inMusic's Submission on AlphaTheta Corporation's Clearance Application to Acquire Serato Audio Research Limited

I. Executive Summary

a. inMusic Brands, Inc. and its subsidiaries and affiliates including inMusic New Zealand Limited (inMusic) welcome the opportunity to comment on the clearance application submitted to the New Zealand Commerce Commission (Commission) on 6 October 2023 by AlphaTheta Corporation (ATC) in respect of the acquisition by ATC of Serato Audio Research Limited (Serato).

b. inMusic's concerns can be summarised by independent best-selling author and prominent DJ industry commentator, Phil Morse on his website, Digital DJ Tips in a post from 25 August, 2023:

> "We said from the start this takeover was monopolistic and that it may threaten the very existence of Serato, and of course by extension, the DJ operations of the only other really major player, inMusic. The DJ industry is in a weird position in that many brands have relied on Serato software over the years, not only the inMusic brands but other big names like Roland and Pioneer DJ itself." He further stated, "As AlphaTheta already has an established DJ software platform for its own Pioneer DJ hardware, Rekordbox, **the purchase of Serato can only really be seen as a play to effectively control the majority of the DJ market, and to give the company a hold over all of Serato's partners**."[1] (Emphasis added).

c. Indeed, on the same day ATC announced it was acquiring Serato, Mr. Morse, whose neutrality in the DJ industry is critical to his credibility among professional DJs who depend on him for industry news, educational materials, product information and reviews, made several astute observations that form the core of why this acquisition should not be allowed:

   i. "[In the] medium term and beyond, [Serato's future as a platform] surely becomes more uncertain. Why? Well, there's the obvious: why would a DJ hardware company need two software brands, **when that software does essentially the same thing**?" (Emphasis added).

   ii. "Serato of course partners with brands like Roland, Reloop, Numark and Rane **to produce bespoke hardware** for its software – all of whom are direct competitors with Pioneer DJ's own hardware. These companies **would effectively be negotiating with a competitor to license software for their products**. We'd guess they would be less willing to do so, meaning they may withdraw from making Serato controllers. **That would lead to Pioneer DJ further increasing its already**

[1] https://www.digitaldjtips.com/inmusic-fights-to-block-pioneers-serato-buyout/.

dominant position as the hardware Serato DJs use." (Emphasis added).

iii. "Pioneer DJ was already in the somewhat strange position of having to make hardware for two platforms, mainly due to market forces (many DJs love to use Serato). But as the owner and dominant hardware manufacturer for both of those platforms, **it would make sense for Pioneer DJ to further its efforts to combine the two**. (Emphasis added).

iv. "Serato users need not worry for now – **but should be ready for big changes in the years ahead**. And of course, some people choose Serato because they don't want to see an industry dominated by just one player. **With Serato now owned by Pioneer DJ, their platform has now been swallowed up by the 'behemoth'"**. (Emphasis added).

v. "[S]hould a manufacturer wish to make a DJ controller from now on, with Pioneer DJ owning both the main software brands (**Serato and Pioneer DJ's own Rekordbox account for nearly 80% of software use**), such a manufacturer will have only a couple of other choices among bigger players: VirtualDJ and djay Pro. **Neither may feel like a good fit**. As stated, this new fact of life may simply **discourage new controller development**.[2] (Emphasis added).

d. inMusic echoes these dire warnings that the proposed acquisition of Serato by ATC will substantially lessen competition in the New Zealand market and globally for DJ hardware and DJ software. Although Mr. Morse notes that inMusic could launch its own DJ software, he also confirms that it is a "two-horse race" with inMusic representing the only hope for meaningful competition. Unfortunately, however, as discussed below, inMusic is starting the race substantially behind—nearly insurmountably—in both development of a viable DJ software product and consumer acceptance of inMusic as a viable DJ software competitor.

e. ATC, through its Pioneer DJ brand, is the world's largest supplier of DJ hardware, enjoying a near-monopoly (believed to hold as much as 80% of the market). Although inMusic is its closest DJ hardware competitor, inMusic earns approximately 20% of ATC's annual revenue from the sale of DJ hardware.

f. ATC also supplies DJ software called rekordbox to end users. rekordbox is tightly integrated with ATC's DJ hardware. ATC does not allow rekordbox to be integrated with any competitive DJ hardware products. inMusic expressly requested that ATC allow rekordbox to be sold with inMusic DJ hardware, and ATC refused. ATC's refusal is unsurprising because ATC's well-publicised, long-term growth strategy is to

[2] https://www.digitaldjtips.com/pioneer-dj-buys-serato/.

create a closed ecosystem of hardware and software (i.e., "No. 1/Only 1"; "One Through Music") that delivers value to customers through a single platform.[3]

g. Serato supplies DJ software globally to end users. Serato and rekordbox are the two largest suppliers of DJ software globally and to New Zealand customers. Although ATC has not publicly disclosed sufficient information to determine whether ATC or Serato is the largest supplier of DJ software, it is nonetheless well-understood in the industry that ATC and Serato occupy the top two positions. The proposed acquisition would allow ATC to control its most significant—arguably *only*—DJ software competitor. In our view, the impact on software pricing and innovation from this horizontal aggregation is obvious.

h. But there will also be profound impacts in hardware markets. inMusic partners exclusively with Serato to deliver DJ software to its customers. No other DJ software (other than rekordbox, which ATC has declined to license to inMusic) maintains the same brand loyalty, pace of innovation and reputation for quality as Serato. There are no reasonable alternative DJ software offerings for inMusic. Consumers are highly unlikely to purchase inMusic's hardware bundled with software other than Serato.

i. The proposed acquisition is a textbook example of both vertical and horizontal consolidation that will substantially lessen competition. The combined firm will have the ability and incentive to foreclose competition in the DJ hardware market (which is already extremely limited) by limiting Serato's partnerships with rival manufacturers and in the DJ software segment. Even short of a complete refusal to deal, ATC can harm inMusic and other hardware competitors in less overt but still highly damaging ways, e.g. by increasing licensing fees, slowing down development and offering fewer features, prioritising development of rekordbox, among other things. In such a situation, inMusic will be left only with limited contractual remedies, which are limited as per their Term, ill-suited to deal with less overt conduct, such as delaying new features, reprioritization of resource, etc., and expensive and time consuming to litigate. Of course, *existing* contracts cannot mitigate the fact that Serato will no longer be inclined to work with inMusic to progress new innovations in the *future* (i.e., which might otherwise be the subject of a future contract).

j. If the proposed transaction is allowed to proceed, the negative impacts to consumers and competitors are numerous. Users of DJ hardware and DJ software will be left with no choice but to purchase tightly integrated ATC products, resulting in material and unstoppable consolidation and market exit. There will be irreparable long-term harm to competition, damaging the interests of consumers. ATC would be able to slow down innovation, prevent DJ hardware competitors (which already have limited market share) from accessing the only reasonable alternative to rekordbox in Serato, and increase prices, among other things.

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[3] https://ssl4.eir-parts.net/doc/7744/ir_material_for_fiscal_ym3/131682/00.pdf at [Slides 25 and 28-29].

II. Competitive Landscape

a. DJs typically fall into two broad categories: professional and hobbyist (sometimes called "bedroom DJ"). Professional DJs perform for an audience in a variety of settings, including entertainment for social functions such as wedding receptions, office parties and school dances, or as the primary attraction at clubs, music festivals or raves. Hobbyist DJs enjoy mixing and playing music but typically do so at home for friends and family, rather than in commercial settings.

b. The basic setup for a professional DJ is to pair hardware (a DJ controller) with a computer (PC or Mac) that is running DJ software.

    i. DJ software is installed on a computer, typically a laptop (either PC or Mac), and processes the signals from the DJ hardware.

    ii. Although the market for DJ hardware is separate from the market for DJ software, there is close interdependence between the two. That is because DJ hardware cannot work without being paired with compatible DJ software.

    iii. Hobbyist DJs may also utilise DJ hardware and software, but they are far more likely to use free and/or low-cost apps integrated on their mobile devices or laptops that are not suitable for professional use.

c. inMusic agrees with ATC that DJ controllers and DJ software products are marketed, sold, and used worldwide.

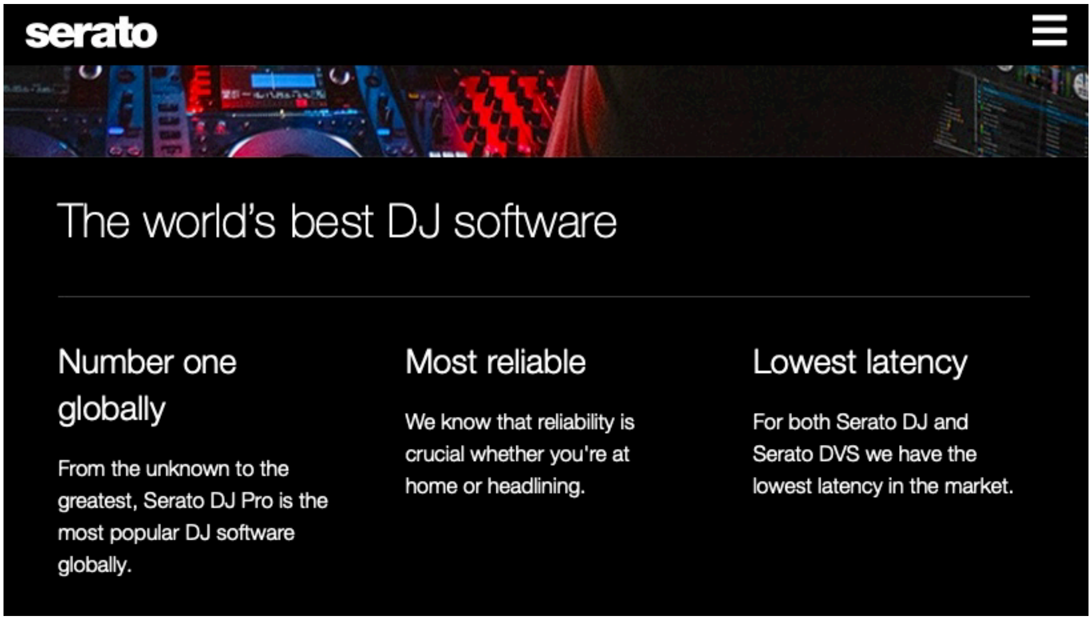
d. The DJ software market is comprised primarily of four providers—rekordbox, Serato, Traktor and Virtual DJ.[4] These DJ software products are the only ones that provide the full suite of features and functionality, as well as deliver sufficient platform stability and dependability for a professional DJ to rely on for their livelihood.[5]

e. Serato touts that it is the most popular DJ software in the world[6]:

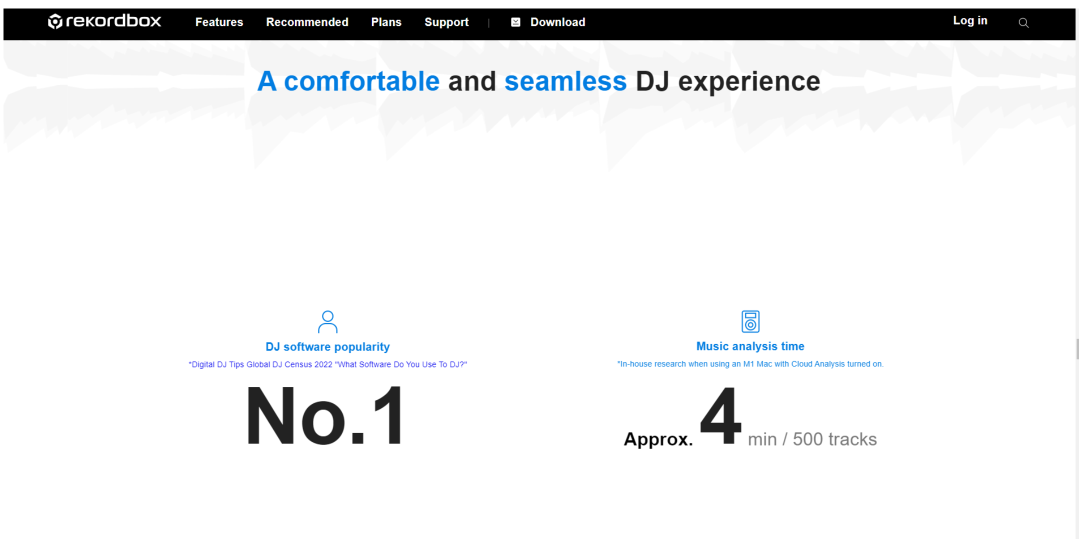
[4] https://www.thedjrevolution.com/best-dj-software/; https://www.digitaldjtips.com/best-dj-software/; https://ehomerecordingstudio.com/best-dj-software/; https://pirate.com/en/blog/best-dj-software/.

[5] inMusic's Engine DJ is sometimes mentioned but is not a desktop DJ software. It is free and embedded in inMusic's all-in-one hardware devices, which have not gained consumer acceptance as an alternative. Similarly, Algoriddim's djay product is sometimes mentioned. It is a mobile app that professional DJs would not use regularly to perform. ATC's anecdotal evidence of one DJ who has performed using only a phone is not relevant. His notoriety for performing with only a phone is expressly because he is the only person currently doing it. Any other software mentioned (Ableton Live, Mixx) is only listed because it has niche features that do not represent true competition.

[6] https://serato.com/dj.



f. Citing the 2022 Digital DJ Tips Global Census, ATC contends that rekordbox is the most popular DJ software in the world[7]:



g. Regardless of which is truly the most popular, unquestionably, the industry recognizes that Serato and rekordbox are the only two DJ software products competing for first place: "In order of popularity, Serato is still the most used software by professional DJs and hobbyists, closely followed by rekordbox. This is likely the case as Serato is still the most popular choice amongst mobile & event DJs."[8] "The two most used platforms among the Digital DJ Tips community are easily Rekordbox and Serato…"[9] "Serato is the most popular DJ software of all, for

[7] https://rekordbox.com/en/.
[8] https://www.thedjrevolution.com/best-dj-software/.
[9] https://www.digitaldjtips.com/best-dj-software/.

a number of possible reasons."[10] Serato has been called the most popular DJ software and rekordbox is the best DJ software for professionals.[11]

h. ATC attempts to downplay Serato's status as "industry standard" and "best" as merely "one person's viewpoint" and urges the Commission to disregard "the views of a few individuals."[12] The Commission should reject this characterization. It is far more than a few individuals; it is the entire industry.[13] As Serato itself touts, Serato is considered to be the best because it is popular, the most reliable and has the lowest latency.[14]

i. The fact that Serato and rekordbox are the most popular DJ software products is critical because "once you've chosen, it's hard to change."[15] Moving between DJ software is "undeniably difficult."[16] Further, "switching software is painful, as DJs necessarily get deeply attached to workflows that are tied to the software they've chosen."[17] In other words, DJ software is "sticky." Users tend to get used to a certain software and rarely change. For example, Native Instruments' Traktor, despite having "[s]ome baffling limitations" and "[c]an be hard to use," continues to be used by DJs "who often have been using it for a long time, and who couldn't imagine using anything else because they've fallen in love with the things it undeniably does really well."[18] Even with this loyal userbase, Traktor is nevertheless "eclipsed by Serato and Rekordbox."[19]

j. ATC attempts to create confusion by dumping on the Commission the names of 34 software "competitors."[20] inMusic has not heard of most of these products. For all inMusic knows, there could be 34 or there could be 134. Based on inMusic's investigation, most, if not all, are thinly-featured, gamified and/or intended for beginners and/or casual users looking for distraction.

k. Most apps presented by ATC can be compared to the *Guitar Hero*/*Rock Band* videogames from the early-2000s. Their user interfaces mimic the real thing, but they use pre-programmed sounds and effects. *Guitar Hero* sold over 25 million copies[21], and *Rock Band* sold over 13 million copies[22], not including the various spin

[10] https://ehomerecordingstudio.com/best-dj-software/.
[11] https://pirate.com/en/blog/best-dj-software/.
[12] The Application at [6.20].
[13] https://wearecrossfader.co.uk/blog/rekordbox-vs-serato/; https://homedjstudio.com/rekordbox-vs-serato/; https://www.digitaldjtips.com/best-dj-software/; https://djtechreviews.com/audio-software/serato-dj-or-rekordbox-dj/; https://www.clubreadydjschool.com/tribe-talk/rekordbox-dj-vs-serato-dj/; https://www.gear4music.com/blog/rekordbox-vs-serato/; see also footnote 5 above.
[14] https://serato.com/dj.
[15] https://www.digitaldjtips.com/best-dj-software/.
[16] https://www.choones.app/blog/2019-08-19/why-is-moving-between-dj-software-difficult.
[17] https://www.digitaldjtips.com/best-dj-software/.
[18] https://www.digitaldjtips.com/best-dj-software/#traktor.
[19] https://www.digitaldjtips.com/best-dj-software/#traktor.
[20] The Application at [5.42].
[21] https://www.vice.com/en/article/wx8bey/the-oral-history-of-guitar-hero.
[22] https://en.wikipedia.org/wiki/Rock_Band.

offs (such *DJ Hero 1 & 2*).[23] Combined, these videogames have vastly outsold real guitars over the last 20 years.[24] Nevertheless, no one would suggest that these games, which use plastic guitars with buttons and no strings, compete with the likes of Fender and Gibson for guitar player customers.

l. Although ATC points to the future where mobile apps compete directly with Serato and rekordbox, they do not compete now, and no one knows what the future holds. In fact, inMusic released a controller called iDJ in 2005 that was one of the first products to obtain 30-pin certification from Apple.

This was cutting edge at the time, and the product sold relatively well as a unique Christmas gift for non-DJs that allowed the user to connect dual iPods to a DJ controller. After the first iPhone was released in 2007, inMusic iterated off the initial iDJ device, which later included an iPad compatible version and a mobile iDJ app. iDJ was ultimately never taken seriously beyond a non-DJ customer base and was eventually discontinued. Quite simply, both then and now, DJing in public with a mobile app, especially for a paid gig, when reliable and stable DJ software exists, is needlessly challenging. ATC's suggestion that the future looks different is no more true now than it was in 2005.

m. Market data bears out that mobile apps are not serious competitors to DJ software. The most accurate and reliable source for market data in the DJ industry is the Digital DJ Tips annual Global DJ Census. Digital DJ Tips has existed since 2010

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[23] The comparison between videogame sales and real guitar sales provides further insight into ATC's misguided reliance on monthly average users (MAU) to define the relevant market. Gamified and beginning apps, most of which are free or extremely low cost and easy to use, will always be widely-used compared to the real thing, which is costly and complicated to learn.

[24] https://www.musictrades.com/census.html.

and is the biggest DJ website in world.[25] For over a decade, Digital DJ Tips has conducted its survey, with tens of thousands of DJs participating. As many as over 32,000 DJs have participated in this survey.[26] The most recent edition garnered 20,000 respondents.[27] According to the Global Census, rekordbox and Serato are far and away the top two DJ software products on the market, being used by a combined 60+% of consumers, while mobile apps are used by less than 2% of respondents.

n. ATC has used Global Census data in the ordinary course of its business.[28] Despite this, ATC disregards the Global Census because it does not support the Application. ATC argues, the percentage of survey respondents who reported that they used apps was "far below the proportion of users that do in fact use DJ software Apps globally."[29] ATC's methodology, however, is deeply flawed, highly speculative and should be disregarded.[30]

o. Moreover, ATC's and Serato's actions outside the Application demonstrate that they do not believe mobile apps are viable competitors. Serato developed a mobile app called Serato Pyro that it abandoned after only a few years and seemingly sees no future for any alternative app. ATC also focuses very little on its mobile app. The Commission should consider the following:

   i. In their press release announcing the acquisition, ATC did not mention mobile apps.[31] The focus is exclusively on software.

   ii. On its website describing its business, ATC includes this graphic, which appears to use the category "Apps" to include all software. Notably, it references rekordbox desktop software but no mobile DJ software apps. The fact that ATC includes its DanceTribe mobile app suggests that the absence of its mobile DJ software app was intentional and not an oversight:

[25] https://www.digitaldjtips.com/about-us/.
[26] https://www.digitaldjtips.com/global-dj-census-2021-results/.
[27] https://www.digitaldjtips.com/here-are-the-results-from-our-2023-census-the-biggest-dj-survey-in-the-world/.
[28] [redacted].
[29] The Application at [6.9(a)].
[30] ATC relies heavily on MAU to establish the market, but MAU is disfavored and is a metric with limited value because, among other things, it is not standardized, open to manipulation and does not measure user behavior or user quality. https://www.vox.com/2015/2/9/11558810/the-monthly-active-user-metric-should-be-retired-but-what-takes-its; https://cmlabs.co/en-id/seo-terms/monthly-active-user#:~:text=The%20lack%20of%20industry%20standardization,the%20standard%20for%20their%20success; https://medium.com/@pubscale/what-is-monthly-active-users-mau-and-how-to-increase-it-8f7c67860b5b; https://corporatefinanceinstitute.com/resources/valuation/monthly-active-users-mau/; https://www.storyly.io/glossary/monthly-active-users-mau.
[31] https://alphatheta.com/en/information/alphatheta-acquires-serato-audio-research-limited/.

iii. The above graphic breaks down ATC's business, but nowhere in the press release announcing the acquisition, does it mention its WeDJ app.[32] In fact, the WeDJ app was first launched six years ago. Since that time, it has been rarely updated.

iv. ATC is part of a public company and is required to publish financials and advise investors of growth strategies. At the end of FY2022, ATC released its customary Supplementary Information, which mentions growing rekordbox but again ignores WeDJ.[33]

v. ATC partners only with Serato; no other third-party mobile apps or software. If mobile apps dominate the present and are the future, why is ATC not investing in mobile instead of paying over $100 million NZD for a desktop-only DJ software company?

p. The inescapable conclusion is that ATC's recent about-face with respect to mobile apps is occasioned entirely by seeking clearance for the proposed acquisition. None of Serato, ATC or inMusic have succeeded in launching and maintaining a mobile app.

[32] https://alphatheta.com/en/#our-business.
[33] https://ssl4.eir-parts.net/doc/7744/ir_material_for_fiscal_ym3/131682/00.pdf.

q. Turning to the market for DJ hardware, it is even more significantly consolidated, with ATC controlling the vast majority of the market.[34]

  i. inMusic designs, develops, markets, and sells DJ hardware (i.e., DJ controllers) under its Rane, Denon DJ, and Numark brands.

  ii. inMusic competes directly with ATC, who is the market leader for DJ hardware. inMusic products are often viewed as equal to or better than ATC's hardware. Despite this, inMusic struggles to increase market share.

  iii. inMusic holds approximately 18% of the market, and there are a few smaller competitors that collectively account for about 10% of the market (e.g., Hercules, Native Instruments, Roland, Reloop).

  iv. Serato does not sell DJ hardware.

r. ATC's dominance in the DJ hardware market is unquestionable and insurmountable. According to the Global Census, approximately 55% of respondents reported Pioneer DJ as their main hardware brand, and another 30% who use a different brand as their main equipment reported owning Pioneer DJ equipment as well. Additionally, over 50% of those surveyed most want to upgrade from a different brand to Pioneer DJ. In other words, the vast majority of DJs (approximately 85%) own at least one item of Pioneer DJ hardware and over 50% of those who do not currently own Pioneer DJ hardware want to own Pioneer DJ hardware.[35]

s. Vertical relationships:

  i. DJ hardware cannot work without compatible DJ software.

    1. DJ controllers are not standardised, like keyboards. Each controller is uniquely designed. For a DJ controller to work seamlessly for the user, it must be integrated to a specific DJ software product to ensure the hardware's firmware is communicating precisely with the DJ software.

    2. This critical integration process is carried out by the software developer and takes months of work before any controller using that software product can be released to customers. This allows the end user to start DJing nearly immediately without additional manual configuration. In fact, even ATC touts the convenience of this "free plug-and-play compatibility" with both Serato and/or rekordbox for most of its controllers.[36]

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[34] [redacted].
[35] https://www.digitaldjtips.com/here-are-the-results-from-our-2023-census-the-biggest-dj-survey-in-the-world/.
[36] For example: https://www.pioneerdj.com/en-us/product/controller/ddj-flx10/black/overview/ or https://www.pioneerdj.com/en-us/product/controller/ddj-rev5/black/overview/.

3. The hardware and software development and mapping process is highly collaborative with both developers employing large QA teams to test and debug before public release. After release, both the DJ software and hardware's firmware are likely to be updated, which requires new rounds of QA for the implementation to continue to work seamlessly.

ii. inMusic gives Serato its strategy years in advance, and product plans months in advance. In fact, inMusic recently shared confidential design information for a new, upcoming piece of hardware that is still two years away from release. That afternoon, Serato contacted inMusic to advise it of the ATC proposed purchase.

iii. Serato is a discriminating partner. If Serato does not think a product will be successful, Serato will not agree to integrate its DJ software with it. In fact, Serato required inMusic to enter into three separate Development Team Funding Agreements [redacted].[37]

iv. [redacted] As a result, Serato collects all customer data, and inMusic obtains none.

v. Serato's business model has long required it to partner with hardware manufacturers to distribute its software to consumers and has long remained "neutral" – partnering with virtually every DJ hardware manufacturer in the world, including both ATC and inMusic.[38]

vi. inMusic depends entirely on Serato to sell software to its customers, in order that those customers have the software they need to use inMusic controllers.

1. inMusic partners with Serato to supply its customers with Serato software for every controller that inMusic makes. Under the inMusic/Serato licensing agreement, inMusic pays royalties to Serato for each controller sold with Serato software.

2. inMusic's hardware must be compatible with Serato software and inMusic must also be able to contract with Serato on competitive terms.

    a. This requires inMusic to provide confidential specifications and layouts to Serato early in development, then protypes and samples, and finally pre-production units for extensive quality testing and bug-fixing by both inMusic and Serato.

[37] [redacted].

[38] The Application at Confidential Annexure 10.

b. This is a bespoke process for each branded DJ controller.

3. inMusic would like to offer rekordbox to its customers as an alternative, but ATC has refused to allow its software to be sold with inMusic hardware.

4. inMusic is proud of what Engine DJ does and the features it offers, but it has not been designed to perform what Serato or rekordbox does. Its marketability is entirely dependent on being sold with Serato desktop DJ software to carry out the full suite of features and functions a DJ needs. It was developed as a *complement* to Serato DJ software in recognition of the long-term partnership between inMusic and Serato. In the consumer's mind, Engine DJ software does not stand as a substitute for Serato or rekordbox. Moreover, the cost and time for inMusic to develop Engine DJ as a desktop DJ software would be prohibitive.

5. In terms of software for DJ hardware, there are only two viable options: Serato and rekordbox.

vii. ATC sells its hardware with either rekordbox software or Serato software, but it does not allow its rekordbox software to be sold with non-ATC hardware. The fact that the only third-party software provider that ATC partners with is Serato reflects its view that Serato is the only meaningful competitor to rekordbox and significantly undermines its claims in its application that there are many viable alternatives to Serato and rekordbox.

III. Competition Concerns

a. The proposed acquisition will result in unilateral horizontal effects for the supply of DJ software, which will harm New Zealand consumers.

i. The combined firm will account for a substantial majority of the DJ software market globally and in New Zealand. It is illogical and costly to maintain two software codebases. The most likely scenario is that ATC will combine the codebases of rekordbox and Serato into a single product, thereby eliminating the current version of Serato.

ii. But regardless, the remaining smaller DJ software suppliers are unlikely to represent significant competitive constraint on the combined firm, so post-transaction ATC would be able to profitably raise prices and/or reduce the non-price aspects of its offering. As discussed above, consumers of DJ software do not easily change their preferred software. ATC's entrenchment at the top of the market will be nearly impossible to overcome by smaller competitors.

iii. The reduction in competition is also likely to slow technological innovation in a product market in which rapid innovation has previously been a hallmark feature.

b. The proposed acquisition will result in the complete vertical integration of a significant independent DJ software supplier into the dominant DJ hardware supplier, which will harm global and New Zealand competitors.

i. Under the current state of the market, if a consumer prefers Serato software, they may purchase an inMusic controller, an ATC controller or a controller from one of the other competitors in the DJ hardware market. If a consumer prefers rekordbox software, they can only purchase an ATC controller.

ii. Because ATC has refused to allow rekordbox to be sold with any other controllers, inMusic reasonably believes ATC will not allow Serato to be sold with non-ATC controllers either, post-transaction.

iii. Consumers of DJ hardware and software will effectively have no choice but to purchase ATC-owned products, and/or ATC could pursue a single platform, closed ecosystem.

c. <u>**Foreclosure**</u>. ATC has both the ability and incentive to foreclose inMusic from Serato software, thereby virtually eliminating inMusic as a hardware competitor. <u>Two options</u>: (1) reduced collaboration to facilitate compatibility between hardware and software and/or higher prices or (2) complete foreclosure.

i. Ability:

1. ATC is an entrenched incumbent that enjoys passionate and unshakable brand loyalty similar to Apple, Tesla or Google.[39]

2. ATC will gain an effective monopoly across the full vertical supply chain of DJ software and hardware.

3. There are no viable substitutes for Serato's software or rekordbox.

4. inMusic's existing licensing agreement with Serato (and Serato's agreements with other hardware suppliers) is insufficient to protect a competitive marketplace.

a. The agreement is not a passive licensing agreement for inMusic to utilise an off-the-shelf software product. As discussed, there is substantial collaboration between inMusic and Serato to perform new bespoke feature implementation, necessary integration testing, and

[39] https://wearecrossfader.co.uk/blog/denon-vs-pioneer-dj/.

troubleshooting/bug-fixing. ATC could simply offer a lower level of collaboration or product support, resulting in lower quality integration, and reduce the benefit of the agreement.

b. ATC will not be incentivised to renew agreements with competing DJ hardware suppliers. [redacted], and inMusic never contemplated that Serato would not be independent.

c. Moreover, if ATC violates or terminates the agreement, inMusic would be entitled only to ordinary breach of contract remedies – not restoration of competition.

ii. Incentive:

1. inMusic competes closely with ATC. Although ATC is the clear market leader, inMusic is the second largest supplier of DJ hardware both in New Zealand and globally.

   a. By cutting off inMusic's access to Serato software, ATC will benefit from higher sales or prices, and stands to gain up to 20% market share by squeezing inMusic and all other competitors to exit the market.

2. ATC has a history of restricting competitors' access to rekordbox software and has refused to allow inMusic to use rekordbox with its hardware. rekordbox has never been in any other company's hardware.

3. ATC's denials that it would not have the incentive to foreclose competition are simply incredible. ATC could more than make up for the loss of revenue from license fees paid by DJ hardware manufacturers through additional sales of its DJ hardware. The Commission should look at how ATC acts, not what they say. ATC would not pay over $100 million—which represents over a ten times multiple of Serato's EBITDA—only to leave Serato's business as is. ATC, as a public company, has an obligation to its shareholders to maximise profitability. Waiting ten years to payback its investment is highly unlikely.

d. **<u>Information sharing</u>**: As discussed above, the hardware/software "integration" process is extensive and highly collaborative, involving weekly progress meetings for months. inMusic discloses its product plans to Serato up to two years in advance of public release to ensure software and hardware compatibility. Post-transaction – even if inMusic is able to continue to license Serato software – inMusic would need to turn over highly confidential business information to ATC, its direct competitor, to ensure similar ongoing compatibility.

e. **Anticompetitive harm in New Zealand**

i. The detrimental impact to New Zealand's national interest will be substantial.

ii. Not only will an elimination of competition negatively impact consumers through lack of choice and higher prices, but if inMusic loses business due to the proposed transaction, inMusic's physical presence in New Zealand is likely to be substantially reduced or eliminated.

1. inMusic owns real estate in Auckland and employs 40 people. inMusic has invested approximately $50 million in the New Zealand economy in the last five years.
2. The choice to locate in New Zealand was driven by Serato also being located in New Zealand. If inMusic can no longer partner with Serato, its incentive for being in New Zealand is negated.

IV. Lack of Available Remedy

a. Even if, for example, ATC made assurances that it would continue to make Serato software available to inMusic customers, it could impose higher royalties, provide fewer features to inMusic customers than its own, decline marketing support and/or provide slower and lower quality after-market support, among the many other ways it could manipulate the situation to make it unappealing to use inMusic hardware.

b. inMusic's confidential business information will lie in the hands of its competitor – undermining inMusic's innovation and competitive edge and damaging its business reputation.

c. No behavioral promises would sufficiently alleviate the competition concerns.

V. ATC's Application contains substantial misrepresentations and unsupported speculation

a. inMusic would be remiss if it did not address the substantial misrepresentations and unsupported speculation advanced by ATC in its application.

i. **MIDI Mapping Allows Universal Capability Between Hardware and Software**. Hardware manufacturers partner with Serato to obtain the deep integration that comes from months of code-level integration and testing. ATC contends that users can easily map any controller to any software. However, that process is complex, time-consuming, unsupported by most manufacturers (including ATC) and therefore can never reach the level of providing a satisfactory customer experience.[40]

[40] https://www.thedjrevolution.com/best-dj-software/.

ii. **<u>DAWs Are Viable Alternatives to DJ Software</u>**. ATC contends that DAWs like Ableton Live are "increasingly" being used to DJ. In support, ATC advances anecdotal evidence that one person likes to use Ableton Live. Nothing supports widespread use of DAWs by professional DJs. To the contrary, as shown above, the Global DJ Census shows that Ableton Live use is minimal. ATC also speculates that major DAW developers will move into DJ software, but the music production market (valued at $2.7 billion USD in 2022) is much bigger than the DJ software market,[41] so it is far likelier to be the other way around (which is exactly what Serato is doing in moving from DJ to music production). ATC mentions several potential entrants but there is nothing to suggest that any are in fact developing DJ software or intend to. ATC's contentions are entirely speculative. Two of the biggest DAWs, Avid and Image-Line previously made DJ software but abandoned the market.

iii. **<u>Barriers to Entry Are Very Low</u>**. The major DJ software incumbents have decades of experience. Serato and Traktor have been around since the late-1990s/early-2000s, Virtual DJ since 2004, rekordbox since 2009 and Algoriddim since 2010. All these companies are well-financed, have built up brand goodwill and loyal customer bases and have mature codebases. The cost and time to catch up is nearly insurmountable.

iv. **<u>The Acquisition is "Primarily" About Music Production</u>**. Serato's experience in music production can best be described as nascent. For example, Serato is rarely, if ever, mentioned by the reputable outlets as among the best music production software providers.[42]

VI. Conclusion

If the proposed acquisition is permitted, with great reluctance and disappointment, inMusic will be left with no choice but to shutter its New Zealand operations and retreat from the DJ market altogether. The proposed acquisition will lessen competition by foreclosing DJ hardware competitors from partnering with Serato thereby increasing ATC's already dominant market share in hardware. ATC also will control a dominant share of the DJ software market.

[41] https://www.fortunebusinessinsights.com/industry-reports/digital-audio-workstation-market-100150.
[42] https://www.musicradar.com/news/the-best-daws-the-best-music-production-software-for-pc-and-mac; https://pirate.com/en/blog/best-daw-music-production-software/.