



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

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

Date: 13 May 2016

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THE PROSECUTOR

v.

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

**WRITTEN REASONS FOR THE TRIAL CHAMBER'S DECISION ON
PROSECUTION MOTION FOR THE ADMISSION OF STATEMENTS BY WITNESS
PRH705**

Office of the Prosecutor:

Mr Norman Farrell, Mr Graeme Cameron
& Mr Alexander Milne

Legal Representatives of Victims:

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

Counsel for Mr Salim Jamil Ayyash:

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

Counsel for Mr Mustafa Amine Badreddine:

Mr Antoine Korkmaz, Mr Iain Edwards &
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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:

Mr Vincent Courcelle-Labrousse, Mr Yasser
Hassan & Ms Natalie von Wistinghausen

Counsel for Mr Assad Hassan Sabra:

Mr David Young, Mr Guénaël Mettraux
Mr Geoffrey Roberts



INTRODUCTION

1. On 4 May 2016, the Trial Chamber delivered a decision in court on the admission into evidence of four witness statements.¹ These are the written reasons for that decision.
2. The Prosecution seeks the admission into evidence of four witness statements signed by Witness PRH705.² The witness is a representative of Touch, one of the two Lebanese mobile telecommunication service providers,³ through whose evidence the Prosecution seeks to connect the Accused to relevant events contained in the consolidated indictment.
3. The Prosecution submits that the statements should be admissible in their entirety under Rule 156 of the Special Tribunal's Rules of Procedure and Evidence.⁴ In the alternative, the Prosecution requests the Trial Chamber to admit specific paragraphs of the statements into evidence.⁵
4. Counsel for the Accused, Mr Salim Jamil Ayyash, Mr Mustafa Amine Badreddine, and Mr Assad Hassan Sabra responded to the motion.⁶ The Defence of Mr Hussein Hassan Oneissi and Mr Hassan Habib Merhi did not respond to the motion. The Prosecution replied, specifically addressing paragraphs 16 to 19 of the Sabra Defence response, at the Trial Chamber's request.⁷ No sur-replies were filed.

SUBMISSIONS

A. Prosecution

5. The Prosecution requests the Trial Chamber to admit into evidence four witness statements made by Witness 705, and their annexes. The Prosecution submits that the statements concern Touch's network and its business practices and records, including the generation, business use, and

¹ Transcript of 4 May 2016, pp. 21-24.

² *Prosecution v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, STL-11-01/T/TC, F2553, Prosecution Motion for the Admission of Witness Statements signed by Witness PRH705, 18 April 2016.

³ Witness 705 states that since 2004, MTC has been the manager of the Second Mobile Network in Lebanon (Mobile Interim Company 2 - MIC2) under the legal name of 'Mobile Telecommunications Company' (MTC), and that 'Touch' is now the trade name for that brand: Statement of Witness 705, 16 November 2015, para. 14.

⁴ Prosecution motion, para. 12.

⁵ Prosecution motion, paras 16, 19.

⁶ F2572, Sabra Defence Response to "Prosecution Motion for the Admission of Witness Statement Signed by Witness PRH705", 28 April 2016; F2573, Ayyash Defence Joinder to Sabra Defence Response to "Prosecution Motion for the Admission of Witness Statements Signed by Witness PRH705", 29 April 2016; F2574, Badreddine Defence Response to "Prosecution Motion for the Admission of Witness Statement signed by Witness PRH705", 29 April 2016.

⁷ F2577, Order to Prosecution to Reply to Defence Submissions Regarding Statements of Witness PRH705, 29 April 2016; F2580, Prosecution Reply to the Sabra Response to the Prosecution Motion for the Admission of Witness Statements signed by PRH705, 2 May 2016.

storage of call data records, cell site data, and subscriber records.⁸ The Prosecution submits that the statements are admissible because they complement the witness's anticipated evidence, they have probative value and are relevant to the case under Rule 149 (C).⁹

6. If the Trial Chamber elects not to admit the entirety of the four witness statements, the Prosecution requests that it receives into evidence the following paragraphs of the individual statements:¹⁰

- a) 16 November 2015 statement, paragraphs 1-20, 23-24, 27-30, 34-50, 55, 57, 59-61, 64-65, 67-74, 76-81, 103-106, 112-114, 116, 126-131, 134-138, 147-148, 156, 160-161, 163, 179, 181, 196-197, 200, 202, 206, 214, 230, 242, 249-258, 260-262, 263-287, 294, 300-308, 310, 312-321, 327-337, 339-347, 348-356;
- b) 16 December 2015 statement, paragraphs 1-13, 16-26;
- c) 3 February 2016 statement, paragraphs 1-15; and
- d) 26 February 2016 statement, paragraphs 1-11, 17, 19.

7. Further, since the witness could orally provide the entirety of the evidence in the statements, the Prosecution submits that allowing the admission of the statements, annexes and the testimony of the witness would not prejudice the Defence nor result in additional or different evidence. The Trial Chamber will receive the same evidence either through this proposed approach or only through oral testimony. The only questions are the form and the amount of court time required to receive the evidence. Because of the excessive time required to hear the entirety of Witness 705's evidence orally, the Prosecution proposes the admission into evidence of the statements or the identified specific paragraphs. Moreover, the Defence's ability to cross-examine Witness 705 on the statements or the specific paragraphs, and anything he says during the hearings, is unaffected by the proposed approach.¹¹

⁸ Prosecution motion, para. 6.

⁹ Prosecution motion, paras 5-6. Rule 149 (C) states: 'A Chamber may admit any relevant evidence which it deems to have probative value.'

¹⁰ Prosecution motion, para. 19.

¹¹ Prosecution motion, para. 15. A reference to 'Witness PRH707' in this paragraph appears to be a typographical error.

B. Response from the Defence of Mr Sabra and Mr Ayyash

8. Counsel for Mr Sabra oppose the admission of Witness 705's statements, arguing that this would result in the Trial Chamber 'being faced with voluminous repetitive evidence.'¹² Further, they argue that admitting the statements in their entirety and simultaneously leading lengthy and detailed evidence on the matters in the statements 'would further clog an already congested trial record.'¹³ The Sabra Defence concedes that the Trial Chamber is not prevented by the rules of international criminal procedure from permitting the Prosecution to lead the same evidence orally and in writing, but suggests that good administration of justice and trial management require that the Prosecution identify specific paragraphs it intends to tender in writing and for the Trial Chamber to admit only those paragraphs, where relevant and probative.¹⁴

9. Counsel for Mr Sabra also argue that the Prosecution failed to satisfy its burden to demonstrate that each and every paragraph of the statements sought to be admitted and annexed is relevant and probative with respect to the allegations contained in the consolidated indictment.¹⁵ On this basis, the Sabra Defence submits the motion should be dismissed *in limine*, or, in the alternative, that the motion should be refiled.¹⁶ Counsel for Mr Ayyash joined the Sabra Defence response in all respects.¹⁷

C. Response from the Defence of Mr Badreddine

10. Counsel for Mr Badreddine oppose the motion in its entirety. They submit that the Prosecution's argument is overly general in its suggestion that the statements contain relevant evidence probative of the reliability of Touch's records and data.¹⁸ Moreover, the statements do not meet the threshold of *prima facie* reliability, as they largely comprise hearsay evidence. It is also 'clear' that Witness 705 will be unable to provide information regarding the reliability of much of what is contained in his statements or their annexes, which they submit will leave the Defence unable to effectively test the reliability of his evidence.¹⁹ The Defence lists specific areas within the statements and annexes where it submits the witness has acknowledged being unable to provide details relating to the documents sought to be admitted, specifying, as examples, Touch network

¹² Sabra response, para. 6.

¹³ Sabra response, para. 7.

¹⁴ Sabra response, para. 7.

¹⁵ Sabra response, paras 12-20.

¹⁶ Sabra response, paras 20-23.

¹⁷ Ayyash joinder, para. 1.

¹⁸ Badreddine response, para. 4.

¹⁹ Badreddine response, paras 5-6.

architecture, forms for the purchase of a pre-paid subscription, clock synchronisation and handwritten dates.²⁰ Finally, counsel submit that the hearsay nature of the statements and annexes, what they term ‘the inherent unreliability that results from the manner in which they were compiled’, and the witness’s inability to testify about the reliability of the information, will make it ‘simply impossible’ to establish the degree and reliability of the hearsay and to test the adequacy of any evidence on the provenance of the information provided.²¹ Annexed to their submission is a chart detailing specific objections to the statements and annexes.²²

D. Prosecution reply

11. At the Trial Chamber’s direction, the Prosecution replied on 2 May 2016, specifically addressing paragraphs 16 to 19 of the Sabra Defence response. In its reply, the Prosecution expands on its request related to specific paragraphs of the statements for which it seeks admission to include paragraphs 288 to 291 and 322 to 326 of Witness 705’s first statement, dated 16 November 2015.²³ Responding to the Defence submissions that it has failed to prove the relevance and probative value of the materials, it argues that evidence from the telecommunications companies is necessary to establish the existence of telephone use which is identified as a tool to establish a conspiracy, as alleged in the consolidated indictment.²⁴ The purpose of the application is to provide a mechanism for certain technical portions of the evidence to be presented in a more efficient manner.²⁵ Finally, the Prosecution submits that the threshold requirements for admissibility of *prima facie* relevance are fully met based upon a confidential annex attached to its reply.²⁶

E. Partial withdrawal of Prosecution request and annexes admitted into evidence

12. On 11 May 2016, the Prosecution notified the Trial Chamber that it no longer sought the admission of 23 annexes to Witness 705’s statement of 16 November 2015.²⁷ This postdates the Trial Chamber’s oral decision of 4 May 2016. Nevertheless, the oral decision, and consequently these written reasons, remain unaffected by the Prosecution’s partial withdrawal of their request as

²⁰ Badreddine response, paras 14-18.

²¹ Badreddine response, para. 19.

²² Badreddine response, Confidential Annex A.

²³ Prosecution reply, para. 2.

²⁴ Prosecution reply, para. 3.

²⁵ Prosecution reply, para. 4.

²⁶ Prosecution reply, para. 4, Confidential Annex A.

²⁷ Provisional transcript of 11 May 2015, p. 30.

it relates to those 23 annexes. Further, since issuing the 4 May 2016 oral decision, the Trial Chamber has admitted into evidence 6 annexes to Witness 705's statement of 16 November 2015.²⁸

DISCUSSION

13. The Trial Chamber has previously decided that a party may 'supplement or replace parts of a witness's oral evidence with a prior written statement that the witness adopts under Rule 156 (A) (iii)'.²⁹ The Trial Chamber has the discretion, under Article 21 of the Statute and Rules 149 (C) and (F), to admit the statements or the identified paragraphs into evidence as complementary and supplementary to Witness 705's oral evidence. Neither Rule 155 nor 156 expressly prohibits combining the oral examination-in-chief of a witness and the admission of a written statement of the same witness.

14. Article 21 (3) of the Statute specifies that a Chamber 'may receive the evidence of a witness orally or, where the interests of justice allow, in written form'. It does not state that the admission of evidence is confined to one or the other.

15. Rule 149 (F) provides, relevantly, that a Chamber 'may receive the evidence of a witness orally, or pursuant to Rules [...] 155, 156 [...]'. Rule 156 permits the receipt into evidence in lieu of oral evidence, of a written statement or transcript of evidence, going to the proof of the acts or conduct of an accused, if the witness (i) is present in court; (ii) is available for cross-examination and questioning by Judges; and (iii) attests that the statement accurately reflects the witness's declaration and what he or she would say if examined.

16. The Prosecution has submitted that its purpose in offering the written statements in conjunction with the testimony of the witness is to ensure the efficient presentation of extensive evidence. Having reviewed the statements and the proposed exhibits, the Trial Chamber declines to admit the entirety of all four statements along with all of the annexes. Rather, for the reasons below, the Trial Chamber is satisfied that admitting the paragraphs specified by the Prosecution in its motion and reply, along with the annexes to those statements, would assist the efficient presentation of the technical evidence of the witness. Admission of these portions of the statements

²⁸ Statement of Witness 705, 16 November 2015, annex 2 (P821); annex 5 (P830); annex 7 (P831); annex 10 (P832); annex 14 (P833); annex 22(1) (P817). See provisional transcript of 9 May 2016, pp. 34, 74; provisional transcript of 11 May 2016, pp. 70, 72, 74, 76.

²⁹ F2522, Decision on Prosecution Motion for the Admission of Statements by Witness PRH707 and on Ayyash Defence Motion to Strike the Prosecution Reply, 15 April 2016, para. 42.

will aid the Trial Chamber in ensuring that the questioning of the witness is conducted as effectively as possible.

17. As already decided, so long as the appropriate safeguards of the right to a fair trial are maintained, no principle of international human rights law or of international criminal law and procedure appears to prevent a Chamber from allowing a witness to testify orally in addition to admitting witness statements into evidence, according to either Article 21 (3) or Rule 149 (F).³⁰ The general principles of international criminal procedural law plainly allow a Chamber to receive evidence in a manner which, even if not expressly provided for in the Rules, is consistent with the objects and purposes of the Statute and the fundamental principles of justice.³¹

A. Defence objection as to hearsay

18. Counsel for Mr Badreddine objected to the admission into evidence of portions of the statements that they consider to be hearsay, arguing generally that this makes cross-examination difficult if not impossible. In essence, they challenge the reliability of the evidence contained in the contested portions of the statements.³²

19. The Trial Chamber ruled on this issue in its Decision on Prosecution Motion for the Admission of Statements by Witness PRH707 and on Ayyash Defence Motion to Strike the Prosecution Reply, on 15 April 2016. The Trial Chamber held that:³³

- Rule 149 (C) permits the Trial Chamber to admit any relevant evidence which it deems to have probative value;
- The Statute and Rules of Procedure and Evidence contain no prohibition against the admission of hearsay evidence, nor do they distinguish between various forms of hearsay evidence;³⁴
- The general principles of international criminal procedural law, as reflected in the practice of other international criminal courts and tribunals since 1994, allow hearsay

³⁰ F2552, Decision on Prosecution Motion for the Admission of Statements by Witness PRH707 and on Ayyash Defence Motion to Strike the Prosecution Reply, 15 April 2016, para. 37.

³¹ ICTY, *Prosecutor v. Blagojević et al.*, IT-02-60-AR73, IT-02-60-AR73.2, IT-02-60-AR73.3, Decision, 8 April 2003, para. 15.

³² Badreddine Response, paras 5, 11-14, 19, Confidential Annex A.

³³ F2552, Decision on Prosecution Motion for the Admission of Statements by Witness PRH707 and on Ayyash Defence Motion to Strike the Prosecution Reply, 15 April 2016, paras 49-50.

³⁴ F0937, Decision on Compliance with the Practice Direction for the Admissibility of Witness Statements under Rule 155, 30 May 2013, para. 30.

evidence but with the proviso that its weight must be assessed in light of the totality of the evidence;³⁵

- In international criminal law proceedings, there is no bar on receiving hearsay evidence, first-hand or otherwise. The normal principles of relevance and deemed probative value apply to hearsay evidence;
- In applying the general principles of international criminal law case-law, a party need not show definite proof of reliability or probative value when requesting the admission of evidence;
- Sufficient indicia of reliability is all that is required; the probative value of a document is distinct from the question of weight that the Trial Chamber may ultimately give it;³⁶
- This applies equally to hearsay evidence; and
- The Trial Chamber may admit the evidence and thereafter, after hearing from the Parties, determine the weight, if any, to give to it.

20. The Trial Chamber therefore rejects the Defence's arguments.

B. Relevance and probative value of the statements and annexes

21. The Trial Chamber, having reviewed the relevant portions of Witness 705's statements and their annexes, is satisfied that they are relevant to Touch's generation, business use, and storage of call data records, cell site data, and subscriber records. However, before deciding whether the information in the paragraphs contain the necessary indicia of reliability to make them *prima facie* reliable, and hence providing the necessary probative value to make them admissible into evidence, the Trial Chamber requires further evidence from the witness as to the provenance of the information contained in the relevant paragraphs.

22. The Badreddine Defence has specific objections as to the reliability of certain of the statements and annexes, both based upon representation that the material is hearsay in some

³⁵ ICC, *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06, Decision on the Admissibility of Four Documents, 20 January 2011, paras 28-29; *Prosecutor v. Katanga and Ngudjolo Chui*, ICC-01/04-01/07, Decision on the Prosecution Motion for Admission of Prior Recorded Testimony of Witness P-02 and Accompanying Video Excerpts, 27 August 2010, para. 18; ICTY, *Prosecutor v. Milošević*, IT-02-54-T, Decision on Admission of Documents in Connection with Testimony of Defence Witness Dragan Jasović, 26 August 2005, para. 18; ICTY, *Prosecutor v. Limaj et al.*, IT-03-66-T, Decision on Prosecution's Motion for Provisional Admission of Witness Statements Under Rule 92bis dated 13 October 2004, 15 December 2004, para. 9; ICTR, *Prosecutor v. Karemera et al.*, ICTR-98-44-T, Decision on Defence Oral Motions for Exclusion of Witness XBM's Testimony, for Sanctions against the Prosecution and for Exclusion of Evidence Outside the Scope of the Indictment, 19 October 2006, para. 17.

³⁶ F1308, Decision on Prosecution's Motion to Admit into Evidence Photographs, Videos, Maps and 3-D Models, 13 January 2014, para. 8.

instances, and based upon the absence or presence of information as to other documents (e.g., lack of date, title, signature, page number, front page, handwritten note, or other data listed).³⁷

23. In determining the weight, if any, to be given to such statements, the Trial Chamber will evaluate the evidence in light of any demonstrated weakness related to it. However, the Trial Chamber is satisfied that—the relevance of the materials having been established—these objections do not preclude admission of the documents, subject to the necessary indicia of reliability required to establish probative value.

C. Business records and testimony by a company representative

24. The Trial Chamber has already decided on the issue relating to business records and testimony by a company representative. In its decision of 15 April 2016, the Trial Chamber held that:³⁸

- Business records are considered to have the necessary indicia of reliability if produced in the normal course of business of the relevant organisation or workplace;
- Records expressly produced by a business for the purposes of litigation may be treated differently. But because of this, the maker of the record is more likely to be available to testify than for records produced in the normal course of business by a large corporation, such as Touch;
- Business records, by their very nature, are produced by different company officials, in differing capacities and in differing sub-departments. They may be automatically generated, like, for example, telephonic call data records. And the larger the corporation and the more complex the issues at hand, self-evidently, the greater the potential for a diversity of sources for the records; and
- In these circumstances a court can but receive the best available evidence, and, at a later point, attribute to it the appropriate weight.

24. Most of the evidence contained in Witness 705's statements and annexes is derived from Touch's business records produced in the normal course of business and not for the purposes of litigation. Consistent with the Trial Chamber's previous ruling in relation to the statements of Witness 707, the Trial Chamber is satisfied that Touch's suitably qualified personnel, using a range of data from relevant sources, provided the witness with the information in his statements that is

³⁷ Badreddine Response, Confidential Annex A.

³⁸ F2552, Decision on Prosecution Motion for the Admission of Statements by Witness PRH707 and on Ayyash Defence Motion to Strike the Prosecution Reply, 15 April 2016, paras 54 - 59

outside of his personal knowledge. Admission of the various annexes to his statements into evidence will be subject to further evidence from the witness.

D. Annexes to the statements

25. Documents contained in Annexes 7, 9, and 11 to Witness 705's statement of 16 December 2015 have already been admitted into evidence.³⁹ The Trial Chamber found these documents admissible in its 'Decision on Three Prosecution Motions for the Admission into Evidence of Mobile Telephone Documents.'⁴⁰ These documents having already been admitted, the Trial Chamber takes no further action and rejects the further Defence objections to these annexes.

26. The reasoning which applies to the admission of Witness 705's statements also applies in relation to the annexes to Witness 705's statements, which consist of business records, extracts from business records and other documents produced by Touch. Requiring the tendering Party to satisfy the Trial Chamber that, to admit these documents, a more burdensome test applies to them would be inconsistent with its earlier decision on the admission of evidence and the practice of international courts and tribunals.⁴¹

27. The Trial Chamber, consistent with its established practice,⁴² will also allow the Prosecution to tender into evidence any annexes to Witness 705's statements that form an inseparable and indispensable part of his testimony. The Trial Chamber will hear any further specific objections to any portions of the statements at the time of their proposed tender into evidence.

28. The first of the four statements the Prosecution seeks to have admitted is dated 16 November 2015.⁴³ The 58 annexes appended to it consist of the following records:⁴⁴

- Annex 1 – Appointment of Witness 705 as representative of Mobile Interim Company Number 2 (MIC2) (Touch).

³⁹ Admitted as exhibit P00467. *See* Transcript of 22 May 2015, p. 44.

⁴⁰ F1876, Decision on Three Prosecution Motions for the Admission into Evidence of Mobile Telephone Documents, 6 March 2015, disposition.

⁴¹ For example, statement of Spartak Mkrtychyan, admitted as exhibit P578, transcript of 14 September 2015, p. 21 and statement of Andrew Fahey, admitted as exhibit P00595, transcript of 17 September 2015, pp. 8-10.

⁴² *See e.g.*, F1280, First Decision on the Prosecution Motion for Admission of Written Statements Under Rule 155, 20 December 2013, paras 7-14.

⁴³ Prosecution motion, para. 19. This statement is listed in the Confidential Annex A as having a date of 17 November 2015. Having examined the document, it appears to have a typewritten statement date at page 72 of 73 of 16 November 2015. All references in this Decision are to that statement bearing the 16 November 2015 date.

⁴⁴ As explained earlier, the Prosecution no longer seeks the admission into evidence of annexes 33-55 of Witness 705's statement of 16 November 2015. *See above* para. 12; provisional transcript of 11 May 2015, p. 30.

- Annex 2 – The Management Agreement of 11 June 2004 between the Republic of Lebanon and Mobile Telecommunications Company (MTC) and related documents.
- Annexes 3 and 4 – The Network Architecture and Diagram for MTC (Touch).
- Annexes 5 to 16 – Various service agreements, terms and conditions of service for Touch and affiliate companies.
- Annex 17 – A disc containing the MTC records for calls ‘all over Lebanon’ for MTC subscribers and roamers between September 1, 2004 and December 2005.
- Annex 18 – Correspondence between the Lebanese Ministry of Telecommunications and MTC, conveying a disc responding to an inquiry for an ‘up-to-date list of all subscriber records’ of MTC’s clientele.
- Annex 19 – Cell information, coverage survey maps, responses to queries regarding software and survey maps used for MTC (Touch) coverage 2005, 2007 and latest maps.
- Annex 20 – Cell information related to radio planning tools used by Touch after 2004.
- Annex 21 – A disk containing best predicted cell coverage shape files, cell mast locations in 2004, 2005, and 2007 along with cells used with the masts.
- Annex 22 – MTC’s response to a request to clarify the correct location of 19 cell sectors in 2004-2005 and the correct azimuths in 2004-2005 for three cell towers.
- Annex 23 – MTC’s frequency plan on 14 February 2005 along with cell identification data and cell name for each cell on that date.
- Annex 24 – One DVD labelled ‘Minicode Converter’ and a disk labelled ‘SMS Unicode’.
- Annex 25 – Information related to the Nabatieh cell tower and responses to queries related to its operation.
- Annex 26 – Explanation of the definition of ****Data Msg**** relating to an SMS message.
- Annexes 27 and 28 – MTC Liban’s Postpaid and Prepaid Booklet terms and charges.
- Annexes 29 and 30 – Tariffs and Fees Schedules.
- Annex 31 – Various purchase orders and amended purchase orders.
- Annex 32 – List of Distribution Contracts 2004-2005 for MTC Liban.
- Annexes 33 to 58 – Distribution agreements, amendments and termination of distribution agreements between MTC (Touch) and various service providers.

29. With respect to the annexes to Witness 705’s statement of 16 December 2015, these six annexes represent agreements on maintenance, facilities management, infrastructure support and termination between Touch and its service providers. Annexes 7, 9, 11 and 12 to this statement

contain Liban Cell prepaid contracts information. Annex 13 is identified by the witness in his statement as representing 'credits' reflecting credit balances of specific mobile telephone numbers. Annex 14 is a list of the short codes used in roaming call data records to denote a specific or given operation. Annex 15 is a comprehensive list of names for specific cell identifications and Witness 705 states that he will be able to explain why a cell name corresponding to a particular cell ID code may change over time.

30. The annex to Witness 705's 17 February 2016 statement has a photograph of a disk which contains all the subscribers' records in Touch's possession.

31. The Trial Chamber has previously held that a witness testifying for a corporation can provide evidence based upon reviewing company records and practices, and obtaining information from other company personnel.⁴⁵ This applies even where the witness testifying as the representative of the corporation does not have personal knowledge, provided they can attest that the testimony represents business record information serving as the basis for the witness's testimony.

32. Contrary to the objections raised by the Sabra Defence in its response, after considering the Prosecution reply, the Trial Chamber is satisfied that the evidence in the contested paragraphs is relevant to the allegations in the consolidated indictment. The statements are not to be admitted in a vacuum, as they will be used in the course of testimony presented by a witness who will be asked to attest to the accuracy of those statements he made under Rule 156. Further, the witness can be cross-examined fully about the records.

33. Having concluded that the information in the statements and annexes appears to be relevant, however, it remains for the Prosecution to tie the evidence to the consolidated indictment through the statements and testimony of Witness 705. Before deciding whether the information in the paragraphs specified by the Prosecution for admission contain the necessary indicia of reliability to meet this standard, and hence providing the necessary probative value to make it admissible into evidence, the Trial Chamber requires further evidence from the witness as to the provenance of the information contained in these paragraphs. Further, admitting the proposed paragraphs into evidence would not prevent Defence counsel from presenting their own evidence challenging any perceived flaws in Witness 705's evidence.

⁴⁵ F2552, Decision on Prosecution Motion for the Admission of Statements by Witness PRH707 and on Ayyash Defence Motion to Strike the Prosecution Reply, 15 April 2016, paras 54-59.

CONFIDENTIALITY

34. Because they contain confidential witness information, some of the submissions made by the Parties, or their annexes, were filed confidentially. The Trial Chamber reiterates the public nature of these proceedings and orders the Parties, if they have not done so already, to file public redacted versions of their submissions and any annexes, or to have them reclassified as public.

DISPOSITION

FOR THESE REASONS, the Trial Chamber, on 3 May 2016:

DENIED the Prosecution motion to admit into evidence in their entirety the four witness statements signed by Witness 705 and dated 16 November 2015, 16 December 2015, 3 February 2016 and 26 February 2016;

DECLARED admissible under Rule 155 (C) or Rule 156—but subject to receiving further evidence, and if necessary, further submissions, as to their reliability and probative value—the following paragraphs of Witness 705’s statements and the annexes (with the exception of Annexes 7, 9 and 11 to Witness 705’s 16 December 2015 statement which are already in evidence and noting that Annexes 2, 5, 7, 10, 14 and 22(1) to Witness 705’s 16 November 2015 statement are now in evidence):

- a) 16 November 2015 statement, paragraphs 1-20, 23-24, 27-30, 34-50, 55, 57, 59-61, 64-65, 67-74, 76-81, 103-106, 112-114, 116, 126-131, 134-138, 147-148, 156, 160-161, 163, 179, 181, 196-197, 200, 202, 206, 214, 230, 242, 249-258, 260-262, 263-287, 288-291, 294, 300-308, 310, 312-321, 322-326, 327-337, 339-347, 348-356;
- b) 16 December 2015 statement, paragraphs 1-13, 16-26;
- c) 3 February 2016 statement, paragraphs 1-15; and
- d) 26 February 2016 statement, paragraphs 1-11, 17, 19; and

ORDERED the Parties, if they have not done so, to file public redacted versions of their submissions and any annexes, or to have them reclassified as public.

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

Leidschendam,
The Netherlands
13 May 2016

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

