

To: Anneke Turton, Manager Applications

ASSESSMENT REPORT: AlphaTheta Corporation

Date	7 September 2023	Classification	IN CONFIDENCE: Commercially sensitive
LINZ reference	202300399	Deadline	11 October 2023

Purpose

We seek your decision on an application for consent to acquire significant business assets under the Overseas Investment Act 2005 (**Act**).

Action sought

1. Review this report
2. Determine whether to grant consent and, if so, on what conditions.
3. Indicate your decision from page 3.

Key information

4. For the reasons set out in this report, our recommendation is to **grant consent**.

Applicant	AlphaTheta Corporation Japan (80.56%), USA (8.19%), UK (6.38%) and Various (4.87%)
Vendors	<p>Alan James Wilderland New Zealand (100%)</p> <p>Gregory Noel Rathbun, Nicole June Hoek and Stephen Marcus Jason West s.9(2)(a) New Zealand (100%)</p> <p>Bruce Raymond Sheppard, Nicole June Hoek, Stephen Marcus Jason West s.9(2)(a) New Zealand (100%)</p> <p>Dianna Joan West, Rebecca Thomas and Damon James Birchfield s.9(2)(a) New Zealand (100%)</p> <p>Jeanne Merle Bertenshaw and Vulcan Trustee Co (2020) Limited s.9(2)(a) New Zealand (100%)</p> <p>Serato Employee Trustee Limited¹ New Zealand (98.6%), Australia (1.4%)</p>

¹ s.9(2)(b)(ii)

Asset	Acquisition of 100% of the shares in Serato Audio Research Limited
Consideration	\$104,000,000
Relevant tests	Investor test: s18A National interest test: s18(b)

Timing

5. The Overseas Investment Regulations 2005 specify the total assessment timeframe for this application is 35 working days. A 30 working day extension has been applied due to a third party submission and resulting consultation. This application is currently on day 38, therefore a decision is due to the applicant by 11 October 2023.

A. Decision

Core tests

6. I determine that:

- 6.1 The '**relevant overseas person**' is (collectively):

Relevant overseas person	Role
AlphaTheta Corporation	Applicant
Noritsu Koki Co., Ltd.	Parent of the Applicant
Kayo Nishimoto	Significant shareholder of the Applicant

- 6.2 The '**individuals with control of the relevant overseas person**' are:

Individuals with control	Role
Masakazu Suzuki	Directors of AlphaTheta Corporation
Yoshinori Kataoka	
Ryosuke Yokobari	Directors of AlphaTheta Corporation and Noritsu Koki Co., Ltd.
Ryukichi Iwakiri	
Akari Otsuka	Directors of Noritsu Koki Co., Ltd.
Tsuyoshi Takada	
Motoaki Ibane	
Ota Akihisa	

- 6.3 None of the relevant overseas persons and individuals with control of the relevant overseas person have established any of the factors contained in section 18A(4) of the Act.

National interest assessment

7. I note that the overseas investment in significant business assets is not a transaction of national interest under section 20A of the Act and the Minister of Finance has not notified it is a transaction of national interest under section 20B of the Act.
8. I note that the Minister of Finance has not declined consent to this transaction on the basis that the transaction is contrary to New Zealand's national interest.

Decision about whether to grant or decline consent

9. My ultimate decision is to grant consent subject to the conditions in the Proposed Decision in **Attachment 1**.

s.9(2)(a)

Anneke Turton

Manager (Overseas Investment -LINZ)

Date: 7 / 9 / 2023

Released under the Official Information Act 1982

B. Background and proposed transaction

10. AlphaTheta Corporation² (the **Applicant**) is seeking consent to acquire 100% of the shares in Serato Audio Research Limited³ (**Serato**).

Serato

11. Serato produces DJ and music production software, as well as various audio accessories. The company is Auckland based with studios in the USA and UK. The majority of its approximately 180 employees are based in New Zealand.
12. Serato has a reputation of providing high end products suited to digital audio performance and production. The Applicant produces both DJ hardware and software, and historically specialised in the physical audio market, but has transitioned into the digital market. The Applicant and Serato are the two largest producers of DJ software globally.
13. The acquisition of Serato includes its subsidiaries;
- Serato Limited⁴,
 - Serato Employee Trustee Limited⁵, (**Serato Trustee**),
 - Serato International Holdings (NZ) Limited⁶,
 - Serato Management Limited⁷,
 - Serato Inc Limited Partnership⁸,
 - Serato USA LLC⁹.
14. The structure of Serato and its subsidiaries is outlined in the Current & Intended Ownership Structure in **Attachment 2**.

Transaction details

15. As of 11 July 2023, Serato has 2,181,383 privately issued shares, [REDACTED]

16. [REDACTED]

s.9(2)(b)(ii)

17. An SPA was entered into by the Applicant and the Vendors on 11 July 2023 for the transfer of all shares in Serato.
18. Seratos' ordinary shares are held by six direct shareholders:
- Alan James Wilderland (36.09%),
 - Gregory Noel Rathbun, Nicole June Hoek and Stephen Marcus Jason West [REDACTED] s.9(2)(a) [REDACTED] (21.39%),

² Incorporated in March 2020, Japan company number 0104-01-151827.

³ New Zealand company number 894999

⁴ New Zealand company number 6220881

⁵ New Zealand company number 6616813

⁶ New Zealand company number 5837809

⁷ New Zealand company number 2184449

⁸ New Zealand company number 2226545

⁹ Delaware company number 5867560

- Bruce Raymond Sheppard, Nicole June Hoek, Stephen Marcus Jason West **s.9(2)(a)** (17.87%),
- Dianna Joan West, Rebecca Thomas and Damon James Birchfield **s.9(2)(a)** **s.9(2)(a)** (17.87%),
- Jeanne Merle Bertenshaw and Vulcan Trustee Co (2020) Limited **s.9(2)(a)** **s.9(2)(a)** (5.38%),
(Collectively the **Vendors**); and
- Serato Trustee (1.40%)

19. The ownership of Serato is outlined in the Current Ownership Structure in **Attachment 2**

Serato Trustee

20. Serato Trustee holds 14,250 ordinary shares **s.9(2)(a)**

21.

22.

23.

s.9(2)(b)(ii)

C. Application of the Act

24. The Asset is sensitive because the consideration being paid for the securities is more than \$100 million,¹¹ so consent is required.¹² The following criteria for an investment in significant business assets apply to this application:¹³

- The investor test must be met.¹⁴
- You must also note whether the investment is a transaction of national interest and, if so, whether the Minister of Finance has decided that the investment is contrary to New Zealand's national interest.¹⁵

25. We assess the investor test in Part E, and discuss national interest matters in Part F.

D. Applicant and investor test

26. This section describes the Applicant and assesses whether the investor test is met.

¹⁰ A trustee who only holds the trust property on behalf of the beneficiaries, with no active duties to perform

¹¹ Section 13(1)(a)(ii) of the Act.

¹² Under sections 10(1)(b) and 13(1)(a) of the Act.

¹³ Set out in section 18 of the Act.

¹⁴ Section 18A(4) of the Act.

¹⁵ Section 18(1)(e) of the Act.

Business Activities

27. The Applicant was initially a division of Pioneer Corporation created in 1994. The division produced high end commercial audio equipment, including the first flat-top DJ CD player.
28. The Applicant specialised in DJ, audio, and music production equipment and software. In 2020 the Applicant was acquired by Noritsu Co Limited¹⁶ (**Noritsu**).

Ownership

29. The Applicant is 99.9% owned by Noritsu, a holding company listed on the Tokyo Stock exchange. Noritsu has several subsidiaries that operate in the development and sale of audio equipment, cosmetic equipment and stationery.
30. Kayo Nishimoto¹⁷ has a 48.59% interest in the Applicant through her 0.1% ownership in the Applicant, and her shareholding in Noritsu both directly and indirectly through wholly owned holding companies.
31. The second largest shareholder in Noritsu is the Master Bank Trust of Japan Limited, with 6.79% of the shares. The remaining shares are owned by various shareholders, none of which have an ownership interest over 5%.
32. We consider Kayo Nishimoto a relevant overseas person, as a 48.59% ultimate beneficial owner of the Applicant. The Applicant submitted that no approvals regarding the transaction are required from Kayo Nishimoto. However, we consider that the individuals' significant interest may represent an influence over the Applicant.
33. A diagram of the intended ownership structure is in **Attachment 2**.
34. For these reasons, we recommend that the **'relevant overseas person' (ROP)** is collectively:

Relevant overseas person	Role
AlphaTheta Corporation	Applicant
Noritsu Koki Co., Ltd.	Parent of the Applicant
Kayo Nishimoto	Significant shareholder of the Applicant

Control

35. The Applicant and Noritsu have ultimate control over the approval and possible divestment of the transaction. The day to day business of Noritsu is conducted by its directors, who are elected by the shareholders by majority vote.
36. The board of directors of the Applicant are appointed by Noritsu. The board of Noritsu are appointed by shareholders' meeting by majority vote. Kayo Nishimoto does not hold a majority of the shares in Noritsu, so cannot veto appointments.
37. Therefore, we recommend that the **'individuals with control of the relevant overseas person' (IWC)**¹⁸ are:

Individuals with control	Role
Masakazu Suzuki	Directors of AlphaTheta Corporation
Yoshinori Kataoka	

¹⁶ Incorporated in November 1981, Japan company number 1700-01-002607.

¹⁷ Kayo Nishimoto is the daughter of Kanichi Nishimoto, the founder of Noritsu.

¹⁸ Section 15.

Ryosuke Yokobari	Directors of AlphaTheta Corporation and Noritsu Koki Co., Ltd.
Ryukichi Iwakiri	
Akari Otsuka	Directors of Noritsu Koki Co., Ltd.
Tsuyoshi Takada	
Motoaki Ibano	
Ota Akihisa	

Summary of investor test

38. The relevant overseas persons and individuals with control established none of the factors contained in section 18A(4) of the Act.
39. For the reasons set out above our conclusion is that **the investor test has been met.**

E. Not a transaction of national interest

40. The investment does not involve a transaction of national interest under the mandatory criteria of the Act.¹⁹ This is because the investment does not involve a non-NZ government investor, or an investment in a strategically important business (as defined in the Act).
41. We have not referred this transaction to the Minister of Finance for him to call it in for a national interest assessment on a discretionary basis.²⁰ He has therefore not declined consent to the transaction.
42. We are directed²¹ that the starting point is the assumption that overseas investment is in New Zealand's national interest and that we should only seek the Minister of Finance to exercise his discretion for a national interest assessment if the proposed investment:
- could pose risks to New Zealand's national security or public order
 - would grant an investor significant market power within an industry or result in vertical integration of a supply chain
 - has foreign government or associated involvement that was below the 10 per cent threshold for automatic application of the national interest test, but granted that government (and/or its associates) disproportionate levels of access to or control of sensitive New Zealand assets
 - would have outcomes that were significantly inconsistent with or would hinder the delivery of other Government objectives
 - raises significant Treaty of Waitangi issues, or
 - relates to a site of national significance (e.g. significant historic heritage).
43. We do not consider that this investment engages any of these risk factors.

Submission

44. s.9(2)(b)(ii) s.9(2)(ba)(i)

¹⁹ Under s 20A of the Act.

²⁰ Section 20B of the Act

²¹ Ministerial Directive Letter (24 November 2021).

²² [Letter to OIO.pdf \(A5497326\)](#)

45.

46.

47.

s.9(2)(b)(ii) s.9(2)(ba)(i)

NZCC

48. Based on the available information, we consider the transaction poses a possible market competition risk. The NZCC is the appropriate regulator to assess market competition risk.
49. We consulted with the NZCC, who confirmed that they have requested the Applicant file a clearance application due to market competition concerns. The clearance regime is voluntary, as the NZCC does not have the power to require that parties file a clearance application pre transaction.
50. We recommend that any consent granted is conditional on the Applicant first obtaining NZCC's approval. This can be through a clearance application, or through written confirmation. This will ensure that any potential market competition risks are considered by the NZCC prior to settlement.
51. This has been added in the form of Special Condition 1, as shown in **Attachment 1**. We also recommend that the deadline date for acquisition be 31 August 2025, to accommodate the NZCCs clearance process and any resulting action.

Conclusion

52. We are satisfied that Special Condition 1 will mitigate any potential National Interest risks arising from any market competition issues.

F. Conclusion

53. After considering the application, our view is that:
- the investor test has been met; and
 - the transaction is not considered to be a transaction of national interest.
54. If you agree, we refer you to **Attachment 1** to review the Proposed Decision (including consent conditions), and from page 3 of this Assessment Report to record your decision.

s.9(2)(a)

Nickolas Leaming

Advisor

Overseas Investment-LINZ

Date: 5/09/2023

G. List of Attachments

1. Proposed Decision
2. Current & Intended ownership structure

Released under the Official Information Act 1982

ATTACHMENT 1 PROPOSED DECISION

Consent for Overseas Person to Acquire Significant New Zealand Business Assets

Read this consent carefully - you must comply with all the conditions. If you do not, you may be subject to fines or other penalties.

Consent

Decision date: 7 September 2023

The following people have been given the following **consent**:

Case	202300399
Consent	The Consent Holder may acquire the Assets subject to the Conditions set out below.
Consent holder	AlphaTheta Corporation (Japan Company Number 0104-01-151827) We will also refer to each Consent holder and the Consent holders together as you .
Assets	100% of the shares in Serato Audio Research Limited (New Zealand Company Number 894999)
Timeframe	You have until 31 August 2025 to acquire the Assets.

Conditions

Your Consent is subject to the Special Conditions, Standard conditions and Reporting conditions (Conditions) set out below. You must comply with them all. Be aware that if you do not comply with the conditions you may be subject to fines or other penalties. In the Consent and the Conditions, we refer to Toitū Te Whenua Land Information New Zealand as **LINZ, us or we**.

Act means the Overseas Investment Act 2005.

Special conditions

You must comply with the following **special conditions**. These apply specifically to this Consent and include conditions that we must impose under the Act:

Details	Required date
Special condition 1: Do not acquire the Assets without New Zealand Commerce Commission clearance or confirmation	

Details	Required date
<p>You must not acquire the Assets until you receive either:</p> <ol style="list-style-type: none"> 1. written clearance or authorisation for the acquisition of the Assets from the New Zealand Commerce Commission under section 66 or section 67 of the Commerce Act 1986, or 2. written confirmation from the New Zealand Commerce Commission that it does not intend to consider the acquisition of the Assets further. 	At all times

Standard conditions

You must comply with the **standard conditions** set out below. These apply to all overseas people who are given consent to acquire sensitive New Zealand Assets, including you:

Details	Required date
Standard condition 1: Acquire the Assets	
<p>You must acquire the Assets:</p> <ol style="list-style-type: none"> 1. by the date stated in the Consent. If you do not, your Consent will lapse and you must not acquire the Assets, and 2. Using the acquisition, ownership, and control structure you described in your application. Note, only you - the named Consent holder - may acquire the Assets, not your subsidiary, trust, or other entity. 	As stated in the Consent
Standard condition 2: Tell us when you acquire the Assets	
<p>You must tell us in writing when you have acquired the Assets. Include details of:</p> <ol style="list-style-type: none"> 1. the date you acquired the Assets (settlement), 2. consideration paid (plus GST if any), 3. the structure by which the acquisition was made and who acquired the Assets, and 4. copies of any transfer documents and settlement statements. 	As soon as you can, and no later than two months after settlement
Standard condition 3: Remain not unsuitable to Invest in New Zealand	
<p>You, and to the extent that you are not an individual, the Individuals Who Control You must remain not unsuitable to own or control the Assets in accordance with section 18A(1) of the Act. The Individuals Who Control You are individuals who:</p> <ol style="list-style-type: none"> a. are members of your governing body 	At all times

Details	Required date
<p>b. directly or indirectly, own or control more than 25% of you or of a person who itself owns or controls more than 25% of you, and</p> <p>c. are members of the governing body of the people referred to in paragraph (b) above.</p> <p>To avoid doubt, this includes the members of your governing body.</p>	
<p>Standard condition 4: Tell us about changes that affect you, the people who control you, or people you control</p>	
<p>You must tell us in writing if any of the following events happens to any of the Consent holders:</p> <ol style="list-style-type: none"> 1. You become aware that you and/or any Individual Who Controls you establishes any of the investor test factors listed in section 18A(4) of the Act. 2. You cease to be an overseas person or dispose of all or any part of the Asset. 3. Your New Zealand Service Address changes. This is the address you provided us in your application as the address which we will send any legal document we need to serve on you. 	<p>Within 20 working days after the change</p>

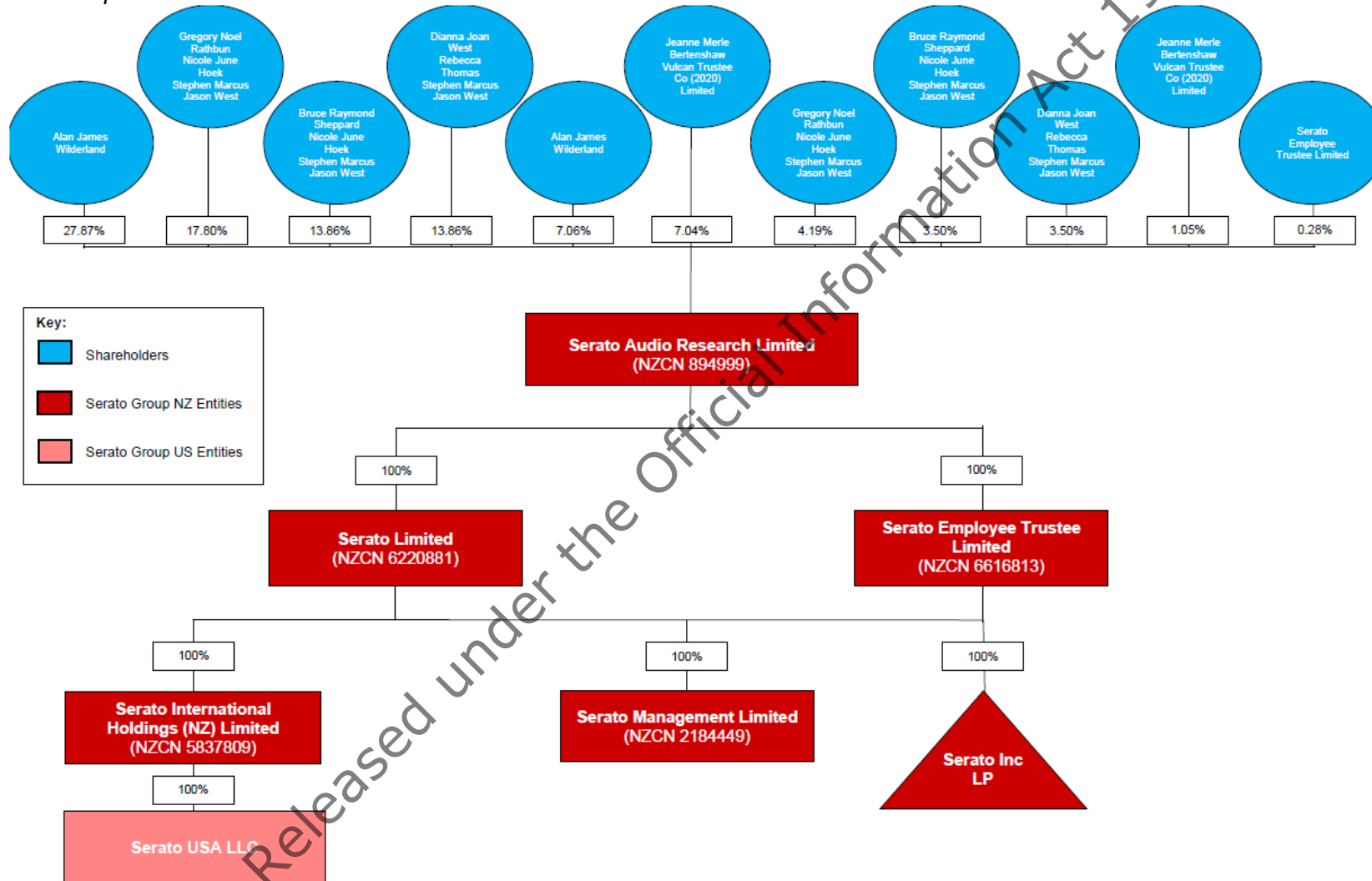
Reporting conditions

If requested in writing by the OIO, the Consent Holder(s) must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:

- a. the representations and plans made or submitted in support of the application and notified by the regulator as having been taken into account when the Consent was granted, or
- b. the conditions of this Consent.

ATTACHMENT 2 – CURRENT & INTENDED OWNERSHIP STRUCTURE

Current ownership structure of Serato:



s.9(2)(b)(ii)