

inMusic’s Cross-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 Submission of Serato Audio Research Limited (Serato) in response to the Statement of Unresolved Issues (SoUI) published 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.
2. The Commission is not blocking Serato’s founders from exiting the business. No part of the SoUI states or implies that the mere act of entering into an agreement to sell all shares of Serato is unlawful. The Application, and the Commission’s investigation thereof, has always been driven by the identity of the buyer. inMusic need not repeat the entirety of its many arguments against the merger, but in short, as anyone outside ATC’s and Serato’s boardrooms can see and acknowledge, ATC would not be paying over \$100 million NZD plus substantial earnouts only to continue to operate Serato as an independent entity that competes directly with ATC for the sale of DJ software. Far from a “conspiracy theory,” it would make good business sense for the Merged Entity to enact any number of the several anti-competitive strategies it would have at its disposal post-closing. Serato scoffs that such conduct would be legally, practically and/or commercially unlikely for various reasons, but as the Commission has essentially recognized, Serato is either being hopelessly naïve or willfully obtuse.
3. The fact is that the Commission’s decision on the Application should not be a particularly close call in any respect. If the Proposed Acquisition were allowed to proceed, ATC would control the majority of both the DJ hardware and DJ software markets. The Commission rightly identified numerous areas of concern where the Proposed Acquisition would substantially lessen competition. The Commission’s SoUI is well-reasoned and wholly supported by the evidence. Meanwhile, the parties have provided little credible evidence, speculated endlessly and told inconsistent stories throughout this process—all in a desperate attempt to conceal the anti-competitive truth of the Proposed Acquisition.
4. Despite this, Serato lashes out in its Submission, complaining that the Commission misapplied the law, overlooked evidence and never even should have looked at the Proposed Acquisition because, apparently, it is fine for the parties to break the law as long as it does not impact too many people in New Zealand. Serato ignores that the Commission is not alone in finding that the Proposed Acquisition is likely to substantially lessen competition. The UK Competition and Markets Authority is currently in Phase 2 of its investigation. After Phase 1, it issued express findings nearly identical to the Commission’s SoUI based on an independent investigation.¹ Notably, the parties were offered the opportunity to avoid a Phase 2 investigation by offering undertakings but expressly declined to do so.²
5. Serato’s Submission in Response to the SoUI avoids all the above (or any reasoned debate on the merits). Serato eschews adding anything new to the legal or factual record, instead

¹ See <https://www.gov.uk/cma-cases/alphatheta-slash-serato-merger-inquiry>.

² See https://assets.publishing.service.gov.uk/media/664470cabd01f5ed32793b3e/Decision_to_refer.pdf.

cherry-picking random contentions in their favor while ignoring the substantial record against them. Worse, Serato attacks the Commission by implying that the Commission is somehow preventing Serato's founders from selling their business at all and not acting in the best interests of New Zealand consumers. Serato's Submission also appears timed to a public relations campaign where its founders AJ Bertenshaw and Steven West have sat for an exclusive interview with New Zealand's National Business Review. In it, they describe the "chilling effect" of the Commission's "likely blocking" of the Proposed Acquisition. In sharing a link to the interview on his LinkedIn profile, Mr. West stated, "The NZ government claims to celebrate business success. As long as you're not too successful, that is."

6. For Serato to play the victim of government overreach is stunningly disingenuous. Should the Commission ultimately decline to clear the merger (as it should), Serato's founders have no one to blame but themselves. It was quite obvious to neutral observers even before the Application was filed that the merger was anti-competitive: "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."³
7. Despite what they will have you believe in their Submission and accompanying media blitz (in which they concede that their Submission was not intended to change the outcome but rather to complain about the perceived unfairness to them), no one should feel sorry for Serato's founders. They hired a top-tier, internationally renowned investment advisory firm months prior to entering into the SPA with ATC for the express purpose of marketing Serato for sale. While inMusic does not claim to be privy to all negotiations, it is aware that ATC did not make the only offer, and that interest in Serato from other potential purchasers remains. Should Serato's founders still wish to exit the business, there is no doubt they will enrich themselves handsomely and may reinvest the funds from any sale of the business in whatever New Zealand ventures they so desire.
8. While understandable that Serato is frustrated, it is not the Commission's fault that Serato wasted a year pursuing a merger that should not be cleared because it is likely to substantially lessen competition. Serato's attacks on the Commission are entirely unwarranted and should be directed inward because the parties are the only ones responsible for their predicament.

³ <https://www.digitaldjtips.com/inmusic-fights-to-block-pioneers-serato-buyout/>.