

inMusic’s Submission on the Statement of Unresolved Issues

1. inMusic Brands, Inc. and its subsidiaries and affiliates including inMusic New Zealand Limited (inMusic) welcomes the opportunity to comment on the Statement of Unresolved Issues published (SoUI) by the New Zealand Commerce Commission (Commission) on 29 May 2024 in respect of the clearance application (Application) submitted by AlphaTheta Corporation (ATC) to acquire Serato Audio Research Limited (Serato).
2. ATC wants to purchase Serato for one purpose: to control completely the DJ software and hardware markets. Already possessing over 70% of the DJ hardware market and a significant, growing share of the DJ software market, owning Serato would provide ATC with an immediate, impenetrable stranglehold over its competition. If cleared to purchase Serato, not only would ATC more than double its DJ software market share, but it would add to its arsenal numerous anti-competitive strategies, both overt and subtle, to destroy what little competition remains—all to the detriment of the DJ industry and its consumers.
3. The Commission well understands this. Although never explicitly addressed by the parties or directly called out by the Commission, the subtext for the Application remains: why would ATC pay over \$100 million NZD for Serato when ATC already has rekordbox, which competes closely with Serato, and ATC has the resources (including the money it proposes to spend on Serato) to expand further its capabilities and grow its market share without Serato. ATC’s clear motive is an SLC in its favor.
4. Just as it did in the SOI, and again in the SoUI, the Commission assessed the evidence and argument concerning the Proposed Acquisition correctly. inMusic submits that it is likely the Proposed Acquisition will substantially lessen competition in both the DJ hardware and DJ software markets in New Zealand and globally and should therefore not be cleared.
5. The Commission has invited further submissions on certain points.¹ inMusic has provided substantial evidence throughout this process and adds the following in response to the Commission’s invitations:
 - a. No mobile app other than Algoriddim’s djay is compatible with any inMusic hardware. ATC sells exactly one DJ controller (the DDJ-200) that is compatible with edjing Mix, in addition to djay (compared to eight and seven controllers for rekordbox and Serato respectively).² In other words, notwithstanding that the parties persistently repeat the myth that mobile apps are widely used and are not just for beginners, ATC makes only one compatible DJ controller, and it is an entry-level controller that sells for just USD \$199.³ Considering that ATC and inMusic comprise approximately 90% of the DJ hardware market and only one mobile app other than Algoriddim is compatible with one beginner controller between them, the Commission is correct to find insufficient evidence that mobile apps should be included in the relevant market. The parties (which

¹ SoUI at [45-46, 70, 83, 92, 118, 133, 161, 166].

² <https://www.pioneerdj.com/en-us/product/controller/>

³ NZD\$399, see <https://pioneerz.co.nz/products/ddj-200>.

bear the burden of proof) have not produced any relevant data or evidence to suggest otherwise.

- b. inMusic submits that there is no serious doubt that rekordbox and Serato “compete closely,” and it is silly of the parties to claim otherwise. The Commission has pointed to substantial evidence that they compete, including the parties’ own internal documents.⁴ Perhaps the best evidence, however, is a simple Google search asking whether they compete. Numerous results from independent, third-party sources, with no incentive to favor one answer over the other, consistently state that they do.⁵ While the Commission has solicited submissions on certain questions, in inMusic’s view, any submissions received could only marginally affect the analysis. The bottom line is that Serato and rekordbox are the top two DJ software products on the market and compete very closely.
- c. There is no evidence that mobile apps have imposed, or will impose, a competitive constraint on laptop applications. If such evidence existed, the parties have had approximately eight months since filing the Application to produce it but have come up empty at every turn. The Commission is correct to point out that, at best, Algoriddim—not mobile apps in general—is contributing to innovation in the DJ software industry.
- d. inMusic has nothing to add to the Commission's thoroughly reasoned analysis concerning the high barriers to entry and expansion. The parties have grossly underestimated the time and cost to enter and expand and overestimated the willingness of DJs to switch to new products. inMusic has previously submitted significant evidence on these points, including reports from Oxera. The simple fact is that ATC succeeded in entering the laptop DJ software market because Pioneer DJ was already the dominant DJ hardware brand. No one else could replicate that against the Merged Entity.
- e. Nothing prevents the Merged Entity from foreclosing rivals following the expiration of the clause 6 protections of the SPA in five years. The parties do not even pretend as much, instead hand waving over the concern by claiming that the DJ industry is changing and will look much different by then.⁶ No real evidence is provided to support this assertion, and certainly nothing remotely approaching that to satisfy the Commission an SLC is not likely as a result. Even while the SPA is in force, however, for all the reasons the Commission notes, as well as additional bases provided by

⁴ SoUI at 60.2.2 suggests one of Serato’s internal documents supports that Serato and rekordbox compete closely.

⁵ See, e.g., <https://wearecrossfader.co.uk/blog/rekordbox-vs-serato/> (“Choosing between rekordbox and Serato DJ is very similar to choosing between Windows and macOS. Both perform the same tasks but do them in different ways.”); <https://www.gear4music.com/blog/rekordbox-vs-serato/#:~:text=However%2C%20Rekordbox%20has%20several%20unique,User%20interface> (“Serato and Rekordbox are both industry-leading DJ control software, and they’re regarded as the two main systems that DJs use.”); <https://ditechreviews.com/buying-guides/serato-dj-or-rekordbox-dj>.

⁶ See ATC Response to SOI at [7.56].

inMusic⁷, the SPA provides no protection for the industry. Third parties cannot enforce it, and Serato's sellers may not have an incentive to enforce it. Not to mention, as the Commission points out, the parties' cash out arithmetic is wrong, and Serato's sellers may well be incentivized to cash out the earn out in many circumstances, leaving ATC to harm its competitors and no one to stop it.

- f. If inMusic launched a RANE product without Serato integration, it would be asking its customers to pay for an expensive paperweight. DJs buy RANE products because of their Serato integration. As inMusic has previously stated, inMusic provides hardware designs to Serato many months—and often over a year—in advance of launch.⁸ For example, within the next month, inMusic plans to launch its new RANE Performer controller, a high-end, four-channel DJ controller with motorized platters. inMusic has spent almost a year integrating Serato into the controller. This is necessary in inMusic's view for the deep integration that its customers require, especially for its RANE brand. While some entry-level products may not require as much time, the fact is that Serato's suggestion that inMusic could provide prototypes and/or designs just before launch or after launch to ensure complete confidentiality is not a viable commercial strategy, especially since ATC presumably will continue to benefit from providing its hardware to Serato months or years in advance. This is precisely the type of unfair choice that ATC will benefit from going forward if the Application is cleared: inMusic can preserve confidentiality by waiting until after launch but the tradeoff will be a lesser user experience at launch, likely resulting in slower sales (or zero sales in the case of RANE products since there is no alternative software DJs will accept) and hence competitive marginalization over time. A better launch on the other hand, with deeper Serato integration, risks ATC knowing new features prior to public release, which will similarly lead to competitive marginalization over time (but via a different mechanism). inMusic should not be faced with these outcomes, nor forced to make these choices, when dealing with its close partner Serato.
6. To the extent ATC, Serato and/or others submit additional evidence and argument, inMusic welcomes the opportunity to address it on cross-submission.

⁷ See for example inMusic's cross submission on the SOI at paragraphs 47 – 54 https://comcom.govt.nz/_data/assets/pdf_file/0020/351254/inMusic-Cross-submission-on-Statement-of-Issues-in-response-to-Parties-25-April-2024.pdf.

⁸ See for example paragraph 62 of inMusic's cross submission on the SOI https://comcom.govt.nz/_data/assets/pdf_file/0020/351254/inMusic-Cross-submission-on-Statement-of-Issues-in-response-to-Parties-25-April-2024.pdf.