

9 April 2024

**By Email:**

**Attention: Gavin McNeill and Sarah Gifford**

Commerce Commission | Te Komihana Tauhokohoko  
44 The Terrace  
PO Box 2351  
WELLINGTON 6140

**AlphaTheta Corporation / Serato - Confidential submission on Confidential SOI**

- 1.1 We refer to the confidential version of the Statement of Issues published on 7 February 2024 (**Confidential SOI**) and third party interview notes or responses to requests for information from third parties (**Third Party Information**) provided by the Commerce Commission (**Commission**).
- 1.2 In the Appendix to this letter, we comment on certain of the confidential matters raised in the Confidential SOI and Third Party Information relating to AlphaTheta Corporation's (**ATC**) proposed acquisition of Serato (**Proposed Transaction**). The Appendix is supplementary to and should be read together with the submission by ATC in response to the Statement of Issues, dated 8 April 2024.
- 1.3 The Appendix contains information in respect of which third parties have claimed confidentiality, for which we have provided undertakings not to share the information with ATC. It also contains confidential information belonging to ATC and Serato. Accordingly, we request that it be kept confidential by the Commission.
- 1.4 Capitalised terms in the Appendix have the same meaning as the ATC Submission or the SOI, unless otherwise defined.

Yours faithfully

**MinterEllisonRuddWatts**

Jennifer Hambleton  
Partner

T +64 9 353 9794  
jennifer.hambleton@minterellison.co.nz  
Reference: 9900201026

Dr Ross Patterson  
Consultant

T +64 9 353 9864  
ross.patterson@minterellison.co.nz

## Appendix 1 – Comments on Confidential SOI

	SOI reference	ATC submission reference	Comment
<b>Market definition</b>			
1.	SOI at [26], fn 7		<p>In the SOI the Commission states that “<i>there is some evidence to suggest certain apps may be providing innovation contributions to the wider industry</i>”. The Commission references in support statements made by [ ].</p> <p>The evidence shows that [ ].</p> <p>According to [ ]:</p> <ul style="list-style-type: none"> <li>• [ ]<sup>1</sup>;</li> <li>• [ ].<sup>2</sup></li> <li>• [ ].<sup>3</sup></li> <li>• [ ]<sup>4</sup></li> <li>• [ ]<sup>5</sup></li> </ul>
2.	SOI at [27]	ATC Submission at [4.17]	<p>The SOI states that “<i>on the demand side, market feedback indicates that apps are targeted at a different type of customer than laptop applications</i>”. This conclusion does not correctly represent the evidence before the Commission.</p> <p>The market feedback indicates that [ ].<sup>6</sup>. [ ].</p> <p>[ ]<sup>7</sup></p>

<sup>1</sup> Commerce Commission interview with [ ]

<sup>2</sup> Commerce Commission interview with [ ]

<sup>3</sup> Commerce Commission interview with [ ]

<sup>4</sup> Commerce Commission interview with [ ]

<sup>5</sup> Commerce Commission interview with [ ]

<sup>6</sup> Commerce Commission interview with [ ]

<sup>7</sup> Commerce Commission interview with [ ]

	SOI reference	ATC submission reference	Comment
			[ ]. <sup>8</sup>
<b>Closeness of competition between ATC and Serato</b>			
3.	SOI at [57] - [58]	ATC Submission at [6.7]	[ ]. <sup>9</sup> [ ]
4.	SOI at [59], Table 2		<p>The Commission has estimated that, based on revenue, the merged entity would have a market share of up to [ ] globally and up to [ ] of the New Zealand market.<sup>10</sup></p> <p>The Commission's data is incomplete and therefore the Commission significantly overstates the parties' shares of the DJ software market by revenue. There are many other DJ software providers who earn revenue from their DJ software, including Cross DJ, PCDJ Dex3, Future.dj Pro, Ultramixer6 and YouDJ<sup>11</sup>, and it appears that no attempt has been made to obtain revenue data from these parties. Further, the Commission has not sought revenue data from DJ Apps, such as Edjing, DJ it! and DiscDJ3D. Some of these other DJ software products (particularly Cross DJ and Edjing) have a significant number of users globally and are substitutable for Serato and rekordbox for the reasons explained in the ATC Submission. Instead, the Commission dismisses the presence of all these other market participants completely.</p> <p>In any event, [ ]. We are unable to test the veracity of the Commission's calculations of market share by revenue, because we have not been provided with the underlying source data used to calculate the figures in Table 2. Further, [ ]<sup>12</sup>, [ ]<sup>13</sup>.</p>
5.	SOI at [62]-[65]	ATC Submission at [6.7]	<p>At [62] the Commission states that "<i>the evidence from market participants suggests Serato is the market leader and that rekordbox is a close competitor</i>".</p> <p>[ ]:</p>

<sup>8</sup> Commerce Commission interview with [ ].

<sup>9</sup> [ ].

<sup>10</sup> See [59] and Table 2 of the SOI.

<sup>11</sup> See Annexure 9 of the Application.

<sup>12</sup> Commerce Commission interview with [ ]

<sup>13</sup> [ ]

	SOI reference	ATC submission reference	Comment
			<p>(a) [ ]<sup>14</sup></p> <p>(b) [ ]<sup>15</sup>. [ ]<sup>16</sup>. [ ]<sup>17</sup></p> <p>(c) [ ]<sup>18</sup> [ ]<sup>19</sup></p> <p>(d) [ ]<sup>20</sup>, [ ]<sup>21</sup>.</p>
<b>Constraint from existing rivals</b>			
6.	SOI at [71]		<p>The SOI states that “<i>it is unclear that these providers [ ] have the level of hardware integration or reputation to replace the lost competition</i>”.</p> <p>[ ]</p> <p>[ ]<sup>21</sup> [ ]<sup>22</sup>.</p> <p>[ ]<sup>23</sup>.</p> <p>[ ]:</p> <ul style="list-style-type: none"> <li>• [ ]<sup>24</sup></li> </ul>

<sup>14</sup> See [ ]

<sup>15</sup> Commerce Commission interview with [ ].

<sup>16</sup> Commerce Commission interview with [ ].

<sup>17</sup> Commerce Commission interview with [ ]

<sup>18</sup> Commerce Commission interview with [ ]

<sup>19</sup> Commerce Commission interview with [ ]

<sup>20</sup> Commerce Commission interview with [ ]

<sup>21</sup> Commerce Commission interview with [ ]

<sup>22</sup> Commerce Commission interview with [ ]

	SOI reference	ATC submission reference	Comment
			<ul style="list-style-type: none"> <li>• [ ]<sup>23</sup></li> <li>• [ ]<sup>24</sup></li> <li>• [ ].<sup>25</sup></li> </ul> <p>[ ]<sup>26</sup></p> <p>[ ].<sup>27</sup></p> <p>i[ ]<sup>28</sup> [ ].</p> <p>[ ].<sup>29</sup></p> <p>[ ]<sup>30</sup>. [ ].<sup>31</sup></p> <p>[ ]</p>
7.	SOI at [80]	See ATC Submission at [5.9].	The SOI states that <i>“Market participants told us that it would be possible to use music production software to DJ, but no one does it, or purchases music software to DJ and that music production software would never</i>

<sup>23</sup> Commerce Commission interview with [ ]

<sup>24</sup> Commerce Commission interview with [ ]

<sup>25</sup> Commerce Commission interview with [ ]

<sup>26</sup> Commerce Commission interview with [ ]

<sup>27</sup> Commerce Commission interview with [ ]

<sup>28</sup> Commerce Commission interview with [ ].

<sup>29</sup> Commerce Commission interview with [ ]

<sup>30</sup> [ ]

<sup>31</sup> [ ]

	SOI reference	ATC submission reference	Comment
			<p><i>compete with DJ software as it has a different usage.</i>” While the Commission cites an interview with [ ] in support of this statement, [ ]<sup>32</sup></p> <p>As the Commission acknowledges in paragraph [80] of the SOI, music production software will act as a constraint “<i>if the software includes the functionality needed to DJ</i>” and “<i>the user is already familiar with music production software.</i>” The ATC Submission notes that the DJ Census shows that more experienced DJs are very familiar with Ableton (see paragraph [5.9(c) of the ATC Submission). Further, as previously explained and [ ], Ableton has the functionality needed to DJ.</p>
<b>Vertical effects – DJ hardware – Ability to foreclose</b>			
8.		ATC Submission at [7.51]	Consistent with ATC’s submission that Serato is not a must have, [ ] <sup>33</sup>
9.		ATC Submission at [7.61]	Consistent with ATC’s submission that MIDI-mapping is not a complex or difficult process, [ ] <sup>34</sup>
10.		ATC Submission at [8.1(e)]	<p>The evidence before the Commission is consistent with ATC’s submission that [ ]:</p> <ul style="list-style-type: none"> <li>• [ ].<sup>35</sup></li> <li>• [ ].<sup>36</sup></li> </ul>

<sup>32</sup> Commerce Commission interview with [ ]

<sup>33</sup> Commerce Commission interview with [ ]

<sup>34</sup> Commerce Commission interview with [ ]

<sup>35</sup> Commerce Commission interview with [ ]

<sup>36</sup> Commerce Commission interview with [ ]