

**inMusic’s Cross-Submission in Response to
Non-Party Erik Gavriluk’s Submission in Response to the Statement of Issues**

1. inMusic Brands, Inc. and its subsidiaries and affiliates including inMusic New Zealand Limited (inMusic) welcome the opportunity to comment on Erik Gavriluk’s Response to the Statement of Issues published by the New Zealand Commerce Commission (Commission) on 8 April 2024 in respect of the clearance application submitted by AlphaTheta Corporation (ATC) to acquire Serato Audio Research Limited (Serato).
2. Mr. Gavriluk writes, “I felt compelled to share **my experience** innovating in audio software and hardware for over 25 years.” [Emphasis added]. inMusic respectfully submits that the Commission should treat Mr. Gavriluk’s submission just as he characterized it: one person’s opinions based on his own experience in a segment of the audio industry not relevant to the Application.
3. Mr. Gavriluk does not appear to be a DJ, nor does he appear to have any experience in the DJ software or hardware industry. Nevertheless, this does not stop him from submitting an apparent stream-of-consciousness essay filled with unsubstantiated claims, oversimplified and overgeneralized economic principles and assertions that lack critical context, are misleading and/or outright incorrect.
4. Much of Mr. Gavriluk’s support for the Application rests on the notion that all software eventually becomes commodified, and when that happens, prices drop, which forces innovation. While he does not define commoditization, it is generally understood to be the process of converting a product into a standardized object where “the individual, unique characteristics, and brand identity of the product” are removed “so that it becomes interchangeable with other products of the same type.”¹ Commodities ultimately compete solely on price and not on different characteristics.²
5. Commoditization of software was a hot topic around the turn of the century³ when Mr. Gavriluk last owned and operated an audio software business, but recent references are hard to come by. Even back then, however, it was hardly settled fact that all software would become commoditized.⁴ To the contrary, there was significant debate, and to the extent that there was any consensus, it focused primarily on operating systems, web services and open-source, not niche software products.⁵
6. Even if, for the sake of argument, the Commission were to accept Mr. Gavriluk’s philosophy that software in a given industry inevitably becomes the same product and, therefore, can be purchased cheaply, the evidence plainly shows that has not, in fact, happened nor is it likely to happen in the DJ software market. inMusic will not repeat the entirety of its prior

¹ See <https://www.investopedia.com/terms/c/commoditization.asp>.

² See <https://www.investopedia.com/terms/c/commoditization.asp>.

³ See, e.g., <https://www.zdnet.com/article/understanding-software-as-a-commodity/>.

⁴ See, e.g., <https://www.onstartups.com/tabid/3339/bid/137/Code-Is-Not-A-Commodity-Why-Software-Is-Not-Like-Soybeans.aspx> and <https://sloanreview.mit.edu/article/the-myth-of-commoditization/>.

⁵ See, e.g., <https://www.zdnet.com/article/understanding-software-as-a-commodity/>.

arguments, but in short, the DJ software market is mature (the top 4 competitors have existed for at least 15 years), DJs rarely switch software, and brand reputation and quality are key differentiators. As the Commission has noted, there are significant barriers to entry and expansion in the DJ software market, including time, cost and convincing customers to switch providers.⁶ While Mr. Gavruluk’s theoretical, generalized view of software markets may have some applicability in other industries, it bears no resemblance to reality for the DJ software market, and any prognostication about the future (which ATC and Serato have similarly relied upon heavily but unpersuasively) is pure speculation that cannot inform the Commission’s decision.⁷

7. Mr. Gavruluk similarly argues without evidence that the wide availability of MIDI mapping files (and in the case of Mixxx DJ, source code) refutes arguments that hardware and software “configuration is a difficult or a chilling barrier to competition.” Again, Mr. Gavruluk (like ATC and Serato) ignores reality. As inMusic has shown extensively, MIDI mapping a DJ controller to DJ software is technically complex and, thus, rarely done by end users who can simply buy DJ hardware that is already integrated with DJ software. Moreover, ***by Serato’s own admission***,⁸ many hardware features (jogwheels, most notably) cannot be MIDI-mapped. By contrast, keyboard and pad controllers are far easier to map to music production software, and Mr. Gavruluk is therefore likely biased by his experience in music production to believe that DJ controllers are similarly simple to map. He is wrong and has provided no basis to support his opinions.
8. Even Mr. Gavruluk’s ad hominem attacks on inMusic are misguided and demonstrate his ignorance of economic concepts and inMusic’s business. Citing Warren Buffet, Mr. Gavruluk notes that inMusic’s business model is “[s]adly...taking the last puff of smoke off a cigar.” This does not mean what Mr. Gavruluk thinks it means. Mr. Buffet’s approach was to buy a failing company’s stock at a low price as a short-term investment, thinking it may have one

⁶ See Statement of Issues at [84].

⁷ Mr. Gavruluk’s analysis does not even hold up with respect to the music production software market that he has experience in. At the very least, he grossly oversimplifies the situation. He notes that Avid’s Pro Tools (one of the earliest DAW products) went through a series of price reductions from 1999 to 2009 and seems to imply that this was due to acquisition of his company and commodification. This is a very narrow view that ignores many other factors. In the 1990s, the music production software market was relegated largely to professional studios, and Pro Tools was the industry standard. Other early entrants included Cubase and Logic Pro. Of course, the internet became mainstream in the 1990s, and file-sharing service Napster was launched in 1999. Home users could suddenly produce their own music and share it. FL Studio was launched in 1997, and Ableton Live was launched in 2001. Apple acquired Logic Pro in 2002. Yamaha acquired Cubase in 2005. As inMusic has previously noted, the music production software market is a multi-billion dollar industry. It was not the commodification of music production software that lowered prices, it was more likely the proliferation of well-capitalized competitors entering the market, combined with soaring demand for home-studio software. Seeing opportunity in a burgeoning market, major corporations entered. Price reductions were the sign of healthy competition. Indeed, it is notable that there has not been exits from, or consolidation in, the music production software market, and the market continues to attract new entrants (like Serato). The DJ software market, on the other hand, has attracted few new entrants, and any music production software producers that have attempted DJ software quickly exited (i.e., Image-Line and Avid), which is unsurprising given ATC’s and Serato’s dominance in a mature market.

⁸ <https://support.serato.com/hc/en-us/articles/209377487-MIDI-mapping-with-Serato-DJ-Pro>.

last surge before going out of business, and then he sold it at a profit.⁹ While inMusic often buys companies that are bankrupt or close to it, none of those are short-term investments that inMusic is looking to milk value out of for nothing. To the contrary, inMusic has saved many iconic brands from disappearing and has not offloaded a single one of them. One would think a purported media historian such as Mr. Gavriluk would appreciate that inMusic has resuscitated many failing brands and given them new life. Moreover, inMusic employs hundreds of personnel around the world to develop its software. In New Zealand alone, inMusic has invested over NZD \$50 million over the last five years to support its software development. It is unclear why Mr. Gavriluk believes the absence of current job openings means inMusic does not employ software engineers at all, but he is also wrong that there are no current openings in inMusic’s software development department.¹⁰

9. Ultimately, Mr. Gavriluk’s submission fails to engage with the facts and law concerning the proposed acquisition in favor of esoteric, disconnected and unreliable anecdotes that may inform his own opinion but do not support clearance. Mr. Gavriluk clearly believes that technology is paramount and innovation will continue on, even with consolidation in the industry, but unfortunately, he misunderstands (or overlooks) how markets work. ATC holds over 70% of the DJ hardware market and a combined ATC and Serato would hold over 60% of the DJ software market. By comparison, the open source Mixxx DJ software that Mr. Gavriluk touts as supporting “dozens” of DJ hardware brands has a market share of 0.45% according to Digital DJ Tips 2023 Global Census. Having an available alternative, even if the technology is superior, and getting customers to use it are two different things. Mr. Gavriluk ignores this distinction.
10. To the extent ATC, Serato and/or others submit additional evidence and argument, inMusic welcomes the opportunity to address it on further cross-submission.

⁹ <https://smartasset.com/investing/cigar-butt-investing-warren-buffett-strategy>.

¹⁰ <https://apply.workable.com/inmusic-1/>.