

**THE TRIAL CHAMBER**

**Case No.:** STL-11-01/T/TC

**Before:** Judge David Re, Presiding  
Judge Janet Nosworthy  
Judge Micheline Braidy  
Judge Walid Akoum, Alternate Judge  
Judge Nicola Lettieri, Alternate Judge

**Registrar:** Mr Daryl Mundis, Registrar

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**THE PROSECUTOR**

v.

**SALIM JAMIL AYYASH  
MUSTAFA AMINE BADREDDINE  
HASSAN HABIB MERHI  
HUSSEIN HASSAN ONEISSI  
ASSAD HASSAN SABRA**

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**DECISION ON THREE PROSECUTION MOTIONS FOR THE ADMISSION  
INTO EVIDENCE OF MOBILE TELEPHONE DOCUMENTS**

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## INTRODUCTION

1. The Prosecution filed three motions under Rule 154 of the Special Tribunal's Rules of Procedure and Evidence seeking the admission into evidence, 'from the bar table', of seven sets of documents relevant to the acquisition of mobile telephones and handsets,<sup>1</sup> 39 mobile telephone contracts,<sup>2</sup> and 99 mobile telephone business records,<sup>3</sup> relevant to the conspiracy charged in the consolidated indictment. The Prosecution also seeks to amend its list of exhibits filed under Rule 91.<sup>4</sup> Counsel for the Accused, Mr Salim Jamil Ayyash, Mr Mustafa Amine Badreddine, Mr Hassan Habib Merhi, and Mr Hussein Hassan Oneissi responded to the motions.<sup>5</sup>

## SUBMISSIONS

2. One of the key strands in the Prosecution's case against the five Accused concerns the use of mobile telephones. In the consolidated indictment, the Prosecutor alleges that five interconnected mobile telephone groups were involved in the assassination of the former Lebanese Prime Minister, Mr Rafik Hariri, in Beirut on 14 February 2005.<sup>6</sup> Four of these five telephone groups allegedly operated as networks, meaning that they had a high frequency of contact with other telephones within the same group.<sup>7</sup> For ease of reference, the Prosecution refers to each of the mobile telephone groups by a different colour—as the 'red', 'blue', 'yellow', 'green' networks and the 'purple' telephones—and alleges that the Accused and others used the telephones in their preparations for the

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<sup>1</sup> STL-11-01/T/TC, F1774, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, Prosecution Rule 154 Motion for the Admission of Documents relevant to the Acquisition of "Network" Mobile Phones and Handsets, 2 December 2014 (first Prosecution motion).

<sup>2</sup> F1775, Prosecution Rule 154 Motion for the Admission of 39 Mobile Phone Contracts, 2 December 2014 (second Prosecution motion).

<sup>3</sup> F1776, Prosecution Rule 154 Motion for the Admission of 99 Mobile Phone Business Records, 3 December 2014 (third Prosecution motion).

<sup>4</sup> Second Prosecution motion, paras 2 and 7-12.

<sup>5</sup> F1795, Consolidated Response by the Ayyash Defence to Three Prosecution Motions Pursuant to Rule 154 for Admission of Evidence from the Bar Table, 17 December 2014; F1789, Baddredine Defence Consolidated Response to the Prosecution's Rule 155 Motion Dated 1 December 2014 and Three Rule 154 Motions Dated 2-3 December 2014, 12 December 2014; F1796, Consolidated Response from the Merhi Defence to the Motions of 2 and 3 December 2014 for the Admission of Evidence Relating to the Acquisition of Network Phones, 17 December 2014; F1793, Consolidated Response to the "Prosecution Rule 155 Motion for the Admission of Statements in relation to the 'Red' network Telephone Subscriptions in Lieu of Oral Testimony" and to the "Prosecution Rule 154 Motions for the Admission of Documents relevant to the Acquisition of 'Network' Mobile Phones and Handsets, 39 Mobile Phone Contracts and 99 Mobile Phone Business Records" dated 1, 2 and 3 December 2014, 16 December 2014 (Oneissi Defence response).

<sup>6</sup> F1444, Consolidated Indictment, filed on 7 March 2014, paras 14-19.

<sup>7</sup> Consolidated indictment, para. 14.

attack of 14 February 2005.<sup>8</sup> The Prosecution alleges that, to conceal the real reason for their purchase, the mobile telephones were either purchased anonymously, subscribed in another person's name, or acquired using false identification documents.<sup>9</sup> They were then used in the manner alleged in the consolidated indictment to plan and carry out Mr Hariri's assassination.

**A. First Prosecution motion: documents regarding the acquisition of mobile telephones and handsets**

3. In its first motion, the Prosecution seeks the admission into evidence of seven sets of documents to help prove how the mobile telephones and handsets attributable to the Accused were acquired.<sup>10</sup> The Prosecution argues that four of the seven sets of documents will demonstrate that the 'green' mobile telephones<sup>11</sup> and those belonging to the 'blue' and 'yellow' networks of telephones were purchased in a manner that concealed the identity of the actual users.<sup>12</sup> The remaining three sets of documents will help to prove how and when the mobile telephone handsets in the 'red' network entered Lebanon—and the extent of their use inside Lebanon between 4 January 2005 and 14 February 2005—including with SIM cards in that network.<sup>13</sup> At least two Prosecution analysts, Witnesses PRH147 and PRH230, will use these documents to analyse and explain how the telephone networks operated.<sup>14</sup>

**(i) Official communications from the Lebanese Government**

4. The first four sets of documents are letters sent by the Lebanese Ministry of Interior and Municipalities and the Director-General of Lebanon's General Security to the Special Tribunal's Prosecutor, in response to his requests for assistance.<sup>15</sup> The Prosecution explains that these documents will prove whether authentic subscriber information and identification documents were

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<sup>8</sup> Consolidated indictment, para. 15.

<sup>9</sup> First Prosecution motion, para. 18.

<sup>10</sup> First Prosecution motion, paras 2-4.

<sup>11</sup> At footnote 4 of the Second Prosecution motion, the Prosecution explains that the 'green' telephones are a group of 18 telephones. The 'green' network evolved from this group and comprised only three of the 18 telephones.

<sup>12</sup> First Prosecution motion, paras 2, 3 and 18.

<sup>13</sup> First Prosecution motion, para. 4. A SIM card, also known as a subscriber identity module, is a smart card that stores data for mobile telephone subscribers. This includes user identity, location and telephone number, network authorisation data, personal security keys, contact lists and stored text messages.

<sup>14</sup> First Prosecution motion, paras 8 and 42.

<sup>15</sup> First Prosecution motion, paras 19, 24, 33 and 36.

used to purchase the 'green' mobile telephones and mobile telephones in the 'blue' and 'yellow' networks of telephones.<sup>16</sup>

5. The Ministry's first letter responded to the Prosecutor's request to confirm whether genuine identification documents existed in respect of 51 names.<sup>17</sup> The Prosecution argues that this information is relevant to establish the authenticity, or lack thereof, of the identification documents submitted with the mobile telephone contracts for; 18 'green' telephones, six 'blue' network telephones, two 'yellow' network telephones, and other telephones allegedly used by the Accused.<sup>18</sup>

6. The Ministry's letter stated that it did not hold any genuine identification documents for nine of these 51 names. These nine persons were purportedly the subscribers of the 18 'green' telephones.<sup>19</sup> The Ministry also stated that it had no genuine identity card for one of the named subscribers of two 'blue' network telephones.<sup>20</sup> It did, however, hold two genuine records for the named subscriber of a 'yellow' telephone, but these did not match the identification details on the mobile telephone contract for that particular 'yellow' telephone. The Ministry also had a genuine record for the named subscriber of another 'yellow' telephone. That person, however, denied either buying or using that telephone.<sup>21</sup> Finally, the Ministry stated that genuine records existed for people who had been in contact with the Accused, Mr Ayyash, Mr Badreddine, and Mr Merhi, and with the named subscribers of Mr Merhi's and Mr Oneissi's 'purple' telephones.<sup>22</sup>

7. In a second letter, the Ministry certified that the driving licence used to acquire two 'blue' network telephones, was fraudulent.<sup>23</sup> This complemented the Ministry's response regarding the 51 names, stating that it does not hold genuine identification documents for anyone having the name used on the driving licence.<sup>24</sup>

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<sup>16</sup> First Prosecution motion, para. 10.

<sup>17</sup> First Prosecution motion, para. 11.

<sup>18</sup> First Prosecution motion, para. 12.

<sup>19</sup> First Prosecution motion, para. 13.

<sup>20</sup> First Prosecution motion, para. 15.

<sup>21</sup> First Prosecution motion, para. 16; statement of Witness PRH107.

<sup>22</sup> First Prosecution motion, para. 17.

<sup>23</sup> First Prosecution motion, paras 21-22.

<sup>24</sup> First Prosecution motion, para. 22.

8. In its third letter, the Ministry provided information regarding a Lebanese passport, and the entry into and exit from Lebanon of a Saudi Arabian and a Syrian national.<sup>25</sup> The fourth letter to the Prosecutor was from the Director-General of Lebanon's General Security, and also concerned the Saudi Arabian's entry into and exit from Lebanon.<sup>26</sup> The Prosecution submits that, when considered with other—or what it terms 'ancillary'—evidence, this information establishes that the named subscribers of four 'blue' network telephones did not actually use those telephones, but that their identification documents were attached to the relevant mobile telephone contracts without their knowledge.<sup>27</sup>

**(ii) Business records related to the 'red' network mobile telephone handsets**

9. The remaining three sets of documents that the Prosecution seeks to tender into evidence list the IMEI<sup>28</sup> number for eight mobile telephone handsets that were used with SIM cards belonging to the 'red' network of telephones.<sup>29</sup> These telephones were allegedly used in the surveillance of Mr Hariri, or of locations connected to him.<sup>30</sup> The documents in this category are; 'basic warranty checks' for two Nokia handsets,<sup>31</sup> a packing list for handsets shipped from Alcatel in France to Eastern Distributors and Forward Corporation (SAL) in Lebanon,<sup>32</sup> and a packing list for a shipment of handsets shipped from the United Arab Emirates to Itsalat International Company in Lebanon.<sup>33</sup> The Prosecution relies upon these IMEI numbers to show the origin and distribution of the handsets, and where and when they were purchased.<sup>34</sup>

10. In October 2005, the Lebanese authorities obtained the basic warranty checks from an authorised Lebanese distributor of Nokia products. The Lebanese authorities provided these to the United

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<sup>25</sup> First Prosecution motion, paras 26-34.

<sup>26</sup> First Prosecution motion, paras 35-36.

<sup>27</sup> First Prosecution motion, paras 28 and 35; statement of Witness PRH493.

<sup>28</sup> Every mobile telephone handset has a unique International Mobile Equipment Identity (IMEI) number. *See* para. 37 of the first Prosecution motion.

<sup>29</sup> First Prosecution motion, paras 4 and 37.

<sup>30</sup> Consolidated indictment, para. 15 (a).

<sup>31</sup> First Prosecution motion, para. 40. The basic warranty checks contain information downloaded from the Nokia website that is automatically generated by entering an IMEI number. *See* para. 45 of the first Prosecution motion.

<sup>32</sup> First Prosecution motion, para. 46. A packing list is an itemised list of the goods included in a shipment. It typically indicates the quantity, description, weight and packing method of the goods being shipped. The first Prosecution motion refers to this document as a 'delivery note' dated 22 September 2004. This date, however, is the date on which Eastern Distributors and Forward Corporation (SAL) placed its order with Alcatel, rather than the date of the document itself.

<sup>33</sup> First Prosecution motion, para. 54.

<sup>34</sup> First Prosecution motion, paras 4 and 37-39.

Nations International Independent Commission (UNIIC) on 9 April 2008, as part of a larger collection of reports and documents, and again in April 2009 as part of the Lebanese investigative case file.<sup>35</sup> The Prosecution alleges that the basic warranty checks provide a timeframe for the import into Lebanon of two Nokia handsets, both of which were used with more than one ‘red’ network SIM card. These handsets were not used in Lebanon with any SIM card until 4 January 2005, in Tripoli.<sup>36</sup>

11. Representatives of the two companies that received the shipments of handsets provided the two packing lists to the Lebanese authorities, who then provided them to the UNIIC.<sup>37</sup> The representative of Itsalat subsequently provided information—in a witness statement—of the provenance of the Itsalat packing list.<sup>38</sup> The Prosecution explains that the packing lists help trace the distribution and purchase of handsets used with ‘red’ network SIM cards.<sup>39</sup> For instance, the Alcatel packing list will help prove that Alcatel shipped at least two handsets to a company in Tripoli for onward sale, and that one handset was sold in Tripoli on 30 December 2004. The Prosecution explains that this is probative because the ‘red’ network SIM cards were also bought in Tripoli between 24 December 2004 and 4 January 2005.<sup>40</sup>

#### **B. Second Prosecution motion: mobile telephone contracts**

12. In its second motion, the Prosecution requests that 39 documents, which it generically describes as ‘mobile phone contracts’, be admitted into evidence. In 2008, following a request for assistance from the UNIIC Commissioner, the Lebanese authorities provided two of the 39 contracts to the UNIIC.<sup>41</sup> Representatives of Lebanese retailers and telecommunications service providers gave witness statements to the Prosecution verifying the provenance and contents of the remaining 37 contracts. These contracts are annexed to the relevant witness statements.<sup>42</sup>

13. The Prosecution argues that 36 of these contracts are relevant to analysing the ‘red’, ‘green’, ‘blue’ and ‘yellow’ networks of telephones. In addition, two contracts are associated with the

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<sup>35</sup> First Prosecution motion, para 44.

<sup>36</sup> First Prosecution motion, paras 42-43.

<sup>37</sup> First Prosecution motion, paras 47, 52 and 56.

<sup>38</sup> First Prosecution motion, para. 56; statement of Witness PRH560.

<sup>39</sup> First Prosecution motion, paras 46-56.

<sup>40</sup> First Prosecution motion, para. 51.

<sup>41</sup> Second Prosecution motion, paras 54-55.

<sup>42</sup> Second Prosecution motion, paras 26-27, 43, 56, 61, 67-68; statement of Witness PRH064; statement of Witness PRH011; statement of Witness PRH091; and statement of Witness PRH100.

acquisition of telephones in the ‘green’ network, and one contract is for a telephone that was allegedly in contact with six of the ‘green’ telephones.<sup>43</sup> Although they differ in their format, the Prosecution states that all the contracts generally include the same type of information, namely; the name of the telecommunications service provider, the barcode and/or telephone number assigned, the subscriber’s personal information (such as name, address, date of birth and alternate telephone number), the distributor and/or the point of sale, the purchase date of the telephone and/or the date the contract was processed by the telecommunications service provider.<sup>44</sup> The Prosecution relies on these contracts to establish when the network telephones were purchased. It submits that the contracts, when considered with other evidence, will also prove that the named subscribers did not actually use the telephones.<sup>45</sup> And, as specified in the first motion, Prosecution analyst witnesses, here, Witness 147 and Witness PRH435, will use the contracts to analyse and explain the operation of these telephone networks.<sup>46</sup>

**(i) ‘Red’ network telephones**

14. The first set of contracts the Prosecution seeks to tender into evidence are eight documents titled ‘Alfa Active identification’ forms, for the eight SIM cards allegedly used in the ‘red’ network. These contracts originate from the Lebanese telecommunications provider, Alfa Company.<sup>47</sup>

15. The Prosecution explains that, when considered with other evidence, the contracts establish that the ‘red’ network SIM cards were purchased anonymously, with the intention of laying a false trail to Tripoli.<sup>48</sup> These anonymous purchases occurred when Alfa was offering monetary incentives to retailers to encourage customers to provide identification details when purchasing pre-paid telephone lines. According to the Prosecution, some retailers used the identification documents of former customers to benefit from the Alfa rebate scheme; the ‘red’ network telephones were purchased

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<sup>43</sup> Second Prosecution motion, para. 3.

<sup>44</sup> Second Prosecution motion, para. 13.

<sup>45</sup> Second Prosecution motion, para. 4.

<sup>46</sup> Second Prosecution motion, paras 16, 25 and 40.

<sup>47</sup> Second Prosecution motion, para. 19, incorrectly referring to their pre-trial brief number as R91-80125 instead of R91-801625.

<sup>48</sup> Second Prosecution motion, para.19.

anonymously in this manner.<sup>49</sup> In addition, in statements already in evidence, those named as the ‘subscribers’ of six of these eight contracts state that they had previously bought a SIM card or a handset from mobile telephone retailers in the Tripoli area,<sup>50</sup> and that a copy of the identity card they had provided for that purchase was later used, without their knowledge, on the ‘red’ network telephone contracts.<sup>51</sup>

16. For example, in early 2005, and using his own identity documents, one witness bought a SIM card at a mobile telephone retailer in Halba Square, in Akkar, Northern Lebanon. However, his identity documents were later used without his knowledge or consent to purchase a ‘red’ network telephone in his name. The witness identified as correct—on an ‘Alfa Active identification form’—his parents’ names, his birthday, and his birthplace. Other information, however, such as his address, family size and education level was incorrect, and the handwriting and signature were not his. Although his identity card was attached to the form, the witness had not applied for that telephone number, had not used it, and did not know who used it.<sup>52</sup> Statements by the others whose identities were used without their knowledge to purchase ‘red’ network SIM cards, reveal a similar pattern.<sup>53</sup>

**(ii) ‘Green’ network telephones**

17. The Prosecution also seeks to tender into evidence 18 ‘contrats d’abonnement au service Cellis’, namely, contracts for the 18 ‘green’ telephones. According to the Prosecution, these contracts will prove that—using fraudulent identity cards to conceal the identities of the telephone users—the

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<sup>49</sup> Second Prosecution motion, paras 22-23. *See also* the third Prosecution motion, para. 24; Witness PRH553, the owner of a mobile telephone retail store in Tripoli states that he used copies of the identification documents of former customers of his and other stores in the Tripoli area, on the ‘red’ network telephone contracts.

<sup>50</sup> Paragraph 22 of the second Prosecution motion states that the eight witnesses had initially purchased telephones from ‘a mobile phone shop in Tripoli’, however, paragraph 24 of the third motion clarifies that these initial purchases were in several stores in the Tripoli area.

<sup>51</sup> On 19 January 2015 the Trial Chamber ruled admissible under Rule 155, eight witness statements relating to seven ‘red’ network telephones. *See* F1820, Decision on the Prosecution Motion for Admission under Rule 155 of Written Statements in Lieu of Oral Testimony relating to ‘Red Network’ Mobile Telephone Subscriptions, 19 January 2015. Seven of these statements have been admitted into evidence: the statements by Mr Jawdat Ahmad (exhibit P370), Mr Abd Al-Hadi Al-Abdallah (exhibit P371), Mr Mohammad Hamawi (exhibit P372), Mr Khaled Al-Yakhni (exhibit P373), Ms Mervat Hamcho (exhibit P374), Mr Mahmoud Refaayeh (exhibit P375), and Mr Wassim Abdo (exhibit P376). The eighth statement, by Witness PRH114, has not yet been admitted into evidence. *See* Transcript no. 110 of 21 January 2015, pp. 37-44 and Transcript no. 114 of 4 February 2015, pp. 3-14. The Prosecution states, at paragraph 25 of its third motion, that it will tender a ninth statement under Rule 158 of a deceased witness, Witness PRH093.

<sup>52</sup> Statement of Mr Mohammad Hamawi (exhibit P372); Transcript no. 110 of 21 January 2015, pp. 43-44.

<sup>53</sup> *See* footnote 51 above.



'green' telephones were purchased from two stores in South Beirut, and, further, that the telephones were managed as a group for nearly a year.<sup>54</sup>

18. Three additional contracts the Prosecution seeks to tender into evidence—a Libancell GSM contract, and two other 'contrats d'abonnement au service Cellis'—derive their relevance from their association with the 'green' telephones.<sup>55</sup> For example, two of the 'green' telephone contracts listed, as the subscriber's alternate telephone number, the telephone number obtained through the Libancell GSM contract.<sup>56</sup> In addition, the telephone number associated with the second 'contrat d'abonnement au service Cellis' was in contact with six of the 'green' telephones and with some of the Accused. In particular, that number allegedly contacted two of Mr Badreddine's personal mobile telephones.<sup>57</sup>

**(iii) 'Blue' network telephones**

19. Nine of the contracts are for 'blue' network telephones.<sup>58</sup> The Prosecution alleges that, when considered with ancillary evidence, they prove that the named subscribers did not actually use those telephones. For example, one of the named subscribers for a 'blue' network telephone contracts is a Saudi Arabian who, according to the information the Lebanese Ministry of Interior provided in response the Prosecutor's requests for assistance, was in Lebanon only between 10 August 2004 and 22 August 2004.<sup>59</sup> The contract for the telephone, however, lists its date of purchase as 17 October 2004, and other evidence will prove that the telephone was put on sale in Lebanon only on 1 October 2004, meaning that she could not have bought that particular telephone.<sup>60</sup> Four other witnesses state that they did not use 'blue' network telephones that were subscribed in their names.<sup>61</sup> Another witness states that the photograph on the fraudulent driving licence used to purchase one of the 'blue' network telephones was that of his relative, though the name stated on the licence was not.<sup>62</sup>

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<sup>54</sup> Second Prosecution motion, para. 28.

<sup>55</sup> Second Prosecution motion, paras 44-53.

<sup>56</sup> Second Prosecution motion, para. 45.

<sup>57</sup> Second Prosecution motion, para. 51.

<sup>58</sup> Three Libancell 'customer info prepaid line' forms, two MTC Touch 'prepaid customer info' forms; one MTC Touch 'postpaid customer info' form, two 'fiche signalétique Clic' applications, and one 'Alfa Active SIM replacement request' form; second Prosecution motion, para. 57.

<sup>59</sup> See para. 8 above.

<sup>60</sup> Second Prosecution motion, para. 60 (a).

<sup>61</sup> Statements of Witnesses PRH090, PRH094, PRH013 and PRH083; second Prosecution motion, para. 60.

<sup>62</sup> Second Prosecution motion, para. 63; Witness PRH061.

(iv) *'Yellow' network telephones*

20. Finally, the Prosecution seeks to tender an 'Alfa Active identification' form into evidence as relevant to a telephone in the 'yellow' network. The Prosecution relies upon this and other evidence to prove that the person named on the contract never used the telephone, but that the person who did, identified by the Prosecution as 'subject six', used it in the surveillance of Mr Hariri, and to contact, some 218 times, the 'yellow' telephone attributable to Mr Ayyash.<sup>63</sup>

(v) *Amending the exhibit list*

21. The Prosecution also seeks leave to add 19 of the 39 mobile telephone contracts to its list of exhibits, filed under Rule 91. These contracts are already on the Prosecution's exhibit list as part of a larger collection of documents, and, to streamline the admission of evidence and to facilitate the referral to individual contracts during trial, the Prosecution wishes to tender extracts.<sup>64</sup>

**C. Third Prosecution motion: business records related to mobile telephones**

22. This motion seeks the admission into evidence of 99 sets of documents generated by Alfa and two Lebanese mobile telephone distributors. The documents include delivery notes, invoices, receipts, and other business records.<sup>65</sup> Representatives of Alfa and the distributors have given witness statements—to which the documents are annexed—explaining their provenance.<sup>66</sup> The Prosecution argues that these documents are relevant to analysing the 'red' network and 'green' telephones, which were used to communicate during the planning and attack on Mr Hariri.<sup>67</sup> At least one Prosecution witness, Witness 147, will use these business records to analyse the telephone networks.<sup>68</sup>

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<sup>63</sup> Second Prosecution motion, paras 69-71; statement by Witness PRH100.

<sup>64</sup> Second Prosecution motion, paras 2 and 7-12.

<sup>65</sup> Third Prosecution motion, paras. 1-2.

<sup>66</sup> Third Prosecution motion, paras 22, 27, 35, 43, 49; statement of Witness PRH032; statement of Witness PRH105; and statement of Witness PRH091.

<sup>67</sup> Third Prosecution motion, para. 3; consolidated indictment, para. 15.

<sup>68</sup> Third Prosecution motion, para. 8.

**(i) 'Red' network telephones**

23. To establish the distribution and sale of 'red' network SIM cards, the Prosecution seeks to tender into evidence; two Power Group delivery notes,<sup>69</sup> and an 'Alfa Active identification statement' dated 19 January 2005.<sup>70</sup> These documents contain the barcode for the SIM cards that proves their distribution, including to retailers, their associated telephone numbers, and when they were purchased.<sup>71</sup> More specifically, these delivery notes show that two bundles of Alfa Active SIM cards were sold to a Lebanese mobile telephone retailer on 24 December 2004 in Tripoli. With other evidence, this will prove that the 'red' network telephones were purchased in Tripoli between their delivery to the retailer on 24 December 2004 and their first use on 4 January 2005 (as alleged in the consolidated indictment).<sup>72</sup>

24. The 'Alfa Active identification statement' was prepared by Power Group, a Lebanese mobile telephone distributor, and provides a list of Alfa Active SIM cards sold according to barcode, Alfa Active number, coupon number, point of sale number and end user name. The barcodes are contained within the ranges specified in one of two Power Group delivery notes.<sup>73</sup> The Prosecution relies on these end user names and the statements from the eight named subscribers of 'red' network telephones to prove that they never used the telephones.<sup>74</sup>

**(ii) 'Green' network telephones**

25. The remaining documents relate to 18 SIM cards that the Prosecution labels the 'green' telephones. The Prosecution argues that the 'green' telephones were managed as a group and that a subset of this group, comprising three telephones, formed the 'green' network—a closed network that was used both to plan and coordinate the attack of 14 February 2005, and in preparing the false claim of responsibility, made on the same day.<sup>75</sup> Two Power Group 'receipt vouchers' and a Power Group 'statement of account' relate to the sale of 12 'green' telephones and will help prove that the telephones were sold to a mobile telephone retailer in Haret Hreik, Beirut, in two batches, on 14 and

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<sup>69</sup> A delivery note is a document accompanying a shipment of goods that lists the description and the quantity of the goods delivered.

<sup>70</sup> Third Prosecution motion, paras 10-12 and 23.

<sup>71</sup> Third Prosecution motion, para. 11.

<sup>72</sup> Third Prosecution motion, para. 19; consolidated indictment, para. 15 (a).

<sup>73</sup> Third Prosecution motion, paras 12 and 23.

<sup>74</sup> Third Prosecution motion, paras 24-25.

<sup>75</sup> Third Prosecution motion, para. 28.

17 July 2004.<sup>76</sup> Three additional documents; two sales slips,<sup>77</sup> and a list of mobile telephone dealers and their contact information,<sup>78</sup> establish the distribution of the remaining six ‘green’ telephones from Alfa to a mobile telephone distributor, and from that distributor to a South Beirut mobile telephone retailer.<sup>79</sup> These documents, with other evidence, will prove that these six ‘green’ telephones were purchased together on 13 August 2004,<sup>80</sup> six weeks before Mr Ayyash, Mr Baddredine, and Mr Merhi allegedly began using three of the ‘green’ telephones to coordinate the preparations for the attack.<sup>81</sup>

26. Finally, the Prosecution seeks to tender into evidence 91 receipts issued by the Lebanese telecommunications provider, Alfa Company, for the monthly payments of the 18 ‘green’ telephones.<sup>82</sup> These payments will prove how the ‘green’ telephones were managed as a group, in a coordinated way, for nearly a year.<sup>83</sup> More specifically, after the initial monthly payment in August 2004—and until 28 May 2005—all invoices for the 18 telephones were paid in cash at the Alfa point of sale branch in Furn el Chebbak, Beirut, on the same day every month, and at around the same time.<sup>84</sup>

#### **D. Defence submissions**

27. Counsel for Mr Ayyash do not object to the Prosecution’s request to add 19 of the 39 mobile telephone contracts to its exhibit list.<sup>85</sup> They object, however, to the admission into evidence of all of the documents in the three Prosecution motions now, on the basis that, to provide context, evidence should generally be tendered through witness testimony.<sup>86</sup> Referring to two Trial Chamber decisions of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in *Karadžić*, they argue that motions filed under Rule 154 should only be used as a supplementary measure to fill any gaps at

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<sup>76</sup> Third Prosecution motion, paras 30-34.

<sup>77</sup> One titled ‘Bordereau normal’ and one titled ‘GSM Sold Connection/Collection Report’ with an attached receipt. Third Prosecution motion, paras 38 and 39.

<sup>78</sup> Third Prosecution motion, para. 40.

<sup>79</sup> Third Prosecution motion, paras. 36-42.

<sup>80</sup> Third Prosecution motion, para. 41.

<sup>81</sup> See STL-11-01/PT/TC, F1077, Redacted Prosecution Pre-Trial Brief, 31 October 2013, para. 25; STL-13-04/PT/PTJ, *Prosecutor v. Hassan Habib Merhi*, F0052, Prosecution Pre-Trial Brief, 13 January 2014, para. 17.

<sup>82</sup> Third Prosecution motion, paras 2, 29 and 44

<sup>83</sup> Third Prosecution motion, paras 3 and 44-50.

<sup>84</sup> Third Prosecution motion, para. 47.

<sup>85</sup> Ayyash Defence response, paras 9-10.

<sup>86</sup> Ayyash Defence response, paras 1, 12-15.

the end of a party's case.<sup>87</sup> They also object to the Prosecution referring throughout its three motions to unspecified 'ancillary' evidence that it claims will complement the documents it seeks to have admitted into evidence.<sup>88</sup>

28. Counsel for Mr Baddredine take no position on the admissibility of the documents in the Prosecution's three motions.<sup>89</sup>

29. Counsel for Mr Merhi do not object to the Prosecution's request to add documents to its exhibit list, but oppose the admission into evidence of the documents, or a ruling on their admissibility.<sup>90</sup> They refer to previous decisions in which the Trial Chamber ruled solely on the admissibility of Prosecution evidence, rather than directly admitting the documents or witness statements into evidence (presumably, as this is not stated in the response, in a court session or in the decision itself). They argue that there is no rule allowing the Trial Chamber to decide the admissibility of evidence before the relevant witnesses have testified. Accordingly, they contest both the admission of the documents or a ruling on their admissibility without the 'relevant witnesses' providing context.<sup>91</sup> Counsel also make—by referring to ICTY Trial Chamber decisions in *Karadžić* and one decision in *Mladić*—the same argument as that of counsel for Mr Ayyash, that the procedure set out at Rule 154 should be used as a supplementary measure at the end of a party's case to fill any gaps.<sup>92</sup>

30. Counsel for Mr Oneissi submit that the three motions should be dismissed. They object to the documents in the first and second motions being admitted into evidence, arguing that the Prosecution has purportedly not disclosed the requests for assistance that it sent to the Lebanese government—which produced some of the documents—or disclosed the documents that would allow

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<sup>87</sup> Ayyash Defence response, paras 7 and 14, citing: ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Decision on Prosecution's First Bar Table Motion, 13 April 2010, para. 9; ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Decision on Accused's Motion to Admit Documents Relevant to Witnesses KDZ490 and KDZ492 from the Bar Table, 9 January 2012, para. 6.

<sup>88</sup> Ayyash Defence response, para. 16.

<sup>89</sup> Baddredine Defence response, paras 1-2.

<sup>90</sup> Merhi Defence response, paras 2-4.

<sup>91</sup> Merhi Defence response, paras 3-5.

<sup>92</sup> Merhi Defence response, para. 3, citing: ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Decision on the Accused's Bar Table Motion (Sarajevo Intercepts), 9 October 2012, para. 7; ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Decision on Prosecution's Bar Table Motion Relating to Witness Dorothea Hanson, 26 June 2011, para. 10; ICTY, *Prosecutor v. Mladić*, IT-09-92-T, TS 11 November 2011, pp. 109, 110; ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Decision on Prosecution's First Bar Table Motion, 13 April 2010, para. 9.

them to verify whether the documents were legally obtained in Lebanon.<sup>93</sup> Further, because Prosecution witnesses will rely upon the documents in the three motions in conjunction with other, as yet unidentified, documents, it is impossible to determine their reliability, probative value and prejudicial effect.<sup>94</sup> The admissibility of the documents should therefore be determined when these witnesses testify, and not before.<sup>95</sup>

## DISCUSSION

### **A. Amendment of the Prosecution's exhibit list**

31. The Trial Chamber has previously held that it may, in the interests of justice, allow a party to amend its exhibit list. In doing so, it must balance the Prosecution's interest in presenting any available evidence against the rights of an accused person to adequate time and facilities to prepare for trial. The evidence must be *prima facie* relevant and probative, and the Trial Chamber may consider, among other factors; i) whether the Prosecution has shown good cause for not seeking the amendments at an earlier stage, ii) the stage of the proceedings, and, iii) whether granting the amendments would result in undue delay.<sup>96</sup>

32. The 19 documents that the Prosecution wants to add to its exhibits list are already on this list, although as part of other documents, and have been disclosed to the Defence.<sup>97</sup> Counsel for Mr Ayyash and Mr Baddredine do not oppose this request, and counsel for Mr Oneissi present no arguments in this respect. Extracting these documents will facilitate their identification during trial. The Trial Chamber accordingly grants the Prosecution's request.

### **B. Admission of documents under Rule 154**

33. The Trial Chamber has previously acknowledged that admitting evidence 'from the bar table', under Rule 154, without requiring a witness to produce or to identify it, is a well-established practice

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<sup>93</sup> Oneissi Defence response, para. 7.

<sup>94</sup> Oneissi Defence response, paras 10-12.

<sup>95</sup> Oneissi Defence response, para. 13.

<sup>96</sup> F1781, Decision on Prosecution Motion to Admit into Evidence Geographic Documents, 8 December 2014, para. 4; F1780, Decision Authorising the Prosecution to Amend its Witness and Exhibit Lists, 8 December 2014, para. 15.

<sup>97</sup> Second Prosecution motion, para. 12.

before international courts and tribunals.<sup>98</sup> Material tendered in this manner—like any other evidentiary material—must meet the basic requirements for the admission of evidence in Rule 149 (C) and (D), in that it must be relevant and probative, and its probative value must not be outweighed by its prejudicial effect.<sup>99</sup> Only *prima facie*—rather than definite—reliability and probative value is required at this stage.<sup>100</sup> Probative value, in this sense, is distinct from the weight that the Trial Chamber may ultimately give to a document or record. The tendering party must also demonstrate, with clarity and specificity, where and how each document or record fits into its case.<sup>101</sup>

34. Defence counsel here have objected to admitting the documents into evidence at this stage, arguing that doing so without witness testimony *of itself* does not permit their proper ‘contextualisation’.<sup>102</sup> They have also objected to the timing of the three motions, with counsel for Mr Merhi arguing that ‘the Rule 154 procedure is a supplementary procedure that should be used sparingly, solely to fill any gaps there may be in a case following the presentation of the evidence in court and preferably at an advanced stage of the proceedings’.<sup>103</sup> Similarly, counsel for Mr Ayyash emphasised ‘the ICTY jurisprudence’ that bar table motions should be supplementary measures to fill in gaps in a party’s case, not the ‘first port of call’ for the admission of evidence.<sup>104</sup>

35. However, this is a selective choice of international case law, because, contrary to these arguments, in international criminal law proceedings there is neither a fixed methodology nor a firm principle—either in timing, subject or content—that mandates how and when Chambers should receive documents into evidence from the bar table.<sup>105</sup> The practices have varied from chamber to chamber at the ICTY and at the International Criminal Tribunal for Rwanda; and the procedures

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<sup>98</sup> F1781, Decision on Prosecution Motion to Admit into Evidence Geographic Documents, 8 December 2014, para. 4; F1350, Decision on Prosecution’s Motion to Admit into Evidence Photographs, Questionnaires and Records of Victims, 28 January 2014, para. 5-7; STL-11-01/PT/TC, F1308, Decision on Prosecution’s Motion to Admit into Evidence Photographs, Videos, Maps and 3-D Models, 13 January 2014, para. 4.

<sup>99</sup> F1781, Decision on Prosecution Motion to Admit into Evidence Geographic Documents, 8 December 2014, para. 4.

<sup>100</sup> Decision of 28 January 2014, para. 7; Decision of 13 January 2014, para. 8.

<sup>101</sup> Decision of 28 January 2014, para. 7; Decision of 13 January 2014, paras 4- 6.

<sup>102</sup> Ayyash Defence response, para. 13; Merhi Defence response, para. 4; Oneissi Defence response, para. 12.

<sup>103</sup> Merhi Defence response, para. 3.

<sup>104</sup> Ayyash Defence response, para. 14.

<sup>105</sup> For a summary of the varying practices of the different Trial Chambers, both at the ICTY and other international criminal courts and tribunals, see *International Criminal Procedure: Principles and Rules*, Göran Sluiter *et al.* eds, Oxford 2013, pp. 1048, 1054-1060.

adopted by the *Karadžić* and *Mladić* Trial Chambers differ from that of some other chambers.<sup>106</sup> Moreover, the *Karadžić* decision cited by counsel for Mr Ayyash does not restrict bar table motions to the end of a party's case but merely states that such motions should be used 'at a *later* stage in the proceedings'.<sup>107</sup> In that case, the Prosecution had filed a bar table motion several months before the start of trial, and sought the admission into evidence of 321 items, many related directly to the charges against the Accused. In that context, the Chamber found that the Prosecution motion carried the real possibility of over-burdening the self-represented Accused.<sup>108</sup> Here, the Prosecution is well into its case, a year after the start of trial, and each Accused is represented by counsel.

36. The Trial Chamber is not prepared to adopt the general guidelines of the *Karadžić* and *Mladić* Trial Chambers at the ICTY in relation to bar table motions. The Trial Chamber does not agree that these motions should be confined to 'supplementary measures to fill in gaps' in a case nor that they should be (generally) filed at later stages in a case. A missing gap in a case could be the difference between a conviction or an acquittal, thus it is difficult to see how this could, in principle, be permitted to be rectified by a bar table motion.

37. The essential issue is whether the documents would be admissible as documents that can be tendered without a witness, rather than whether their admission is intended to plug a gap in a party's case, or the case is nearing its end. Naturally, there may be circumstances when admitting documents from the bar table would be more appropriate at the conclusion of a case, but this should be decided according to the circumstances rather than as a matter of rigid legal principle. For these reasons, the Trial Chamber is not prepared to restrict bar table motions—for any Party—in the manner suggested by Defence counsel.

38. The Trial Chamber also rejects the Defence arguments that effectively submit that only a witness may give 'contextualisation' to these types of documents. Rule 154 allows a Chamber to accept evidence from the bar table of contemporaneous documentary evidence if all the requirements for

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<sup>106</sup> For example, ICTR, *The Prosecutor v. Karamera*, ICTR-98-44-T, Décision sur la requête du Procureur visant à l'admission de la totalité des transcriptions du rassemblement du 7 novembre 1993 au stade de Nyamirambo et des traductions officielles de certaines pièces à conviction déjà admises, 14 April 2009; ICTY, *Prosecutor v. M. Lukić and S. Lukić*, IT-98-32/1-T, Decision on Milan Lukić's Fourth Bar Table Motion, 5 May 2009, para. 4.

<sup>107</sup> ICTY, *Prosecutor v Karadžić*, IT-95-5/18-T, Decision on Prosecution's First Bar Table Motion, 13 April 2010, para. 6.

<sup>108</sup> ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Decision on Prosecution's First Bar Table Motion, 13 April 2010, para. 8.



admission are satisfied.<sup>109</sup> The Trial Chamber does not require the testimony of a witness to receive evidence if the criteria in Rule 149 (C) and (D) and in Rule 154 are met. The documents in question are mainly business records that appear to have been generated in the ordinary course of business and the requirements for admission into evidence are satisfied. This, however, does not mean of itself that the Trial Chamber *must* admit the documents into evidence without a witness. The Trial Chamber could decide that the documents are admissible from the bar table, but also additionally decide, according to the circumstances, that an available witness should testify as to their content. This is the effect of the Trial Chamber's decision here.

39. The Trial Chamber has carefully reviewed each document in the annexes to the three motions including—and, notwithstanding that the Prosecution has not yet sought their admission into evidence—the witness statements to which some of the documents are annexed. To establish that the Prosecution can prove their provenance, and thus, whether the documents contain the necessary indicia of reliability, the Trial Chamber has considered the witness statements and their attached documents together. This is regardless of whether the Prosecution intends to separate—from admitting the associated documents into evidence—the calling of the witnesses to testify, or tendering their statements into evidence. Where documents are not attached to witness statements,<sup>110</sup> the Trial Chamber, to establish their indicia of reliability, has relied upon information the Prosecution provided regarding their chain of custody and origin. For the reasons below, the Trial Chamber is satisfied that the documents are relevant and probative. It is also satisfied that the Prosecution can prove their provenance, and hence, is satisfied of their *prima facie* reliability.

40. However, further, it is apparent that the Prosecution can, with relevant witness testimony—either live or in a witness statement—provide the necessary provenance for all but five of what are essentially business records. A testifying witness may thus provide any missing 'contextualisation' for these documents.

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<sup>109</sup> See e.g. ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-T, Decision on the Prosecution's Motion for Admission of 28 Intercepts from the Bar Table, 20 January 2012, para.11.

<sup>110</sup> Such as the letters from the Ministry of Interior and the Director-General of Lebanon's General Security, the two basic warranty checks, the Alcatel packing list, and two of the 39 mobile telephone contracts in the second Prosecution motion.

41. The documents fall into two categories; (i) official communications from the Lebanese Government in response to the Prosecutor's requests for assistance,<sup>111</sup> and (ii) standard commercial documents such as receipts, packing lists, slips, forms, and other types of contractual and commercial records produced in the ordinary course of business by corporate entities within and outside Lebanon.<sup>112</sup>

**(i) Official communications from the Lebanese Government**

42. The first category of documents is of official letters sent from the Lebanese Ministry of Interior, and various of its sub-departments,<sup>113</sup> to the Prosecutor in response to his requests for assistance. In these letters, the Ministry confirms the authenticity of identification documents belonging to users and subscribers of certain mobile telephones, and the falsity or non-existence of others. The Ministry also provides details of the entry into, and exit from, Lebanon of some of those who are named in contracts for the purchase of telephones.

43. Although counsel for Mr Oneissi have objected to the admission into evidence of any of these documents on the basis that they do not have the requests for assistance that produced these responses, their submissions are unclear as to whether they have actually asked the Prosecution to disclose copies of these documents, or if they did anything to verify their contents and or to address any questions regarding legality.<sup>114</sup> The mere assertion that a party does not have a request for assistance does not, of itself, necessarily affect the reliability of the information contained in the response. Counsel for Mr Oneissi have not explained why the Ministry's information might not have been obtained legally, and why the requests for assistance are necessary to assess the admissibility of this information. The Trial Chamber observes, moreover, that, contrary to counsel's assertions, at least one of the requests for assistance was disclosed to the Defence.<sup>115</sup>

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<sup>111</sup> These documents are subject of the First Prosecution motion.

<sup>112</sup> These documents are subject of all three Prosecution motions.

<sup>113</sup> These include: the General Directorate of General Security; the General Directorate for Political and Refugee Affairs; the General Directorate of Personal Status; the Department of Motor Vehicles; the Traffic, Trucks and Vehicles Management Authority; the Department of Driving; and the Tourist Vehicles and Motorcycles Division.

<sup>114</sup> Oneissi Defence response, para. 7.

<sup>115</sup> Request for assistance 2010/RFA0213/LEB/JoB, for instance, was disclosed to the Defence on 13 September 2013 as part of disclosure number 630, and then again on 2 December 2014 as part of disclosures 1667 and 1668.

44. The Lebanese Ministry of the Interior, as the authority responsible for issuing national identification cards, driving licences, passports, and controlling entry into and exit from Lebanon, provides the best evidence of these documents' authenticity (or lack of), and hence the reliability of the contents of their responses to the Prosecutor's requests for assistance. Defence counsel have put nothing before the Trial Chamber to cast any doubt on the reliability of that information. The Prosecution has demonstrated how it intends to rely upon this information to prove that mobile telephones belonging to the 'green', 'blue' and 'yellow' networks can be attributed to the Accused, even though they were purchased in a manner that concealed the real users' identities. The Trial Chamber is accordingly satisfied that the information in the letters is relevant and probative, the provenance of the information is clear and reliable, and the Prosecution has shown where and how this information fits into its case. The letters are therefore admissible into evidence under Rule 154.

**(ii) *Standard commercial documents***

**a. Basic warranty checks and packing lists**

45. With respect to the second category of documents, the basic warranty checks contain information downloaded from the Nokia website generated automatically by entering an IMEI number. The Prosecution neither relies upon nor has provided the Trial Chamber with any witness statement to prove their provenance. However, the website's ownership by a corporation such as Nokia and that the information is automatically and generically generated—in the absence of anything suggesting that the information in the basic warranty checks is unreliable—provides them with sufficient indicia of reliability for admission into evidence.

46. Regarding the packing lists, the companies that shipped the mobile handsets to Lebanon issued the two packing lists as standard commercial records during the ordinary course of their business. The company representatives who provided these packing lists to the Lebanese authorities explained the origin and purpose of the documents, either in letters to the Lebanese authorities or the UNIIC, or in one case, in a witness statement.

47. The Trial Chamber has carefully examined the two packing lists. The Itsalat packing list is attached to a witness statement. The Alcatel packing list is attached to a letter from a company representative to the Lebanese authorities, that explains the document. Both documents are standard commercial shipping documents, similar in form and identical in purpose. In these circumstances,

and in the absence of anything casting doubt on their provenance, and hence their reliability, the Trial Chamber considers them to be *prima facie* reliable.

48. The Prosecution has demonstrated how it intends to rely upon the IMEI numbers in the basic warranty checks and the two packing lists to show the origin, distribution, and purchase of the handsets belonging to the ‘red’ network allegedly used by or attributable to the Accused. The Trial Chamber is accordingly satisfied that these documents are relevant and probative, their provenance is clear and they are *prima facie* reliable. The Prosecution has also shown where and how they fit into its case. The documents are therefore admissible under Rule 154. However, the Prosecution must also either call to testify the witness who provides the information proving the provenance of the Itsalat packing list, or seek the admission into evidence of his witness statement.

*b. Mobile telephone contracts*

49. The documents in the Prosecution’s second motion are standard mobile telephone contracts, produced by Lebanese telecommunications service providers and retail stores, in the ordinary course of their business. The Prosecution will rely upon these to prove when the SIM cards, allegedly used by the Accused to plan the attack of 14 February 2005, were purchased.

50. The Lebanese authorities provided two of the 39 contracts to the UNIIC following a request for assistance.<sup>116</sup> In statements to the Prosecution, representatives from the telecommunications service providers and retailers provide evidence of the provenance of the remaining 37 contracts and explain their companies’ procedures, operations and how mobile telephone systems work.

51. The two other contracts, obtained through requests for assistance, are template contracts titled ‘contrat d’abonnement au service Cellis’. They are very similar in form to other ‘contrats d’abonnement au service Cellis’ that are attached to witness statements. In assessing the *prima facie* reliability of these and the remaining 37 contracts, the Trial Chamber has examined the available witness statements. The Trial Chamber considers that the witness statements and the information regarding the provenance of the contracts—in the absence of any challenge to their provenance, and hence their reliability—give the contracts the necessary *prima facie* indicia of reliability.

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<sup>116</sup> Second Prosecution motion, paras 54-55.

52. The Prosecution also intends to use the contracts to prove that the purchasers of the SIM cards concealed their identity, either by using the identification cards of others without their knowledge, or by using fraudulent identification documents. The Trial Chamber is accordingly satisfied that the mobile telephone contracts are relevant and probative, their provenance is clear and they are *prima facie* reliable. The Prosecution has also shown where and how they fit into its case. The contracts are therefore admissible under Rule 154. However, the Prosecution must also either call to testify the witnesses who provide the information proving the provenance of the contracts, or seek the admission into evidence of their witness statements.

*c. Other business records related to mobile telephones*

53. The Prosecution's third motion concerns the admission into evidence of 99 documents, which, similarly to the documents in the Prosecution's second motion, are standard business records, produced by Alfa and two Lebanese mobile telephone distributors. These include delivery notes, invoices, slips, receipts and other business documents. Representatives from these three companies also provide evidence of the provenance of the documents. The Trial Chamber considers that this gives them sufficient indicia of *prima facie* reliability to be admissible into evidence, and clearly and reliably establishes their provenance. The Prosecution has also explained the relevance and probative value of these business records, namely that they demonstrate the distribution to retailers of 'red' and 'green' network telephones allegedly used by the Accused to plan the attack, and their purchase, activation and payment.

54. Finally, the Trial Chamber has already admitted, under Rule 155, seven witness statements by those whose names were listed in these mobile telephone contracts as the subscribers of six of the eight 'red' network mobile telephones, but whose identification documents were used without their knowledge to purchase those telephones.<sup>117</sup> Another has been declared admissible and awaits formal admission into evidence.<sup>118</sup> The Trial Chamber has considered these witness statements in its assessments of the documents in the third motion, and is accordingly satisfied that the 99 business

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<sup>117</sup> The statements of: Mr Jawdat Ahmad (exhibit P370), Mr Abd Al-Hadi Al-Abdallah (exhibit P371), Mr Mohammad Hamawi (exhibit P372), Mr Khaled Al-Yakhni (exhibit P373), Ms. Mervat Hamcho (exhibit P374), Mr Mahmoud Refaayeh (exhibit P375), and Mr Wassim Abdo (exhibit P376). See Transcript no. 110 of 21 January 2015, pp. 37-44; and Transcript no. 114 of 4 February 2015, pp. 3-14. See also Decision of 19 January 2015.

<sup>118</sup> The statement of Witness PRH114. See Decision of 19 January 2015.

records are admissible under Rule 154. However, as with the other documents annexed to its witness statements, the Prosecution must also either call to testify the witnesses who provide the information proving the provenance of the documents, or seek the admission into evidence of their witness statements.

**(iii) *Arguments as to ‘legal principle’ preventing a declaration of admissibility***

55. The Trial Chamber rejects the Merhi Defence argument that there is no legal principle (or ‘rule’) permitting the Trial Chamber to declare, in a written decision, that material is admissible *before* formally admitting it into evidence during a court session. In their response, they argued that doing this ‘would be tantamount to stating that all the evidence presented by the Parties has to be declared before any hearing, without any context, which would clearly not be in the interest of justice’.<sup>119</sup>

56. This submission, however, simply misunderstands the context of the Trial Chamber’s practice by which—after carefully reviewing the documents and submissions of the Parties—it has declared certain documents and witness statements to be admissible into evidence. The Trial Chamber has never held that all evidence must be presented and determined in this manner. Rather, it has deliberately adopted a practice of formally admitting documents into evidence in public court sessions irrespective of whether or not it has already decided the admissibility of the documents in a reasoned, written decision.<sup>120</sup> This practice ensures maximum transparency and, by allowing the public to follow the proceedings and to view each piece of evidence as it is received by the Trial Chamber, promotes the public nature of the proceedings.<sup>121</sup> The Trial Chamber will therefore formally admit the documents into evidence and assign exhibit numbers at the appropriate time in the proceedings.

**(iv) *‘Ancillary’ evidence and manner of filing the three motions***

57. The Trial Chamber here expresses its concern about the manner in which the Prosecution has simultaneously filed these three motions, accompanied by charts, and hundreds of documents—some of which are attached to witness statements—and some of which require (unindicated) cross-

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<sup>119</sup> Merhi Defence response, para. 4.

<sup>120</sup> Transcript no. 106 of 9 January 2015, p. 3, lines 4-25.

<sup>121</sup> Transcript no. 102 of 11 December 2014, p. 14, lines 4-7; p. 41, lines 6-9.

referencing between the motions. Filing major evidentiary motions in this confused manner assists neither the Trial Chamber, Defence, Legal Representatives of Victims, nor indeed the Prosecution.

58. In this respect the Trial Chamber essentially agrees with the Defence objection to the Prosecution's references to 'ancillary' evidence, and observes that it would be helpful for the moving party, here the Prosecution, to specify with particularity what this other evidence is, especially where cross-referencing to multiple filings is required. Similarly, the Prosecution's apparently interchangeable use of 'SIM card' for 'mobile telephone' and vice versa is confusing and unhelpful. A mobile telephone is not a SIM card.

59. The Trial Chamber directs the Parties, and particularly the Prosecution, to consider this in future motions to admit documents into evidence.

### **CONFIDENTIALITY**

60. Because they contain confidential witness information, the Prosecution seeks to maintain the confidential status of the annexes to its three motions.<sup>122</sup> The Trial Chamber reiterates the public nature of these proceedings and orders the Prosecution either to file a public redacted version of the annexes or have them reclassified as public.

### **DISPOSITION**

**FOR THESE REASONS**, the Trial Chamber:

**ALLOWS** the Prosecution Rule 154 Motion for the Admission of Documents Relevant to the Acquisition of 'Network' Mobile Phones and Handsets, the Prosecution Rule 154 Motion for the Admission of 39 Mobile Phone Contracts, and the Prosecution Rule 154 Motion for the Admission of 99 Mobile Phone Business Records;

**GRANTS** the Prosecution leave to amend its exhibit list by adding the 19 documents listed in Annex A of the Prosecution Rule 154 Motion for the Admission of 39 Mobile Phone Contracts;

**DECIDES** that it will, at a suitable stage in the proceedings, formally admit into evidence the documents in the three Prosecution motions; and

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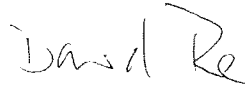
<sup>122</sup> First Prosecution motion, para. 57; Second Prosecution motion, para. 73; Third Prosecution motion, para. 51.

**ORDERS** the Prosecution to file public redacted versions of the annexes to the three motions or to have them reclassified as public.

Done in Arabic, English, and French, the English version being authoritative.

Leidschendam,  
The Netherlands

6 March 2015



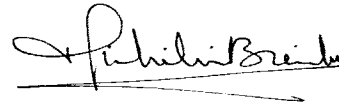
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Judge David Re, Presiding



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Judge Janet Nosworthy



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Judge Micheline Braidy

