

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

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THE PROSECUTOR

v.

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

**DECISION ON PROSECUTION MOTION FOR THE ADMISSION OF
WITNESS STATEMENTS PURSUANT TO RULE 155 AND DOCUMENTS
PURSUANT TO RULE 154**

Office of the Prosecutor:

Mr Norman Farrell, Mr Graeme Cameron
& Mr Alexander Milne

Counsel for Mr Salim Jamil Ayyash:

Mr Eugene O'Sullivan, Mr Emile Aoun &
Mr Thomas Hannis

Victims' Legal Representatives:

Mr Peter Haynes, Mr Mohammad F. Mattar
& Ms Nada Abdelsater-Abusamra

Counsel for Mr Mustafa Amine Badreddine:

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Counsel for Mr Hassan Habib Merhi:

Mr Mohamed Aouini, Ms Dorothée Le Fraper
du Hellen & Mr Jad Khalil

Counsel for Mr Hussein Hassan Oneissi:

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Hassan & Mr Philippe Larochelle

Counsel for Mr Assad Hassan Sabra:

Mr David Young, Mr Guénaël Mettraux &
Mr Geoffrey Roberts



INTRODUCTION

1. In its consolidated indictment, the Prosecution alleges that five interconnected groups of mobile telephones were involved in the assassination of the former Lebanese Prime Minister Mr Rafik Hariri, in Beirut on 14 February 2005.¹ For ease of reference, the Prosecution refers to each of these groups of telephones by a colour, namely: the ‘red network’, the ‘green network’, the ‘blue network’, the ‘yellow network’ and the ‘purple telephones’.
2. To assist it in attributing a purple telephone to the Accused, Mr Hassan Habib Merhi, as well as a mobile telephone allegedly used by his family, the Prosecution seeks to tender, under Rules 154 and 155 of the Special Tribunal’s Rules of Procedure and Evidence, evidence regarding the purchase and delivery of household furniture to Mr Merhi’s residence.² It argues that the attribution of these two telephones will, in turn, allow it to identify Mr Merhi as the user of a green telephone, which the Prosecution alleges he used to coordinate the preparation of the false claim of responsibility for the attack.³
3. The evidence the Prosecution seeks to tender consists of eight witness statements—from Witnesses PRH431, PRH539, PRH550 (Toby Smith), PRH645, PRH647, PRH649, PRH650, and PRH675 and fourteen exhibits. Nine of the fourteen exhibits are not on the Prosecution’s exhibit list. The Prosecution accordingly seeks leave to amend its exhibit list to add them.⁴
4. Counsel for Mr Merhi and Mr Mustafa Amine Badreddine responded to the motion.⁵
5. On 14 October 2015, following a request by the Trial Chamber, the Prosecution made oral submissions to clarify certain points, and define basic and recurring concepts that had not been

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F1444, Redacted Version of the Consolidated Indictment, 7 March 2014, para. 14.

² F2181, Corrected Version of Prosecution Motion for the Admission of Witness Statements pursuant to Rule 155 and Documents pursuant to Rule 154, filed 9 September 2015, 29 September 2015. All subsequent references are to the corrected Prosecution motion and its annexes, unless indicated otherwise.

³ Prosecution motion, para. 2; Consolidated indictment, para. 19 (a) and chart at p. 13.

⁴ Prosecution motion, paras 34-36.

⁵ F2216, Merhi Defence Response to the “Prosecution Motion for the Admission of Witness Statements pursuant to Rule 155 and Documents pursuant to Rule 154”, 24 September 2015; F2218, Badreddine Defence Response to “Prosecution Motion for the Admission of Witness Statements pursuant to Rule 155 and Documents pursuant to Rule 154”, 24 September 2015.

explained in its motion.⁶ During that hearing, the Trial Chamber ordered that the motion—though not its annexes—be reclassified from ‘confidential’ to ‘public’, as the Prosecution, upon further review, no longer considered it to contain sufficiently confidential information to justify that classification.⁷

6. On 29 October 2015, at the Trial Chamber’s request, the Prosecution filed further clarifications on its motion.⁸

APPLICABLE LAW

A. Amendment of the exhibit list

7. The Trial Chamber has previously held that it may, in the interests of justice, allow a party to amend its exhibit list, but 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 general factors that include: (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 amendment would result in undue delay.⁹

8. The Prosecution seeks leave to add to its exhibit list nine of the fourteen documents proposed for admission. These consist of an application form filled out by Mr Merhi to obtain a government-issued identity card, and eight so-called ‘subscriber notes’. During the hearing of 14 October 2015, the Prosecution explained that these subscriber notes (which it also calls ‘subscriber records’) are extracts from the subscriber databases of the Lebanese communications service providers. Each extract contains the personal details of a given subscriber, and other information collected upon the sale of a particular telephone number associated with a SIM card, such as the name of the individual

⁶ Transcript no. 203 of 14 October 2015, pp 33-40.

⁷ F2181, Prosecution Corrigendum and Request for Reclassification of Corrected Version of Motion dated 09 September 2015, 29 September 2015, para. 3. On 28 September 2015, the Trial Chamber, by email from its Legal Officer, requested that the Prosecution clarify the relevance of two items.

⁸ F2291, Prosecution Response to Questions Raised by the Trial Chamber regarding the Corrected Version of Prosecution Motion for the Admission of Witness Statements pursuant to Rule 155 and Documents pursuant to Rule 154, filed 9 September 2015, 29 October 2015.

⁹ 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, para. 5.

making the purchase, the billing address, the nature of the services subscribed to, the date of subscription and whether the subscription is on a post-paid or pre-paid basis.¹⁰

9. The eight subscriber notes to be added to the exhibit list concern the mobile and landline telephone numbers of six different persons and one company¹¹ who were either involved in the purchase and delivery of the household furniture to Mr Merhi, or in contact with him or his family's mobile telephone for the purposes, according to the Prosecution, of gathering information about household furniture.¹²

10. The Trial Chamber is satisfied that all eight subscriber notes, are relevant, ultimately, to the attribution of the purple mobile telephone to Mr Merhi. The Trial Chamber also finds the application form that Mr Merhi filled out to obtain an identity card relevant, as it includes a photograph of Mr Merhi and establishes his biographical details. Since the Defence does not object to the Prosecution adding these nine documents to its exhibit list,¹³ the Prosecution's request for leave to amend its exhibit list is granted.

11. With regard to the eight witness statements the Prosecution seeks to tender under Rule 155, the Defence points out that none are on the exhibit list, and submits that allowing the Prosecution to tender them without having them on the exhibit list is prejudicial to the Defence.¹⁴ Counsel for Mr Merhi in particular argue that the statements are recent and were not disclosed sufficiently in advance to allow for adequate preparation.¹⁵

12. In a recent decision, the Trial Chamber held that it is not necessary for witness statements to be on a Party's exhibit list to be admitted into evidence under Rules 155, 156 or 158. It considered that the statement the Prosecution sought to tender incorporated a previous version that was on the Prosecution's exhibit list, and did not add any substantive evidence.¹⁶

¹⁰ Transcript no. 203 of 14 October 2015, pp 36-37.

¹¹ Prosecution motion, Annex B, items 5-12.

¹² Prosecution motion, para. 10; Prosecution response, para. 9.

¹³ Merhi response, para. 3; Badreddine response, para. 2.

¹⁴ Badreddine response, para. 3; Merhi response, para. 4.

¹⁵ Merhi response, para. 4.

¹⁶ F2224, Corrected Version of 'Decision on Prosecution Motion for the Admission of the Statements of Witnesses PRH056 and PRH087' of 29 September 2015, 5 October 2015, para. 18; F2282, Decision on Prosecution Motion to Admit the Statements of Witnesses PRH575 and PRH703, 21 October 2015, paras 17-19; F2292, Decision on

13. Here, the witnesses are all on the Prosecution's witness list. The description of six of the eight witnesses' evidence as summarised by the Prosecution in its witness list largely mirrors the contents of each of those witnesses' statements.¹⁷ The Trial Chamber accordingly considers that despite the statements not being on the exhibit list, the Defence had adequate notice of the evidence of these witnesses.

14. The remaining two witnesses—Witnesses 539 and Mr Toby Smith—are Prosecution investigators, and the summary of their evidence in the witness list is different from the statements the Prosecution wishes to tender.

15. Mr Smith's statement describes how he interviewed Witness 651 and obtained invoices from him related to Mr Merhi's furniture delivery.¹⁸ Witness 651, however, has already testified about this subject and the relevant documents pertaining to the delivery were admitted into evidence during his testimony.¹⁹ Mr Smith's statement therefore merely revisits an issue the Parties have already had the opportunity to address and cross-examine upon in court. Most importantly, the provenance of those documents has been established by Witness 651, as a representative of the company that issued them. The Trial Chamber considers that Mr Smith's statement therefore causes the Defence no prejudice, and simply corroborates evidence that has already been admitted.

16. Witness 539's statement concerns the provenance and the chain of custody of the application form filled out by Mr Merhi to obtain a government-issued identity card. The Defence does not object to adding the form to the exhibit list. In the Trial Chamber's view, the Prosecution's request to add the application form to its exhibit list constitutes sufficient notice to the Parties that evidence as to its provenance and chain of custody could be also be adduced. The statement, as with those of the seven other witnesses, does not need to be added to the Prosecution's witness list in order to be admitted into evidence.

Prosecution Motion for the Admission into Evidence under Rule 155 of the Statements of Witnesses PRH078, PRH550 and PRH678, 28 October 2015, para. 18.

¹⁷ These are Witnesses PRH431, PRH645, PRH647, PRH649, PRH650 and PRH675. See consolidated indictment, Annex C.

¹⁸ Prosecution motion, para. 22.

¹⁹ The invoices were admitted as Exhibits P-609 and P-613; Transcript no. 201 of 2 October 2015, pp 20 and 33.

B. Admission of witness statements under Rule 155

17. In earlier decisions, the Trial Chamber determined the procedural safeguards for admitting statements into evidence under Rule 155. These allow it to receive written testimony in lieu of live oral testimony in the courtroom. In particular, a statement must meet the basic requirements for admission into evidence under Rule 149 and, if going to proof of the acts or conduct of the Accused, may not be admitted without cross-examination.²⁰ These principles are applicable here.

i) Witness 647

18. Witness 647 was not involved in the purchase or delivery of household furniture to Mr Merhi. However, he describes the building in Bourj Al-Barajneh in which Mr Merhi is alleged to have lived. He also identified a photograph as representing someone with the surname of ‘Merhi’ who lived in that building.²¹ The Prosecution argues that this witness’s evidence is relevant to establishing Mr Merhi’s address and therefore the attribution of telephones to him.²²

19. Counsel for Mr Merhi oppose the admission of the statement into evidence without cross-examination, as the information the witness provides goes directly, according to them, to the allegations made against that Accused.²³ Counsel for Mr Badreddine similarly oppose the admission of the statement, on the basis that his evidence goes to the acts and conduct of the Accused, since he identifies a photograph of Mr Merhi.²⁴

20. The Trial Chamber finds Witness 647’s statement relevant to establishing where Mr Merhi’s furniture was allegedly delivered, and ultimately to attributing mobile telephones to him. The Trial Chamber is also satisfied that this statement is *prima facie* reliable. The fact that the statement

²⁰ STL-11-01/PT/TC, F0937, Decision on Compliance with the Practice Direction for the Admissibility of Witness Statements under Rule 155, 30 May 2013, para. 13; F1280, First Decision on the Prosecution Motion for Admission of Written Statements Under Rule 155, 20 December 2013, paras 7-14; STL-11-01/T/TC, F1785, Decision on the Prosecution Motion for Admission Under Rule 155 of Written Statements in Lieu of Oral Testimony Relating to Rafik Hariri’s Movements and Political Events, 11 December 2014, para. 3.

²¹ Prosecution motion, para. 14. A map marked by him and attached to his statement has already been declared admissible by the Trial Chamber in its Decision on Prosecution for the Admission of Evidence Related to the Locations of Residences Associated with the Accused (F2258) of 9 October 2015, at paragraphs 55-57.

²² Prosecution motion, para. 16.

²³ Merhi response, para. 17.

²⁴ Badreddine response, para. 4.

contains the full transcript of the original audio-recorded interview in this case adds to its reliability.²⁵ The statement is accordingly admissible.

21. Although the Trial Chamber disagrees with counsel that the evidence in question, including the identification of the photograph, goes to the acts and conduct of the Accused or ‘directly’ to the allegations against Mr Merhi, the nature of the witness’s evidence justifies the Defence’s request to cross-examine him. The Prosecution must accordingly make this witness available for cross-examination under Rules 155 (C) and 156.

ii) Witness 539

22. Witness 539 is a Prosecution investigator. He describes obtaining copies of applications for identity cards issued by the Lebanese government, including one for Mr Merhi, which contained the photograph identified by Witness 647.²⁶

23. Counsel for Mr Badreddine make no specific argument with regard to this witness. They object in general to the admission of all eight witness statements tendered in the motion, because they consider attribution-related evidence goes to proof of the acts and conduct of the Accused, and because its admission at this point in time is inappropriate and inconsistent with the trial schedule proposed by the Prosecution.²⁷

24. The Trial Chamber rejects counsel’s argument. It has already found admissible and admitted attribution-related evidence.²⁸ In any event, Witness 539’s statement does not concern attribution, but the biographical details of one of the Accused, and the provenance of a photograph of an Accused that was shown to other witnesses. In the circumstances, the Trial Chamber finds the statement relevant and *prima facie* reliable and admissible under Rule 155. Although the Defence have made no request to cross-examine Witness 539 in relation to this statement, the Trial Chamber

²⁵ Prosecution motion, para. 25. The paragraph numbering in the Prosecution motion are out of order. The Trial Chamber wishes to cite to the second paragraph numbered ‘25’.

²⁶ Prosecution motion, para. 17.

²⁷ Badreddine response, paras 4-6.

²⁸ See generally F2062, Decision on ‘Prosecution Motion for the Admission of Locations Related, 9 July 2015; and F2258, Decision on Prosecution Motion for the Admission of Evidence Related to Residences Associated with the Accused, 9 October 2015; Transcript no. 201 of 2 October 2015; Transcript no. 199 of 30 September 2015; Transcript no. 200 of 1 October 2015.

notes that it has ordered his appearance for that purpose in a previous decision.²⁹ Defence counsel may therefore cross-examine him at that point if they wish.

iii) Witnesses 649 and 650

25. Witnesses 649 and 650 are delivery drivers employed by a furniture wholesaler. On 24 November 2004, Witness 649 delivered household furniture to Mr Merhi's alleged residence in Bourj al-Barajneh. One of the items was rejected by the recipient because it was the wrong size. On 26 November 2004, the correct item was delivered to the same residence, this time by Witness 650.³⁰ Both drivers had mobile telephones issued to them by their employer for use during deliveries. The Prosecution alleges these telephones were in contact with the Merhi family mobile telephone immediately before the relevant deliveries.³¹

26. Counsel for Mr Merhi request that both drivers appear so they may be cross-examined.³² Counsel for Mr Badreddine generally oppose the admission of the two statements.³³

27. The Trial Chamber considers the statements of the two drivers to be relevant to establishing Mr Merhi's address and attributing mobile telephones to him, particularly because of the alleged contact between the mobile telephones issued to the drivers and the Merhi family mobile telephone. Both statements are relevant, probative and reliable, and accordingly admissible.

28. Although the Trial Chamber is inclined to agree with counsel for Mr Merhi that cross-examination, in this instance, would be justified, it observes that in their statements, both drivers state that they have no recollection of the delivery each of them carried out to Mr Merhi, thus greatly limiting the probative value of any oral testimony they may give on those specific events. In the exercise of its discretion, however, the Trial Chamber orders the Prosecution to make one of the two drivers, of its choosing, available for cross-examination under Rules 155 (C) and 156. The statement of the driver not appearing may be admitted under Rule 155.

²⁹ Decision on Locations Related Evidence, 9 July 2015, para. 27.

³⁰ Prosecution motion, paras 7-12.

³¹ Prosecution motion, paras 8 and 12.

³² Merhi response, para. 2.

³³ See para. 23, above.

iv) Witness 645

29. Witness 645 owns a retail furniture business in south Beirut. The Prosecution alleges that on 24 November 2004, the Merhi family mobile telephone was in contact with the witness's business, though there is no allegation or evidence that Mr Merhi purchased anything from him.³⁴

30. In its further clarifications to questions raised by the Trial Chamber, the Prosecution explains the calls to this witness—and to another person who owned a retail furniture business but is not a witness—demonstrate that the Merhi family mobile telephone and the purple telephone attributed to Mr Merhi were used 'to gather information about household furniture from different furniture galleries, as described in the Prosecution's Motion and in the testimony of PRH651.'³⁵

31. Contrary to the Prosecution's submission, however, this was not described anywhere in the original motion, the corrected motion or its annexes. Witness 651 did not address the purpose of telephone calls between the Merhi family and furniture galleries during his testimony.³⁶

32. The Trial Chamber is now satisfied of the relevance and nature of the links described concerning Mr Merhi's household furniture. Specifically, it finds Witness 645's statement sufficiently relevant and reliable for admission under Rule 155.

33. Counsel for Mr Merhi request this witness's appearance for cross-examination. The Trial Chamber considers this request to be reasonable, particularly as the Prosecution investigators do not appear to have asked Witness 645 directly about Mr Merhi.³⁷ The Prosecution must accordingly make the witness available for cross-examination under Rules 155 (C) and 156.

v) Witness 675

34. Witness 675 is an employee of a manufacturer and supplier of household furniture. In his statement, he provides information from the company records regarding Witness 645's retail

³⁴ Prosecution motion, para. 18.

³⁵ Prosecution response, para. 9.

³⁶ Transcript no 201 of 2 October 2015, p. 9.

³⁷ Prosecution motion, Annex A, row 2.

furniture business, and another retail furniture business contacted by the purple telephone attributed to Mr Merhi.³⁸

35. Following the Prosecution's further clarifications, the Trial Chamber is satisfied of the relevance of the two retail furniture businesses regarding which Witness 675 provides information in his statement. By extension, it finds Witness 675's statement relevant. The statement is also *prima facie* reliable, and therefore admissible under Rule 155.

vi) Toby Smith

36. As described above, Mr Smith's statement records his interview with Witness 651 and pertains to the provenance of two invoices he obtained from him related to Mr Merhi's furniture purchase.³⁹ The invoices were admitted into evidence on 2 October 2015 during Witness 651's testimony. The Trial Chamber considers the evidence contained in Mr Smith's statement to be cumulative to that of Witness 651. His statement is relevant, probative and reliable, and therefore admissible under Rule 155.

vii) Witness 431

37. Witness 431 is a Prosecution analyst who extracted or verified the content of the twelve subscriber records and customer database extracts tendered in the Prosecution's motion.⁴⁰ These detail the mobile and landline telephone numbers registered in the names of the various persons—whether witnesses or not—and companies referenced in the Prosecution motion.

38. The Trial Chamber considers Witness 431's statement to be relevant to establishing the provenance and chain of custody of the subscriber notes and customer database extracts and ultimately, to the attribution of telephone numbers to Mr Merhi. It is accordingly admissible under Rule 155.

C. Admission of exhibits into evidence under Rule 154

39. 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

³⁸ Prosecution motion, para. 19.

³⁹ See para. 15 above; Prosecution motion, para. 22.

⁴⁰ Prosecution motion, para. 23; Annex A, row 8.

practice before international courts and tribunals.⁴¹ 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.⁴² Only *prima facie*—rather than definite—reliability and probative value is required at this stage.⁴³ 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.⁴⁴

40. Counsel for Mr Badreddine take no position on the admissibility of the fourteen exhibits proposed for admission under Rule 154.⁴⁵ Counsel for Mr Merhi object to the admission of all but one of the exhibits for different reasons, as further detailed below.

i) Family personal status extract and death certificate

41. The Prosecution seeks to tender two documents in relation to the now-deceased owner of a furniture retail business based in south Beirut.⁴⁶ The Prosecution contends that Mr Merhi placed his order for household furniture with this retailer. The retailer, in turn, ordered the desired items from his supplier (the company employing Witness 651 and the two drivers who are Witnesses 649 and 650), with the supplier ultimately delivering the purchased items to Mr Merhi's alleged residence.⁴⁷

⁴¹ F1876, Decision on Three Prosecution Motions for the Admission into Evidence of Mobile Telephone Documents, 6 March 2015, para. 33; F1781, Corrected version of 'Decision on Prosecution Motion to Admit into Evidence Geographic Documents' of 8 December 2014, 10 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.

⁴² F1781, Corrected version of 'Decision on Prosecution Motion to Admit into Evidence Geographic Documents' of 8 December 2014, 10 December 2014, para. 4.

⁴³ Decision on Photographs, Questionnaires and Records of Victims, para. 7; Decision on Photographs, Videos, Maps and 3-D Models, para. 8.

⁴⁴ Decision on Photographs, Questionnaires and Records of Victims, para. 7; Decision on Photographs, Videos, Maps and 3-D Models, paras 4-6.

⁴⁵ Badreddine response, para. 2.

⁴⁶ Prosecution motion, para. 33.

⁴⁷ Prosecution motion, paras 4 and 6-7.

42. The Prosecution submits that these documents are relevant because the person in question was in contact with the purple telephone attributed to Mr Merhi and the Merhi family mobile telephone.⁴⁸

43. Counsel for Mr Merhi object to the admission of these documents ‘without contextualisation’. Furthermore, they correctly point out that the Prosecution’s call sequence tables show this person’s mobile telephone was in contact only with Mr Merhi’s alleged purple telephone, whereas his landline was in contact only with the Merhi family mobile telephone.⁴⁹

44. The Trial Chamber does not consider the Defence’s arguments on the separate communication between the two telephones associated to Mr Merhi to effectively render these documents irrelevant. The separate communications to the purple mobile telephone and the Merhi family mobile telephone are still relevant to attributing telephones to Mr Merhi, and the personal status extract and death certificate establish the biographical details of one telephone interlocutor.

45. The Trial Chamber is also satisfied that the two documents, as ‘official acts’ according to the Lebanese Code of Civil Procedure, are sufficiently reliable.⁵⁰ They are accordingly admissible under Rule 154.

ii) Identity card application form

46. The Prosecution seeks to tender, under Rule 154, the application form, with photograph, Mr Merhi filled out to obtain his government-issued identity card. The Prosecution submits that the application assists in establishing Mr Merhi’s identity and the location of his residence, in addition to being the source of the photograph identified by Witness 647.⁵¹

47. Neither counsel object to the admission of this document, and its relevance is clear. The Trial Chamber accordingly finds it admissible under Rule 154.

⁴⁸ Prosecution motion, Annex B, row 1.

⁴⁹ Merhi response, paras 2 and 11-12. At row 1 of Corrected Annex B of its motion, the Prosecution incorrectly states that the person’s landline was in contact with both the purple telephone and the Merhi family mobile telephone, though this error is not repeated in the motion itself.

⁵⁰ Art. 143 and 145, Lebanese Code of Civil Procedure; Decision on the Locations of Residences Associated with the Accused, para. 19.

⁵¹ Prosecution motion, para. 32.

iii) Subscriber notes and customer database extracts

48. The Prosecutor seeks to tender ten subscriber notes and two customer database extracts for telephone numbers associated to the ‘purchase and delivery of household products’ to Mr Merhi. In fact, not all of the telephone numbers are associated to the deliveries that took place on 24 and 26 November 2004, and the Prosecution subsequently clarified that some of these telephone numbers might have been contacted by the purple telephone attributed to Mr Merhi or his family’s mobile telephone in an attempt to ‘gather information’ about furniture—rather than an actual purchase or delivery.

49. These telephone numbers include those of the company-issued mobile telephones used by two delivery drivers, the residential landlines of those two drivers, the mobile telephone and landline in the name of the deceased furniture retailer Mr Merhi allegedly contacted to order his furniture, and other telephones that were allegedly in contact with Mr Merhi or his family.⁵²

50. Counsel for Mr Merhi object to the admission of six these documents on the basis of lack of relevance or lack of contextualisation.⁵³

51. All 12 documents in this category for the most part corroborate or are cumulative to other evidence tendered in the motion. As a result of the Prosecution’s further clarifications, the Trial Chamber finds the subscriber notes and customer database extracts relevant. They are extracted from databases the Lebanese communications services providers and Ministry of Telecommunications handed over to the Prosecution. This confers upon them sufficient indicia of reliability for admission into evidence under Rule 154.

⁵² Prosecution motion, para. 31; Annex B, rows 3-12.

⁵³ Merhi response, paras 2 and 11-16.

CONFIDENTIALITY

52. Because they contain confidential witness information, the Prosecution seeks to maintain the confidential status of the annexes to its motion, and the further clarifications it filed on 29 October 2015.⁵⁴ The Trial Chamber reiterates the public nature of these proceedings and orders the Prosecution either to file a public redacted version of the annexes and filing or have them reclassified as public. Counsel for Mr Badreddine and Mr Merhi must also file their responses publically with any necessary redactions.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

GRANTS the Prosecution leave to amend its exhibit list;

DECLARES admissible under Rule 155 the statements of Witnesses PRH431, PRH539, PRH550 (Toby Smith) and PRH675;

DECLARES admissible under Rule 155 (C) the statements of Witnesses PRH645 and PRH647, and requires the Prosecution to make them available for cross-examination under Rule 156;

DECLARES admissible under Rule 155 the statements of Witnesses PRH649 and PRH650, and requires the Prosecution to make one of them available for cross-examination under Rule 156, the statement of the witness not appearing being admissible under Rule 155;

DECLARES admissible under Rule 154 the exhibits listed at Annex B to the Prosecution's motion;

ORDERS the Prosecution to file a public redacted version of the annexes to its motion and its further clarifications of 29 October 2015, or have them reclassified as public; and

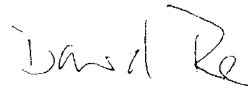
ORDERS counsel for Mr Badreddine and counsel for Mr Merhi to file public redacted versions of their responses or have them reclassified as public.

⁵⁴ Prosecution motion, para. 37; Prosecution response, para. 12.

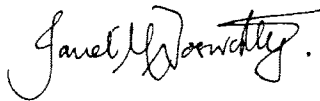
Done in Arabic, English, and French, the English version being authoritative.

Leidschendam, the Netherlands

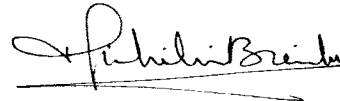
2 November 2015



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

