtual assistants. Other software and smart device manufactures can access software and hardware features on the same basis as Apple, Google, and Amazon’s own devices and services.</p>
<p>US consumers cannot use concurrent smart voice assistants on smart speakers and US iPhone users can only use Apple Pay on their iPhones.</p>	<p>EU consumers can use concurrent smart voice assistants and EU iPhone users can use Apple Pay, other payment systems, and other innovative services developed by third parties for iPhone’s Near Field Communication (NFC) chip.</p>	<p>This levels the playing field leading to a more dynamic and innovative smart devices and services ecosystem. EU consumers have more choices and freedom to use different product and service combinations.  Ref: DMA Article 6(7)</p>
<p>Most US users do not have the right to port their data and freely switch among services, and online platforms are incentivized to make this process hard. The platforms want users to keep using their services and not use competing services.</p>	<p>EU users have the right to port their data and freely switch among services.</p>	<p>The largest online platforms make it easier for EU consumers to port their data, including allowing the use of authorized agents. As a result, EU consumers can more easily switch among different service providers creating more competition and spurring innovation.  Ref: DMA Articles 6(6); 6(9); 6(10)</p>

## 4. Online shopping and e-commerce

American consumers increasingly discover and buy goods and services online and this activity is concentrated on a few large online platforms like Amazon. The e-commerce rules set by Amazon constrain competition both on Amazon and on other e-commerce sites resulting in higher prices and fewer choices for consumers as shown in section 4.1.

### 4.1 How Amazon's market power can lead to worse outcomes for consumers



**1** Amazon controls around 38% of US e-commerce making it a must-have distribution channel for online sellers.<sup>8</sup> It also directly competes with these sellers. Amazon is thus incentivized to set terms and conditions (T&Cs) that increase its profits to the detriment of consumers and sellers.

**2** Investigations into Amazon have found that it often pushes its own products or products using its affiliated services (like Fulfilled By Amazon) to the top of search results. Consumers tend to buy products that show up in top search results. This gives Amazon an unfair competitive advantage and consumers may end up paying more than they would if product search results were unbiased.<sup>9</sup>

<sup>8</sup> As of June 2022, Amazon accounted for 37.8 percent of the U.S. e-commerce market, making it by far the leading online retailer in the country. Second place was occupied by Walmart's e-commerce site with a 6.3 percent market share, followed in third place by Apple, with 3.9 percent.

Source: *US Ecommerce Forecast 2022*, eMarketer, July 2022.

<sup>9</sup> See for example the [European Commission's investigation](#) into anti-competitive conduct by Amazon including its use of non-public data of its marketplace sellers and the way Amazon chooses the winner of its Buy Box and enables sellers to be part of its Prime Programme.

Investigations by [The Markup](#), [Wall Street Journal](#) and [Academics](#) have also found evidence that Amazon preferences its own products and services.



- 3 Amazon imposes Most Favored Nation (MFN) or price parity provisions that often prevents sellers from offering better deals on competing platforms. This reduces competition leading to higher prices and allows Amazon to maintain its dominant market position.<sup>10</sup>
- 4 Amazon is a must-have distribution channel for sellers. This allows it to charge ever increasing advertising and commission rates (these rates would be lower in a competitive marketplace). These higher costs can be passed on as higher prices to consumers or reduce seller margins leading to higher prices and/or fewer choices for consumers.<sup>11</sup>
- 5 Amazon has been accused of using third-party confidential seller and services data to develop its own brands and services. This gives Amazon an unjustified competitive advantage and reduces seller entry and innovation as new ideas are easily and unfairly copied.<sup>12</sup>

Under the DMA the largest online e-commerce platforms like Amazon will need to play by fair market rules. These changes will benefit European consumers as illustrated in the next section. There is no obligation on Amazon to introduce similar changes in the US and US consumers will continue to face worse outcomes.

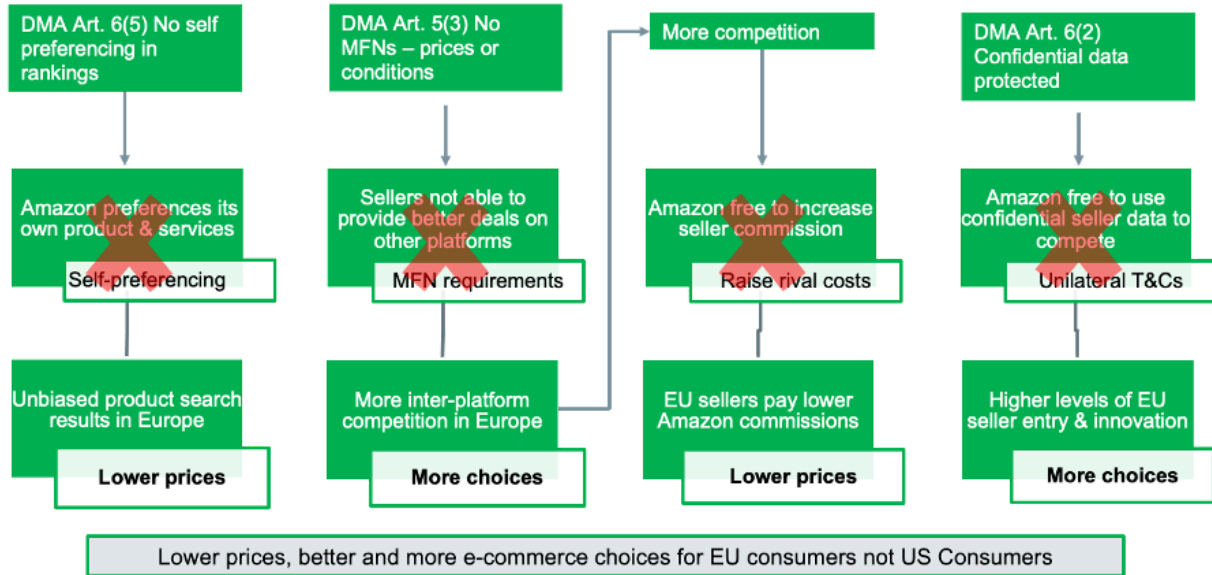
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<sup>10</sup> For example, the [State of California is currently suing Amazon](#) for blocking price competition by requiring sellers to enter into agreements that severely penalize them if their products are offered for a lower price off-Amazon.

<sup>11</sup> A 2021 study by ILSR, '[Amazon's Toll Road](#)' found that using a variety of fees Amazon charged a 34% cut of independent seller revenue on its website, up from 30% in 2018, and 19% in 2014. Reporting by Bloomberg in 2023 suggests that in some instances [Amazon is Taking Half of Each Sale From Its Merchants](#).

<sup>12</sup> See for example the [European Commission's investigation](#) into anti-competitive conduct by Amazon including its use of non-public data of its marketplace sellers. Evidence of similar conduct has also been unearthed by investigative reporting by the [Wall Street Journal](#) and [Reuters](#).

## 4.2 How the Digital Markets Act will constrain Amazon's conduct and lead to better outcomes for EU consumers but not US consumers



## 5. Looking forward

Over the next year Consumer Reports will continue highlighting the pro-consumer product and service changes introduced by American Big Tech companies in Europe but not in the US.

Without fair market rules for the largest online platforms in the US, US consumers will be left behind. They will have fewer choices, have access to worse services, and end up paying higher prices than their European counterparts.

We urge Congress to take action to restore competition to our Digital Markets and to ensure US consumers are not left behind. For example, Congress should consider and vote on legislation such as the American Innovation and Choice Online Act and the Open App Markets Act.

We also urge Facebook (Meta), Google (Alphabet), Apple, Amazon, and Microsoft to not short-change US consumers. They must not deny Americans the innovations and choices they provide to European consumers.