

Submission to NZ Commerce Commission in response to Statement of Issues

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0. Introduction

- 0.1. As a founder and major shareholder of Serato, I have been deeply involved in the company's growth and strategic decisions for the past 25 years. From this vantage point, I have gained extensive knowledge of the competitive dynamics in the DJ software and hardware industries. After carefully reviewing the Commerce Commission's Statement of Issues regarding the proposed acquisition of Serato by AlphaTheta, I respectfully disagree with several of the preliminary conclusions reached. In particular, I believe the Commission's analysis understates the significant competitive constraints that would remain post-acquisition and overstates the likelihood of anticompetitive effects. In this submission, I will focus on five key areas where I believe the Commission's preliminary views are inconsistent with market realities:
1. The active competition in DJ software: The Commission's concern that existing competitors would be insufficient to constrain the merged entity understates the intensity of competition Serato faces from a range of capable rivals, including Traktor, VirtualDJ, Algoriddim's djay Pro AI, and others. Serato's users have shown a real willingness to switch to these alternatives when given a reason to do so.
 2. The competitive significance of mobile apps: While the Commission discounts mobile apps as a competitive constraint, the constraint from mobile apps is real. Mobile DJing has moved from being a "beginner" technology to a pro-level alternative, as occurred with controllers.
 3. RekordBox as a "close competitor": The Commission's assertion that Serato and AlphaTheta closely compete for DJ software customers misinterprets the competitive landscape of DJ hardware and software. "Home brand" software produced by a DJ hardware company as a default companion for their hardware products exists in a different category to the offerings of pure software companies.
 4. The unlikelihood of foreclosure of hardware rivals: Both economic and contractual factors make it extremely unlikely that the merged entity would have the ability or incentive to foreclose access to Serato's software to competing hardware providers. Not only would such a move be economically irrational, destroying a core part of Serato's business model, but it is also prohibited until 31 December 2028 under the acquisition agreement.
 5. The low and declining barriers to entry in DJ software: The Commission's analysis understates the potential for new entry to constrain the merged entity. The costs and technology required to develop DJ software have fallen substantially in recent years, particularly with the advent of tools like generative AI. Serato's position is built on customer loyalty and branding, not any insurmountable technological barriers.
- 0.2. In the following sections, I will elaborate on each of these points, drawing on my deep experience in the industry. I intend to show that the proposed acquisition is unlikely to substantially lessen competition in any relevant market, and that the Commission's preliminary concerns are not supported by the commercial realities facing Serato and its competitors. I appreciate the opportunity to share my perspective on these important issues.

1. Competitive constraint

- 1.1. In 7.2 of the Statement of Issues, you state that it is “unclear whether competition from the remaining competitors would be sufficient to constrain the merged entity”. The constraint being referenced here is the ability to raise prices. The assumption being made is that there is something special about these two software offerings (Serato DJ and RekordBox) that makes switching to an alternative infeasible.
- 1.2. Any assumption that there is something special about the Serato DJ software itself that protects against DJs switching to another piece of software is simply false. In fact, the DJ software market has matured to the point where interfaces have converged to the point of being difficult to distinguish. The customer loyalty Serato currently enjoys reflects a positive experience using the software. We do everything we can to continually enhance this loyalty in how we deal with our customers—we try not to give our customers a reason to switch.
- 1.3. As long as we keep up with innovation and keep our price reasonable, and maintain a commitment to reliable software, many DJs employ a policy of “if it ain’t broke, don’t try to fix it” with regard to their setup. There’s not that much that’s unique about the Serato DJ software, you’ve no doubt seen extensive feature comparisons. Serato DJ is far from being the most feature complete product out there, and though many DJs regard it as “the original and the best”, that’s not due to some magical feature that others can’t replicate, that is due to our tireless efforts to support and celebrate our community, and our commitment to stability.
- 1.4. Our marketing department has a large contingent of dedicated artist relations people, and the content we produce is made in conjunction with (and for) our community. We work hard to stay relevant and connected to our user base. And very importantly, software stability is paramount to our developers. These are values and they can be replicated. Luckily for us, not all other software makers have figured this out yet.
- 1.5. So, I say that Serato maintains a loyal following due to our excellent customer service and commitment to delivering quality software. Maintaining a fair price is a big part of that customer centric approach to business, and there is absolutely no evidence to suggest that the alternative software offerings such as Traktor, Virtual DJ and djay Pro are missing anything that a Serato or RekordBox user requires.
- 1.6. Serato has maintained a strong market position because we work very hard to look after the customers we have, and we invest in community building. If, after merging, AlphaTheta decided to throw all that away by raising the price of Serato DJ, there is nothing to suggest that the existing customer base would feel compelled to stick with it, and everything to suggest that our competitors would enjoy the shift in customer base that would no doubt ensue.
- 1.7. As much as our friends at inMusic would try to have you believe that Serato DJ is a “must have”, there is no actual evidence to this effect. They cite their own tepid effort to replace Serato DJ with an offering of their own as evidence that our user base is unshakeable, but for that to be valid, they would have to have spent some money on software developers and develop a commitment to quality software. You don’t have to search the internet for long to see why people didn’t switch to EngineDJ in droves, just read their own community forum — the software simply isn’t as reliable. But I will speak more on the subject of “home brand” software in section 3.
- 1.8. In my experience, the DJ user base lags a few steps behind other sectors of the software market in terms of technological advancement and acceptance. When Serato released our first piece of DJ software, “Scratch LIVE”, most of our potential customer base didn’t even own laptops, so part of the barrier to entry was buying in to the idea of going high tech. Each step of the way, as the rest of the software business moved into new paradigms, DJ software users stayed a step or two behind.
- 1.9. Software subscriptions are particularly unpopular in our sector, even as they became commonplace in the rest of the digital creative landscape, and we have always had to be careful introducing them as a genuine option without taking away a reasonably priced “buy out” option (permanent license).
- 1.10. This is in stark contrast to the rest of the software industry, where most companies either have no permanent license option at all (for example Adobe), or if they do offer a “permanent” license, it unlocks a version of the software frozen in time, so you miss out on major updates. For example, Microsoft Office still allows

customers to purchase their office suite without paying a subscription, but it is called Office 2021, which while it has regular bugfix releases, it doesn't include major updates. Additionally, Office 2021 doesn't include all the items that the subscription does, which makes the permanent license option even less attractive.

- 1.11. It is important to understand that software subscriptions are a somewhat new and less popular thing in the DJ market. The majority of Serato DJ monthly active users either:
 1. used "pro hardware" that unlocks Serato DJ Pro ([redacted]%),
 2. used entry-level hardware that unlocks Serato DJ Lite ([redacted]%),
 3. used Serato DJ Pro in the free offline mode or a cracked version ([redacted]%), or
 4. had already paid for a permanent license ([redacted]%).
- 1.12. The remainder, who pay an active subscription for our software, account for about [redacted]% of our active monthly users. What this means is that most of the users of our software are not questioning whether they should keep paying for what they are using, because they aren't paying anything to stay where they are.
- 1.13. As the Commission notes in the Statement of Issues, Serato DJ has remained priced at 10 USD since we launched a subscription option in July 2016. That represents a 29% reduction in price compared with inflation. This illustrates our awareness of the extreme price sensitivity of our market.
- 1.14. And while the rest of the software industry has moved on and is virtually 100% subscription based, Serato not only offers the option of buying a permanent license, but we have also never charged for major software upgrades, which means that a permanent license keeps the owner up to date with our latest version, just like the subscription. Both of these features are unheard of in the rest of the software industry and speak to the extreme price sensitivity and aversion to the subscription model in our sector, which explains the total absence of price increases in our subscription option in 8 years.

2. Mobile Apps

- 2.1. The line between personal computer and mobile device has been blurring for many years, to the point where now the capabilities of these product categories have significantly overlapped. The bottom of the line laptop, the MacBook Air is now half the price of the top end iPad Pro, as Apple continues to make their "mobile" platform more suited to the pro user. The rest of the PC and tablet market is the same.
- 2.2. Apple has been making the macOS operating system more and more visually and functionally equivalent to their mobile platform, iPadOS. Many speculate that Apple is trying to move everyone into their more secure, more tightly controlled mobile devices and away from traditional computers. Microsoft is similarly blurring the lines between tablet and laptop based OS.
- 2.3. Among software makers, there is a distinct shift towards mobile computing, with many popular professional software packages having an iOS version these days.
- 2.4. And as usual, the DJ user base has been slow to adopt this form factor. This does not mean that DJs have collectively decided not to use mobile devices to perform, we were just a bit slower to get started.
- 2.5. Most of the major players in the DJ software arena have now released their product on iOS and Android. This includes Traktor, RekordBox, and djay (which started out on iOS, then moved to Mac and PC later).
- 2.6. The Commission has received claims that mobile apps are equivalent to "Guitar Hero" for DJing, as if the mere existence of toys on the same OS as real DJ tools negates their existence. But this is disingenuous, as anyone who is keeping abreast of trends in our industry can plainly see that the mobile apps offered by the major players now have a level of capability that is comparable with laptop applications.
- 2.7. The mobile versions of Traktor, RekordBox and djay all connect to real DJ hardware. We aren't talking about phones and tablets putting competitive pressure on mixers and turntables, we are talking about apps putting pressure on laptop-only software. Just because Serato is behind in launching a fully-featured mobile

app version of our performance software, that doesn't mean we can ignore the pressure those apps exert on our operation.

- 2.8. Equally, arguing that the mobile apps aren't seen as professional enough for the serious DJ market also ignores the history of what is considered "for pros" vs what is "for beginners".
- 2.9. Serato pursued the strategy of claiming the high end first. When we released our first version of performance DJ software in 2004 (Scratch LIVE), we partnered with Rane, a high-end DJ hardware manufacturer and handed them the designs of a box that required a full DJ setup to function: turntables or CDJs and an analogue mixer. Probably \$5k worth of gear, plus you also needed to buy a laptop.
- 2.10. Four years later in 2008, Serato worked with Vestax to release the first ever all-in-one controller, no turntables or mixer required and retailed for around NZD 1,400. The version of software we released had a different brand name (Serato Itch), and we had to be super careful to not cross contaminate the marketing of our pro software with controllers, because professional DJs didn't see controllers as a pro option.
- 2.11. Another four years later in 2012 we were able to bring Scratch LIVE and Itch together into one platform, which we named "Serato DJ", with the release of the most popular controller ever, the Pioneer SX. This is when the "beginner" gear crossed over into the pro market, and controllers became pro.
- 2.12. The same is now happening with mobile apps for DJing. For every "pro" user who scoffs at apps as being "for beginners" there are hundreds of up-and-coming young DJs learning on these products. These "beginners" are the pros of tomorrow, and let's not forget that there are plenty of seasoned professionals winning awards using them today. In this regard, Serato lags behind the competition, as we haven't launched a DJ performance app. The only mobile apps we have released are the Serato remote, a companion product to Serato DJ, and Pyro, a stand-alone music player that we had to pull from the app store due to Spotify removing support for all DJ apps.
- 2.13. During this consultation process with Commerce Commission, our competitor, Algoriddim has released version 5 of their djay Pro software platform. Their approach of swallowing up the low end with a very capable mobile app, then slowly growing into the pro end of the market, puts them in a very good position to capture a significant portion of the market if Serato were to raise its prices.
- 2.14. It also means that someone learning on djay for iPad with no hardware (at one time a best seller on the App Store), may be likely to stick with djay when they go pro and get hardware to go with it (whether they choose to stay on the pro mobile app or even switch to their laptop version). This kind of pressure works slowly if we don't make a mistake, but it can shift the market very quickly if Serato does something silly, like assuming Serato DJ is a "must have" and raises prices.
- 2.15. It makes no sense to ignore the DJ app market as a constraining factor on the ability of the "merged entity" to raise prices, we don't ignore apps. They are strong competition, and we take them very seriously.

3. Close competitors (pure software vs hardware companion)

- 3.1. As I mentioned, when Serato started out making our first DJ software, we partnered exclusively with a DJ hardware company, Rane Inc, to produce a hardware/software combination that operated as an add-on to regular, analogue DJ hardware. At the time the most high-tech piece of DJ equipment available was the "CDJ" a CD player with a large jog wheel on top, to roughly simulate using a vinyl turntable. No hardware companies were making "embedded systems" or releasing software of any kind.
- 3.2. We maintained an exclusive hardware deal with Rane for many years, before starting to work with other hardware manufactures. But as companies expressed interest in entering the newly created all-in-one controller market, we collaborated with more companies to create Serato compatible DJ hardware. Our website currently lists 16 brands of hardware (some discontinued).
- 3.3. Due to consolidation and maturing of the market (including Rane being bought by inMusic in 2016), over 95% of our active users are using hardware made by Hercules, inMusic or AlphaTheta. All of these manufacturers have released their own "home brand" DJ software to accompany their products.

AlphaTheta (Pioneer) has RekordBox, inMusic brands (Numark, Denon and Rane) have EngineDJ and Hercules has DJUCED.

- 3.4. If we expand to include the top 6 hardware brands, the only one without in-house software is Reloop, who seem to have formed a close relationship with Algoriddim, as their djay software is often showcased with Reloop hardware.
- 3.5. These software offerings enjoy the advantage of being the “default” option for the hardware brand, and they are seen as “designed for” the equipment. So DJs who love the Denon brand may be more likely to choose EngineDJ as it is seen as the software made by the people who make the hardware. There are plenty of examples of users on the EngineDJ community pages expressing this point of view.
- 3.6. The popularity of these “home brand” software packages is directly correlated with the popularity of the corresponding hardware brand. RekordBox enjoys a large user base because they have the most popular hardware brand in the industry – Pioneer DJ.
- 3.7. When considering the competitive landscape for DJ software at Serato, I personally don’t put manufacturer’s home brand software in the same category as Serato DJ, Virtual DJ Algoriddim djay or even NI Traktor.
- 3.8. None of the “home brand” DJ software natively supports hardware that they don’t manufacture. That’s because none of them are trying to compete in the DJ software market, they just don’t want to be at the mercy of the software companies if we don’t choose to natively support every one of their products.
- 3.9. I don’t have the access to our hardware partners’ sales or active user data, nor of our actual competitors, so I can only speculate the breakdown of how many users choose home brand for their equipment over an alternative software, but if we imagine it to be 50/50 then it makes sense that RekordBox is a lot more popular than EngineDJ for example, as AlphaTheta sells a lot more DJ hardware than inMusic Brands do.
- 3.10. But this doesn’t mean that Serato “closely competes” with AlphaTheta for software. All the home brand software enjoys the home team advantage when someone chooses their hardware. There are always going to be people who use the default software, and those who are loyal to their software package.
- 3.11. Native Instruments is somewhere in between, because though they started out as pure software, they decided to start making their own hardware. They have had to maintain hardware compatibility with the other manufacturers though it’s not prominent on their website.

4. Hardware foreclosure

- 4.1. Both Serato and AlphaTheta are shrewd operators in our industry. As such, the management and ownership teams of Serato have never seriously considered the possibility of Serato shutting down access to AlphaTheta’s hardware rivals post transaction, as we see with our experience that it would be a losing move.
- 4.2. In fact, the main reason we even have a clause to protect against this in the sale and purchase agreement is because we have a healthy earn-out package in the agreement that is calculated with a formula based on Serato’s profits until the end of 2028. Shifting revenue from Serato to AlphaTheta by either discounting the software license to AlphaTheta or closing out rivals (hoping to sell more hardware) might by some calculations seem to be equivalent in a “merged entity”, but with this earn-out, any activity that shifts profit from Serato to AlphaTheta would negatively impact the earn-out calculation. For this reason, our advisors sensibly recommended adding a clause to prohibit virtually any changes to Serato’s business model into the sale and purchase agreement for the period of the earn-out.
- 4.3. For both parties, this seemed such an obvious thing to agree to that it didn’t appear as an “ask” nor did AlphaTheta want anything in return for agreeing to it. This is because it makes no sense to foreclose, as there is no incentive. There was no “back and forth” or negotiation on this point, both parties easily agreed that any material change to the business model of Serato would be prohibited for the duration of the earn out period.

- 4.4. So, I respectfully and strongly disagree with the notion that AlphaTheta is financially incentivised to foreclose on its rivals post-transaction. However, even if we were to all agree that a rational operator in AlphaTheta's position would choose to foreclose on its hardware rivals, we must also consider what a rational operator would do in my position.
- 4.5. Consider the case where AlphaTheta loses its mind and forecloses on its rivals, that action immediately results in harm to the revenue, and profit of Serato. That harm affects the earn-out and triggers a breach in the sale and purchase agreement. Armed with the cash from the sale, a rational operator in my position would legally enforce the contract and seek damages. In this highly speculative and unlikely scenario, I would absolutely exercise my legal right. This makes the cost to foreclose exponentially higher for AlphaTheta.
- 4.6. The sale and purchase agreement blocks AlphaTheta from entertaining such a bad idea for the period of the earn-out calculations (until the end of 2028). If any person in the industry thinks that 4³/₄ years isn't enough time to get ready to take all of Serato's customers the moment AlphaTheta is free of those restrictions, then that person is not competent, because someone else is always ready.

5. Barriers to entry

- 5.1. The cost to build a piece of software has been decreasing every year, since the beginning of time. So much so, that it is well known in software development circles that if you know you need to build a tool, but you don't need it right away, it's always advantageous to wait.
- 5.2. What it cost AlphaTheta to build RekordBox DJ would have been half or less what Serato had spent on building Serato DJ, and what it would cost to do now could be easily half whatever it cost AlphaTheta back in 2014. That's how software works. In fact, in just the last 12 months, generative AI has increased the productivity of a single developer by a minimum of 2x, but by some measures 5x is a reasonable estimate.
- 5.3. Speaking as a software developer myself and having used generative AI to assist with the writing of code, I can say without doubt, that writing software has never been faster. Writing good software still requires talented developers, but almost all the pauses and delays (such as looking up documentation or writing comments) can be minimised using an AI "co-pilot" to develop with.
- 5.4. Even without AI to help the build process, there are always new frameworks and libraries being added to the developer's toolkit, and incumbent players pay the price, because not only did we have to "roll our own" the first time, but then we have to replace our legacy code with new and updated technology as the rest of the ecosystem evolves. It's always easier to start from scratch with brand new code than to update a legacy system.
- 5.5. [redacted]
- 5.6. Additionally, the availability of open-source DJ software further lowers the barriers to entry for new competitors. As you are no doubt aware, there exists a full featured open source alternative to Serato DJ in the form of Mixxx. Anyone wanting to enter the market can download the source code to a fully-featured, working alternative to Serato DJ as a starting point and apply all their savings in development to marketing and customer service.
- 5.7. The barrier to entry is lower than ever, if the DJ market represented low hanging fruit, there would be a handful of start-ups having a crack at taking users, right now. This sale may even trigger enough interest from external parties to enter the market. An agile start-up could do it very cheaply, and well-funded company could not only do it very easily and quickly, but could outmatch our marketing spend.

6. Conclusion

- 6.1. As a founder, major shareholder and active board member of Serato, I have a deep understanding of the competitive dynamics in this industry. I firmly believe that the proposed acquisition of Serato by AlphaTheta will not substantially lessen competition in the DJ software or hardware markets. Serato faces intense

competition from a range of capable DJ software providers, including from mobile apps. The notion that Serato is a 'must have' product that is insulated from competition is not supported by market realities.

- 6.2. Similarly, I am certain that the Commission's concerns regarding foreclosure of hardware rivals and barriers to entry in DJ software are overstated. There are strong contractual and economic incentives for the merged entity to maintain Serato's existing business model and continued support for third-party hardware. The barriers to entry in DJ software are lower than ever with the availability of open source starting material and falling at an accelerated rate thanks to the availability of disruptive technologies like generative AI.
- 6.3. Regarding the Commission's concerns about the potential misuse of sensitive information post-acquisition, I would like to emphasise that Serato and AlphaTheta are committed to maintaining strict firewalls and information barriers to prevent any sharing of confidential third-party data between the two entities. Our existing contracts with hardware partners include robust non-disclosure and data protection provisions, which will continue to be fully respected and enforced after the acquisition. Accordingly, the earn-out structure of the deal creates a strong financial incentive for AlphaTheta to ensure that Serato operates independently and does not engage in any conduct that could undermine the trust and confidence of our partners.
- 6.4. I urge the Commission to consider these market realities and the dynamic, fast-moving nature of the software industry in its assessment of the proposed acquisition. This acquisition will allow Serato to continue to innovate and compete effectively in a rapidly evolving marketplace, to the benefit of DJs and consumers. Blocking the acquisition based on speculative and hypothetical concerns would be a mistake and [redacted]. But more importantly, it would deprive the end-user and market as a whole of the innovation made possible by this collaboration.
- 6.5. Thank you for considering my views on this matter.