

SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE TRIAL CHAMBER

SPECIAL TRIBUNAL FOR LEBANON

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: 30 September 2016

Original language: English

Classification: Public

THE PROSECUTOR

v.

**SALIM JAMIL AYYASH
HASSAN HABIB MERHI
HUSSEIN HASSAN ONEISSI
ASSAD HASSAN SABRA**

**REASONS FOR ADMITTING WITNESS PRH705'S STATEMENTS AND ANNEXES
INTO EVIDENCE**

Office of the Prosecutor:

Mr Norman Farrell & Mr Alexander Milne

Legal Representatives of

Participating Victims:

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

Counsel for Mr Salim Jamil Ayyash:

Mr Emile Aoun, Mr Thomas Hannis &
Mr Chad Mair

Counsel for Mr Hassan Habib Merhi:

Mr Mohamed Aouini, Ms Dorothee 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 Guénaél Mettraux &
Mr Geoffrey Roberts



INTRODUCTION AND PROCEDURAL BACKGROUND

1. On 8 September 2016, the Trial Chamber delivered a decision in court admitting evidence tendered by the Prosecution through Witness PRH705.¹ These are the written reasons for that decision.

2. Witness 705,² an employee and officially designated representative to the Special Tribunal, of Touch, a Lebanese mobile telecommunications company and communications service provider, made five statements for the Prosecution relating broadly to the Touch mobile telephone network, business practices and records. He also testified over nine days.

3. His testimony relates to the Prosecution's case that a network of mobile telephones was used to plan, coordinate and carry out the attack of 14 February 2005 which killed former Lebanese Prime Minister Rafik Hariri and others.³ To connect the four Accused to these mobile telephones and to events pleaded in the amended consolidated indictment, the Prosecution relies on information, call data records and cell site evidence obtained from Lebanese telecommunications companies.

4. The Prosecution sought the admission into evidence of a number of call sequence tables. These are tables of relevant call data records derived directly from the much larger cache of call data records obtained from Touch, among others. The Trial Chamber, however, deferred their admission until the Prosecution had called at least one witness who could attest to the provenance of the call data records from the Lebanese telecommunications providers, and another on the Prosecution's production of the call sequence tables.⁴ Similarly, the Prosecution seeks the admission of cell site evidence—system-related telecommunications data that permits inferences to be drawn as to the location of telephone users at the time of a given call.⁵

5. Witness 705's evidence is thus a precursor to admitting the cell site evidence and the call data records into evidence. To complement and supplement his in-court testimony the

¹ Transcript of 8 September 2016, p. 3.

² See STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi, and Sabra*, F2377, Decision Authorising the Prosecution to Add Witness PRH705 to its Witness List, 15 December 2015.

³ Amended consolidated indictment, paras 14-19.

⁴ F1937, Decision on Five Prosecution Motions on Call Sequence Tables and Eight Witness Statements and on the Legality of the Transfer of Call Data Records to UNHCR and the STL's Prosecution, 6 May 2015, disposition.

⁵ F2004, Corrected Version of "Prosecution Motion for the Admission of Cell Site Evidence", 23 June 2015 (public with confidential annexes A and B).

Prosecution also requested the admission of four of his statements into evidence. The Defence objected to certain paragraphs of the statements, and on 4 May 2016, the Trial Chamber denied the Prosecution's request to admit the statements into evidence in their entirety.

6. It held that the following paragraphs of Witness 705's four statements—and a number of their annexes not admitted into evidence—were admissible under either Rule 155 (C) or Rule 156, subject to the receipt of further evidence, and further submissions if necessary, as to their reliability and probative value:⁶

a) 16 November 2015 statement (now exhibit P826)

- paragraphs 1-20, 23-24, 27-30, 55, 57, 59-61, 64-65, 67-74, 76-81, 103-106, 112-114, 116, 126-131, 134-138, 147-148, 156, 160-161, 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 (now exhibit P1093)

- paragraphs 1-13, 16-26;

c) 3 February 2016 statement (now exhibit P1094)

- paragraphs 1-15; and

d) 26 February 2016 statement (now exhibit P1095)

- paragraphs 1-11, 17, 19.

7. As a consequence, Witness 705 appeared before the Trial Chamber in May and July 2016 and made the necessary declarations under Rule 156 in respect of each part of his statement that the Prosecution sought to introduce into evidence in lieu of oral testimony.⁷ In his evidence he covered all of his statements and the 34 accompanying annexes that are relevant to this decision.⁸

⁶ Transcript of 4 May 2016, pp. 21-24; F2597, Written Reasons for the Trial Chamber's Decision on Prosecution Motion for the Admission of Statements by Witness PRH705, 13 May 2016, disposition.

⁷ See Transcript of 5 May 2016, pp. 11-13; Transcript of 20 July 2016, pp. 34-58. The Chamber notes that the Prosecution omitted to obtain a declaration from Witness 705 under Rule 156 with respect to paragraphs 288-291, 322-326.

⁸ Taking over 598 pages of transcript (in English). Some annexes to his statements are already in evidence and others have been withdrawn by the Prosecution; consequently, only 34 annexes are relevant to this decision: *see below* paras 33, 113.

8. The witness testified extensively on many matters concerning Touch, including: an overview of the company; its network architecture, features and changes to it; the records and data it generated and retained during the course of its business; its different customer forms; its customer services; details on the generation and storage of its business records and their retrieval for the Special Tribunal; its cell site coverage; customer payment methods; SIM card supply, storage and sale; and its security measures. He also attested to the accuracy and provenance of the information in his statements and annexes. The Prosecution tendered a number of exhibits through him, including, in particular, a fifth witness statement (now exhibit P1096) and a response from Touch to a Prosecution request for assistance sent to the Government of Lebanon, exhibit P1119.⁹

9. The Trial Chamber also permitted Witness 705, during his testimony, to contact relevant Touch staff to clarify aspects of his testimony and to answer specified questions. The Prosecution also sought further information from Touch, through requests for assistance to Lebanon, concerning some the paragraphs in his statements and annexes that the Trial Chamber had ruled admissible.

10. At the conclusion of his testimony, the Trial Chamber ordered the Defence to file further submissions in relation to his testimony.¹⁰ Counsel for Mr Salim Jamil Ayyash, joined by counsel for Mr Assad Hassan Sabra, filed submissions,¹¹ to which the Prosecution responded.¹² Counsel for Mr Ayyash, joined by counsel for Mr Hassan Habib Merhi and Mr Sabra, filed further submissions on Prosecution motions relating to evidence obtained from Lebanese communication service providers, and analysed Witness 705's evidence.¹³ The Prosecution then responded.¹⁴

⁹ Transcript of 20 July 2016, p. 57; Transcript of 6 September 2016, pp 3-4.

¹⁰ Transcript of 21 July 2016, p. 73.

¹¹ F2678, Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH705, 29 July 2016; F2680, Sabra Joinder to "Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH707" and "Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH705", 1 August 2016.

¹² F2690, Prosecution Response to "Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH705", 15 August 2016.

¹³ F2683, Ayyash Defence Further Submissions on Prosecution Motions Related to Evidence from Call Service Providers, 8 August 2016 ("Ayyash Communications Service Providers Submissions"); F2684, Adjunction de la Défense de Merhi aux "Ayyash Defence Further Submissions on Prosecution Motions Related to Evidence from Call Service Providers"; F2685, Sabra Joinder to "Ayyash Defence Further Submissions on Prosecution Motions Related to Evidence from Call Service Providers," 8 August 2016.

¹⁴ F2700, Consolidated Prosecution Response to Defence Submissions in Relation to the Admission of Call Sequence Tables and Evidence Obtained from Lebanese Communication Services Providers, 22 August 2016 ("Prosecution Communications Service Providers Response").

11. The Defence's submissions concerning Witness 705's evidence can be categorized into two broad themes: submissions relating to Touch telecommunications generally, and submissions relating specific portions of his statements, annexes and exhibits that were marked for identification during his testimony. Each is considered in turn.

TOUCH TELECOMMUNICATIONS EVIDENCE GENERALLY

General submissions

Defence

12. Defence counsel argue that, despite his characterization as a corporate or company witness, most of Witness 705's evidence was not based on his personal knowledge but on information provided to him, or to his predecessor as Touch's representative, thereby foreclosing meaningful cross-examination.¹⁵ The witness should have provided evidence as to the provenance of Touch's call data records—including its gathering, retrieval and storage—from his personal knowledge, and not simply relayed information provided by others who could not be cross-examined.¹⁶ The Prosecution did not lead any evidence relating to the identities, positions, qualifications, experience or competence of those within Touch who provided the information to the witness, nor could the Trial Chamber have found that it came from suitably qualified personnel.¹⁷ Where there was no direct evidence as to provenance, the fact that the exhibits tendered through the witness came from Touch did not make them reliable on that basis alone.¹⁸ The Trial Chamber did not hear evidence as to the gathering, storage and retrieval of the call data records, and accordingly the Prosecution has failed to establish their reliability.¹⁹

13. Similarly, Witness 705's testimony in relation to cell site evidence demonstrates his inability to provide relevant technical information beyond that in his statements, and his statements tendered by the Prosecution provide little additional information.²⁰ Therefore, the Trial Chamber has insufficient information about the cell site evidence, beyond that they were

¹⁵ Ayyash Communications Service Providers Submissions, paras 22, 36-38.

¹⁶ Ayyash Communications Service Providers Submissions, paras 21, 23, 26, 38.

¹⁷ Ayyash Communications Service Providers Submissions, para. 24.

¹⁸ Ayyash Communications Service Providers Submissions, para. 25.

¹⁹ Ayyash Communications Service Providers Submissions, paras 27-28, 31, 38.

²⁰ Ayyash Communications Service Providers Submissions, para. 45.

provided by Touch, to assess their reliability.²¹ To admit three documents tendered by the Prosecution in its motion on cell site evidence violates the rights of the Defence. A fourth document, an excel spreadsheet of 'sites' containing basic cell tower information, exhibit P813, should be given no weight.²²

Prosecution

14. The Prosecution responds that the Defence's arguments go to the weight of the evidence, rather than to its admissibility. The evidence should be admitted in line with the Trial Chamber's accepted principles on the admissibility of hearsay evidence, including business records, the evidence of corporate witnesses and that only *prima facie* reliability is required at this stage.²³ The Defence misinterprets the Trial Chamber's directions; it did not suggest that the reliability of the call sequence tables could only be assessed via the narrow prism of the in-court evidence of Witness 705 as a person with direct and personal knowledge of all aspects of the data and records used to produce the call sequence tables. Rather, the admissibility of the call sequence tables, and the Touch telecommunications evidence generally, should be viewed on the totality of the evidence submitted by the Prosecution.²⁴

15. Moreover, the Defence fails to demonstrate how the process of the evidence's admission would be inconsistent with the rights of the Accused because counsel had the opportunity to challenge the provenance of the underlying material and to cross-examine Witness 705. That Defence counsel did not follow certain lines of inquiry during cross-examination does not establish the alleged unreliability of the Prosecution's evidence.²⁵ No authority has been cited for the proposition that the Prosecution was obliged to present a witness with full and direct personal knowledge of each and every possible issue that Defence counsel wished to address and for the Prosecution to lead evidence that the Defence may wish to have addressed.²⁶

16. In any event, Witness 705, testifying on behalf of Touch, corroborated the reliability of the Touch telecommunications evidence. The Defence mischaracterizes his testimony and

²¹ Ayyash Communications Service Providers Submissions, para. 46. The four documents comprise coverage maps, cell tower information, and other technical information relating to cell site evidence. Exhibit 813 is an Excel document titled 'Sites' which contains basic cell tower information for Touch on seven specific dates between 2005 and 2010.

²² Ayyash Communications Service Providers Submissions, paras 44, 46.

²³ Prosecution Communications Service Providers Response, paras 4, 15-16, 21, 24, 27.

²⁴ Prosecution Communications Service Providers Response, paras 18-19, 23.

²⁵ Prosecution Communications Service Providers Response, paras 5, 30-31.

²⁶ Prosecution Communications Service Providers Response, para. 29.

or the evidence in his statements, including the retention of inputs used to produce Touch's coverage shape files,²⁷ retrieval of call data records and accounting for changes that have taken place in Lebanon since 2005.²⁸

17. The Prosecution also requests an extension of the word limit for its consolidated response.²⁹

Discussion

18. Witness 705 testified as Touch's official representative to the Special Tribunal. His primary statement, exhibit P826, in many respects is the same as that prepared by his predecessor as Touch's representative. The Defence arguments concerning the Touch telecommunications evidence therefore generally stem from one common underlying complaint, that Witness 705, as an official Touch representative, did not have personal knowledge of many aspects of his statements and the provenance of the call data records upon which the Prosecution has built its case.³⁰ His evidence therefore consists of hearsay.

19. Defence counsel pointed to portions of the transcript where this is apparent.³¹ However, as the Trial Chamber has already emphasized,³² Witness 705 was not called as a witness of things of which he has only personal knowledge. Rather, he testified as a corporate witness—someone attesting to Touch's business practices, records and storage, and to Touch telecommunications evidence generally. In the Trial Chamber's view—for the purpose of assessing the *prima facie* reliability of his evidence—this witness, by virtue of his position in the company and his technical expertise in the industry, was an appropriate corporate representative.

20. The Trial Chamber is unaware of any similar witnesses in international criminal law procedural law. This is the first time a Prosecution's case has relied heavily on information and data obtained from corporate entities, here, telecommunications companies. As a result,

²⁷ Shape files are files that are uploaded to and viewed in special mapping software that shows Touch's best predicted cell site coverage over a particular area.

²⁸ Prosecution Communications Service Providers Response, paras 6, 32, 34, 36-37, 39.

²⁹ Prosecution Communications Service Providers Response, para. 40.

³⁰ See for example, Transcript of 5 May 2016, pp 60-61; Transcript 6 May 2016, p. 62; Transcript of 9 May 2016, pp 21-24, 26-27; Transcript of 10 May 2016, pp 44-46.

³¹ Ayyash Communications Service Providers Submissions, para. 37.

³² See F2597, Written Reasons for the Trial Chamber's Decision on Prosecution Motion for the Admission of Statements by Witness PRH705, 13 May 2016, paras 24-25. See also F2552, Corrected Version of Decision on Prosecution Motion for the Admission of Statements by Witness PRH707 and on Ayyash Defence Motion to Strike the Prosecution Reply, 11 May 2016, para. 57.

international criminal law case law lacks precedent from which the Trial Chamber can draw applicable principles and practice.³³

21. The Trial Chamber, however, has already decided on the substantial Defence objections to the hearsay evidence of corporate witnesses. In decisions concerning both Witness 705 and Witness 707—an official representative of Alfa, another Lebanese mobile telecommunications company—it held that:

Rule 149 (C) permits the Trial Chamber to admit any relevant evidence which it deems to have probative value. The Rules of Procedure and Evidence and the Statute contain no prohibition against the admission of hearsay evidence, nor do they distinguish between various forms of hearsay evidence. The general principles of international criminal law procedural law ... allow hearsay evidence but with the rider that its weight must be assessed in light of the totality of the evidence. 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.³⁴

22. Furthermore, the Trial Chamber has also previously explained its position concerning business records:

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. This is normal in litigation involving businesses, civil or criminal, and especially in large and complex cases. In these type of cases—involving a large number of documents and issues, connected with occurrences from over a decade ago—finding the originators of many of the records will be an impracticality bordering on the impossible. In these circumstances a court can but receive the best available evidence, and, at a later point, attribute to it the appropriate weight.³⁵

23. Accordingly, business records, if produced in the normal course of business of the relevant organisation or workplace, usually by this fact alone have the necessary indicia of reliability of a business record.³⁶ This indicia, however, may be challenged or undermined.

³³ See F2552, Corrected Version of Decision on Prosecution Motion for the Admission of Statements by Witness PRH707 and on Ayyash Defence Motion to Strike the Prosecution Reply, 11 May 2016, para. 54.

³⁴ F2552, Decision on the Admission of Statements by Witness PRH707, para. 49. See also F2597, Written Reasons for the Trial Chamber's Decision on Prosecution Motion for the Admission of Statements by Witness PRH705, 13 May 2016, para. 19.

³⁵ F2552, Decision on the Admission of Statements by Witness PRH707, paras 55-56.

³⁶ F2597, Written Reasons for the Trial Chamber's Decision on Prosecution Motion for the Admission of Statements by Witness PRH705, 13 May 2016, para. 24. See also F2297, Decision on Prosecution Motion for the Admission of Witness Statements Pursuant to Rule 155 and Documents Pursuant to Rule 154, 2 November 2015, para. 51; F2584, Decision on Prosecution Rule 154 Motion for the Admission of Documents Relating to Telephone Subscriber Records from the Alfa Company, 3 May 2016, para. 35; Iran-US Claims Tribunal – Chamber One, *Riahi v. Iran*, Concurring and Dissenting Opinion of Member Brower, Case No. 485, Award No.

This is to be determined on a case-by-case basis. Mere anomalies or irregularities in corporate records may not, without more, be sufficient to cast doubt on this indicia of reliability.³⁷

24. The Defence arguments concerning Witness 705, in particular his lack of personal knowledge of the evidence, does not of itself render the documents *prima facie* unreliable. The Trial Chamber has carefully examined any errors, discrepancies and inconsistencies in the documents that have been drawn to its attention by the Parties, some of which are noted below. It is of the view that these do not undermine their *prima facie* reliability. Rather, the Defence challenges concern the weight to be attributed to the evidence, and not its admissibility.

25. For these reasons, the Trial Chamber holds that such Touch telecommunications evidence—including the cell site evidence and call data records—to which Witness 705 has testified, is generally *prima facie* reliable.³⁸ They are generally business records, although some may have been produced for the purpose of investigation or litigation.³⁹ Accordingly, the Prosecution was not required to attempt to call a witness or witnesses with first-hand personal knowledge of the details or the origins of every aspect of the records.

26. Indeed, given the scope and breadth of the Touch telecommunications evidence generally, it is apparent that no one person could possess such knowledge. It is a large telecommunications company. Adhering to the Defence's demands would require multiple additional witnesses and be an overly cumbersome, impractical and unjustified use of the Trial Chamber's and Touch's time and resources. And, as previously noted, 'finding the originator of many of the records will be an impracticality bordering on the impossible.'⁴⁰

600-485-1, 27 February 2003, para. 97: 'In assessing the probative value of the minutes, one must bear in mind that the minutes, as business records registered with the Registration Office of Companies, are valid as they appear on their face.'

³⁷ Iran-US Claims Tribunal – Chamber Two, *Gulf Associates, Inc. v. Iran et al.*, Case No. 385, Award No. 594-385-2, 7 October 1999, para. 49: 'Irregularities in the corporate documentation of closely held corporations do not amount to proof of forgery. [...] [T]he Respondent's expert evidence relating to the share certificates and the stock transfer ledger is not sufficient to dislodge the presumption that Gulf Associates' company records are as they appear on their face.'

³⁸ The Trial Chamber reiterates that, at this stage, only *prima facie* reliability is required: F1937, Decision on Five Prosecution Motions on Call Sequence Tables and Eight Witness Statements and on the Legality of the Transfer of Call Data Records to UNHCR and the STL's Prosecution, 6 May 2015, para. 111. Defence submissions to the contrary merely express disagreement with a matter that the Trial Chamber has already ruled upon.

³⁹ See F2597, Written Reasons for the Trial Chamber's Decision on Prosecution Motion for the Admission of Statements by Witness PRH705, 13 May 2016, para. 24: '[m]ost 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.'

⁴⁰ F2552, Decision on the Admission of Statements by Witness PRH707, para. 56.

27. The Trial Chamber, however, has also held that ‘records expressly produced by a business for the purposes of litigation may be treated differently.’⁴¹ Here, it is apparent that some of the annexes to Witness 705’s statements have been produced by Touch, upon request, for use in a criminal investigation or for use in the Prosecution’s case in court. Yet, as the Trial Chamber has previously held with respect to similar documents used by Witness 707, they too are business records, ‘even if prepared for the purposes of litigation in the widest sense, namely, being provided to investigatory authorities such as the UNIIC and the Office of the Prosecutor, or to Prosecution counsel for use in court.’⁴² Indeed, the underlying material contained in most of these documents comprises business records that have been produced in a manner facilitating their use in court. The Trial Chamber is not generally convinced that the indicia of reliability of the underlying business records has been undermined, even if anomalies or irregularities can be identified. These are matters that go to their weight, and not their admissibility.

28. The general Defence objections to Touch telecommunications evidence are therefore dismissed.

WITNESS 705’S WITNESS STATEMENTS AND ANNEXES

29. Under Rules 149 (C) and (D) of the Special Tribunal’s Rules of Procedure and Evidence the Trial Chamber may admit relevant evidence which has probative value which is not substantially outweighed by the need to ensure fair trial. In particular, the Trial Chamber has previously allowed a party to ‘supplement or replace parts of a witness’s oral evidence with a prior written statement that the witness adopts under Rule 156 (A) (iii).’⁴³

30. The Trial Chamber, under Article 21 of the Statute of the Special Tribunal and Rules 149 (C) and (F), may admit the Prosecution’s proposed paragraphs into evidence to supplement and complement Witness 705’s oral evidence. The Trial Chamber may allow a party to combine the oral examination in chief of a witness with a written statement from the same witness.

31. Having reviewed the relevant paragraphs and annexes of Witness 705’s statements, his testimony and the additional submissions of the Parties, the Trial Chamber, for the reasons below, was satisfied as to the provenance and reliability of the information they contained.

⁴¹ F2552, Decision on the Admission of Statements by Witness PRH707, para. 55.

⁴² F2552, Decision on the Admission of Statements by Witness PRH707, para. 66.

⁴³ F2552, Decision on the Admission of Statements by Witness PRH707, paras 28-32, 37-40.

Consequently, the Trial Chamber's 8 September 2016 decision admitted specific paragraphs of Witness 705's five statements and annexes that had been previously marked for identification into evidence.⁴⁴ As a result:

- Witness 705's statement of 16 November 2015 became exhibit P826;
- Annex 4, network schematic 'Touch IT Logical Architecture' from June 2006, became exhibit P825;
- Annex 15, explanation of the call data record life-cycle, became exhibit P827;
- Annex 19, request for assistance response relating to cell towers, basic cell information and maps indicating cell coverage for 2005, 2007, became exhibit P815;
- Annex 20, a request for assistance response describing how coverage was established, became exhibit P816;
- Annex 22 (2), a response to a request for assistance for clarification on geographic coordinates for 19 cell towers and clarification of correct azimuths for 3 cell towers in 2004-2005, became exhibit P818;
- Annex 23 (1), a frequency plan for 14 February 2005 that lists all cell on air at the time, became exhibit P819;
- Annex 23 (2), a frequency plan for 14 February 2005, became exhibit P820;
- Annex 24, a Unicode converter, became exhibit P1098;
- Witness 705's statement of 16 December 2015 became exhibit P1093;
- Witness 705's statement of 3 February 2016 became exhibit P1094;
- Witness 705's statement of 26 February 2016 became exhibit P1095; and
- Witness 705's statement of 4 May 2016 became exhibit P1096.

32. The Prosecution, at the Trial Chamber's request,⁴⁵ resubmitted Witness 705's statements without the paragraphs that were not admitted into evidence.

⁴⁴ Transcript of 8 September 2016, p. 3.

⁴⁵ Transcript of 4 May 2016, p. 85.

16 November 2015 statement (exhibit P826)

33. The following annexes to Witness 705's 16 November 2015 statement were already in evidence: annex 2 (exhibit P821), annex 5 (exhibit P830), annex 7 (exhibit P831), annex 10 (exhibit P832), annex 14 (exhibit P833), and annex 22 (1) (exhibit P817). In court, the Prosecution withdrew 24 annexes, namely numbers 17, and 33 to 55.⁴⁶ The following paragraphs of this statement have also been withdrawn by the Prosecution: 130, 163, 276, 283, and 294.⁴⁷

34. The Defence submits generally that the 16 November 2016 statement was not Witness 705's own words or personal knowledge.⁴⁸ Witness 705 was given a completed statement that he merely signed.⁴⁹ Defence counsel also requested that if the Trial Chamber admitted that statement, an earlier draft of it—now exhibit 1D260—should also be admitted into evidence for the limited purpose of highlighting the extent and type of annotations made by the Witness 705 to the draft.⁵⁰

35. The Trial Chamber agrees. The annotations and changes made by Witness 705 to the draft statement may be relevant to the Trial Chamber's assessment of the weight to be given to exhibit P826. It was in the interests of justice that the Trial Chamber admitted the document into evidence on 28 September 2016.⁵¹

36. Witness 705 explained generally the process of drafting his statements and that much of its content was based on a draft prepared by and for his predecessor as the Touch representative for the Special Tribunal. For example, he made handwritten notes on the predecessor's statement and for every proposed change he consulted the company's governmental affairs department. The reliability of the information was checked and if it was within his personal knowledge he would comment on it, especially if there were any apparent contradictions.⁵²

⁴⁶ F2597, Trial Chamber's Decision, 13 May 2016, para. 12.

⁴⁷ Transcript of 19 July 2016, p. 97; Provisional Transcript of 28 September 2016, pp. 35-36.

⁴⁸ F2678, Ayyash Defence Submissions, para. 14.

⁴⁹ F2678, Ayyash Defence Submissions, para. 14.

⁵⁰ F2678, Ayyash Defence Submissions, para. 18.

⁵¹ Provisional Transcript of 28 September 2016, pp. 44-46.

⁵² Transcript of 21 July 2016, pp. 48-49 (cross-examination by counsel for Mr Ayyash).

Witness and Company Information (paragraphs 1-20, 23; annex 1)

37. The first section of exhibit P826 outlines Witness 705's career history and includes an overview of Touch, such as general information about the company and its overall network architecture.⁵³ Paragraphs 1 through 13 are introductory. Paragraphs 14 through 20 outline the recent history of Touch and general company information such as the purpose of its Owner Supervisory board. Paragraph 23 explains that Touch has no property rights on the asset of the network. Annex 1 is the letter designating Witness 705 as the representative for Touch.⁵⁴

38. This annex is undisputed. The Trial Chamber is satisfied that the information in these paragraphs and the annex is relevant and probative. The witness has first-hand knowledge of general company information from his years working at Touch and his position in the company. They should be admitted into evidence.

Network Architecture (paragraphs 24, 27-30, 34-50, 55, 57, 59-61; annexes 3-4)

39. The next section highlights Touch's network components, outlines the Touch Network architecture, and describes general changes to it from 2004 to the present.⁵⁵ These paragraphs—barring 27 to 29—are uncontroversial, the parties did not make additional submissions on this annex, and refer to normal mobile network operations and planning. They relate to Touch's standard business practices and should therefore be admitted into evidence.

40. Paragraph 24 describes the network components such as the base transceiver station (BTS), the base station controller (BSC), mobile switching centre (MSC), gateway mobile switching centre (GMSC), home location register (HLR), visitor location register (VLR), and pre-pay Intelligence Network (IN) platform. Paragraphs 27 and 28 explain that in 2004 and 2005 the Lebanese network that Touch operated was a global system for mobile telecommunications (GSM) 900 network and that calls made from one person to another are set up and processed through this GSM. In paragraph 29, Witness 705 explains that he could not provide a 'logical schematic' of the network in 2004 and 2005.

41. Paragraph 30 describes some changes to the Touch Network between 2004 and 2006. Paragraph 34 explains that to solve the problem of congestion in the network, Touch installed

⁵³ P826, paras 1-20; Transcript of 19 July 2016, pp. 83, 93; Transcript of 20 July 2016, pp. 33-35.

⁵⁴ P826, para. 2. The Parties did not make additional submissions on this annex.

⁵⁵ P826, paras 24, 27-30, 34-50, 55, 57, 59-61; Transcript of 5 May 2016, p. 30; Transcript of 10 May 2016, pp. 27-28; Transcript of 20 July 2016, pp. 34, 37-39; Transcript of 21 July 2016, p. 52.

more cell sites. Paragraphs 35 through 50 explain what International Mobile Subscriber Identity (IMSI), SIM, and Mobile Subscriber Integrated Services Digital Network Number (MSISDN) are and how they relate to the call set-up.⁵⁶ Witness 705 explains that once a SIM card is loaded into a mobile telephone and it is on, it will scan for the closest cell tower.⁵⁷ Paragraphs 55 and 57 provide information on congestion relief measures employed by Touch, according to global standards. Congestion relief occurs when a cell is overloaded triggering the transfer of calls to neighboring cells.⁵⁸ In paragraphs 59 to 61, Witness 705 explains that statistics were unavailable on the percentage of calls that activate the congestion relief feature. Additionally, he explains networking planning to deal with future anticipated congestion relief.

42. Counsel for Mr Ayyash objected to paragraphs 27 to 29 on the grounds that the witness did not list a consulted department, the source of this information, or a schematic diagram. Furthermore, because Witness 705 did not work at Touch in 2004 or 2005 he could not accurately provide information on what sites existed then.⁵⁹

43. Witness 705's evidence has satisfied the Trial Chamber of the *prima facie* reliability of the information in these paragraphs. Their later assessment is a matter of weight. They may be admitted into evidence.

44. Annex 3 is the network architecture for Touch and is relevant and probative and may also be admitted into evidence.⁶⁰

Annex 4 (exhibit P825)

45. Annex 4 is a complex diagram (or schematic) of the Touch Network architecture.⁶¹ The purpose of the diagram is to show the different components that exist in the network and how they interact with each other.

46. The Defence objects to the document on the grounds of insufficient indicia of reliability.⁶² Witness 705 did not prepare it and does not have first-hand knowledge as to who

⁵⁶ Transcript of 10 May 2016, p. 28; Transcript of 19 July 2016, p. 95; Transcript of 20 July 2016, pp. 34, 39;

⁵⁷ P826, para. 43.

⁵⁸ P826, paras 55-57; Transcript of 20 July 2016, p. 34, 39.

⁵⁹ Transcript of 5 May 2016, pp. 30- 31.

⁶⁰ The Parties did not make additional submissions on this annex.

⁶¹ P826, para. 25. As held above in paragraph 27, even if prepared for litigation, in this context, documents of this kind are business records.

⁶² F2678, Ayyash Defence Submissions, para. 47.

exactly created it. Although he has some knowledge regarding 2G networks, he is not knowledgeable about the network as described in the document because he did not work for Touch during that time period.⁶³

47. The Prosecution submits that it is relevant to the Trial Chamber's assessment of the reliability of Touch systems and the records generated by those systems.⁶⁴ The information in the document is reliable because Touch established the provenance and accuracy and the witness provided sufficient explanatory evidence in his testimony.⁶⁵

48. From Witness 705's evidence the Trial Chamber believes that this schematic meets the threshold of reliability. It is a business record and it is common practice for telecommunications companies to provide a network schematic for technical teams to understand how the network works.

49. The explanations in these paragraphs either derive directly from technical records from Touch or is general information related to mobile telephones. This should be undisputed. For example, in paragraphs 35 to 40 of exhibit P826, the witness explains what IMSI, SIM, and MSISDN are and how they relate to the call set-up. This information is common knowledge to telecommunications providers, and the parties did not make additional submissions on these paragraphs.

50. The Trial Chamber is satisfied that the witness provided sufficient information regarding Touch's network architecture, despite not working there in 2004 or 2005. The witness has years of relevant experience at Touch and either had first-hand knowledge of the company's policies due to his position or was informed of them by another Touch employee. Annex 4 has the necessary *prima facie* reliability to be admitted into evidence.

Business records (paragraphs 64-65, 67-74, 76-81, 103-106, 112-114, 116, 126-129, 131, 134-138; annexes 6, 8-9, 11-13)

51. The next category is the different types of records and data generated and used within Touch's business operations.⁶⁶ The information contained in these paragraphs and the seven

⁶³ F2678, Ayyash Defence Submissions, para. 49.

⁶⁴ F2690, Prosecution Response to "Ayyash Defence Submissions on the Evidence of Prosecution Witness 705," 15 August 2016, para.17; F2678, Ayyash Defence Submissions, para. 49.

⁶⁵ F2690, Prosecution Response, para. 18; Transcript of 10 May pp. 16-20.

⁶⁶ P826, paras 64-65, 67-74, 76-81; Transcript of 10 May 2016, pp. 59-60, 69; Transcript of 19 July 2016, pp. 81, 95, 102; Transcript of 20 July 2016, pp. 34-35, 41-42, 63, 65, 70.

annexes—as described below—comprises the normal business records of a telecommunications company. These paragraphs are relevant and probative. Defence counsel made no additional submissions on them and they appear to be generally undisputed. They should be admitted into evidence.

52. Paragraph 64 describes the information generated in relation to each GSM, including the mobile station MSISDN, contract number, subscriber name, card number, etc. Paragraph 65 describes the call data records generated by Touch including the numbers called, date and time, duration and call type. Paragraphs 64 to 74 provide information derived from Touch's IT department as to the data format of call data records, the transfer account procedure (TAP) by which telecommunications providers exchange roaming billing information, and its 'data clearing house,' a call data record collector for roaming calls used by any GSM operator.

53. Paragraphs 76 and 77 explain that Touch does not have access to any information on calls made while roaming abroad and the only information available regarding roaming is if a roaming subscriber receives a call from a number in Lebanon.⁶⁷ Paragraphs 78 through 81 explain that TAP files are generated when a visitor to the Touch network or a non-Touch subscriber is roaming on the Touch network and are in ASN.1 format, a standard used for describing telecommunications data. Paragraphs 103 to 106 explain that Touch generates call data records and subscriber information but does not keep any record of voicemails and did not generate recharge records (how often and when a subscriber tops up their account) between 2002 and 2005. Paragraphs 112 through 114 explain that when a subscriber changes the IMEI or the IMSI it is detected by Touch through a program used to detect fraudulent international mobile equipment identities.⁶⁸ Paragraph 116 outlines the different types of customer forms, for example what a GSM service contract looks like.⁶⁹ Paragraphs 126 through 129, 131, and 134 through 138, reference different forms such as a Touch Features and Service Request Form, a Touch Request for Subscription/Pre-paid Line, a Touch Lost Subscriber Identity Module Card form, Touch Release Form, and the Touch Corporate Offer Contract.⁷⁰

⁶⁷ Transcript of 10 May 2016, p. 59; Transcript of 19 July 2016, pp. 81, 102; Transcript of 20 July 2016, pp. 34, 41, 63, 65, 70.

⁶⁸ Transcript of 20 July 2016, p. 42.

⁶⁹ Transcript of 11 May 2016, p. 70.

⁷⁰ Transcript of 11 May 2016, pp. 41, 43; Transcript of 19 July 2016, pp. 97; Transcript of 20 July 2016, pp. 34, 42-43; Transcript of 21 July 2016, pp. 53-54.

54. Annex 6 is the amended GSM Service Contract (Post-paid).⁷¹ Annex 8 is the Touch Features & Services Request Form,⁷² Annex 9 is the Touch Request for Subscription/Pre-paid Line Form,⁷³ Annex 11 is the Touch Lost Subscriber Identity Module Card Form.⁷⁴ Annex 12 is the Touch Release Form and annex 13 is the Touch Corporate Offer Contract.⁷⁵

55. The Trial Chamber finds that the information contained in these paragraphs and annexes is relevant and probative as Touch's business records. Touch uses these forms in the ordinary course of business, thus providing evidence of their reliability.

**Details on the generation, storage, and retrieval of business records
(paragraphs 147-148, 156, 160-161, 179, 181, 196-197, 200, 202, 206, 214, 230,
242, 249-258, 260-265, 266-269, 270-272; annexes 15-16, 18-26)**

56. The following category relates to the generation, storage, and retrieval of Touch's business records.⁷⁶

57. Paragraphs 147 and 148 explain that in regard to accounting only total amounts are recorded and between 2004 and 2005 Touch did not need call data records from the IN system (the system that monitors the pre-paid services) relating to pre-paid subscribers for the purpose of managing the life-cycle of the subscriber. Paragraph 156 outlines how data flows from the mobile switching centre (MSC), a network of switching sub-systems, to billing, the call data record rating process, call data record storage, and write access points (the ability to modify records). In cross-examination, Witness 705 explained that each department in Touch does its own periodic archiving.⁷⁷ Part of the data provided to the Special Tribunal, like the frequency plan and site configuration files, was retrieved from the radio planning archives.⁷⁸ Paragraphs 160 to 161 explain that since 1997, call data records have been archived in text format and the information contained within them is related to billing.⁷⁹ The witness was

⁷¹ P826, para. 116. The Parties did not make additional submissions on this annex.

⁷² P826, para. 126. The Parties did not make additional submissions on this annex.

⁷³ P826, para. 127. The Parties did not make additional submissions on this annex.

⁷⁴ P826, para. 134. The Parties did not make additional submissions on this annex.

⁷⁵ P826, paras 136, 138. The Parties did not make additional submissions on these annexes.

⁷⁶ P826, paras 147-148, 156, 160-161, 163, 179, 181; Transcript of 5 May 2016, p. 24; Transcript of 10 May 2016, pp. 30, 67, 91; Transcript of 19 July 2016, pp. 97; Transcript of 20 July 2016, pp. 34, 43-44.

⁷⁷ Transcript of 21 July 2016, p. 34 (cross-examination by counsel for Mr Ayyash).

⁷⁸ Transcript of 21 July 2016, p. 40 (cross-examination by counsel for Mr Ayyash).

⁷⁹ Transcript of 10 May 2016, p. 91; Transcript of 20 July 2016, p. 43.

unaware of who were the systems administrators, and the four or five IT department monitors of outsourcing staff in 2004 and 2005.⁸⁰

58. However, call data records in text format containing non-billing related information have been archived since 2001.⁸¹ Paragraph 179 and 181 relate to clock synchronisation and explain that since 2004 and 2005, the old mobile switching centres, where the clock synchronisation log was kept, are no longer available.⁸² The witness explained in cross-examination that there were five MSCs on the Touch system in 2004, but there was no synchronisation between the clocks in the different MSCs. He did not know what the difference between MSCs would have been in 2004 and 2005 i.e. whether it was seconds or five to ten minutes.⁸³ Paragraph 196 explains that Witness 705 was informed by the Touch commercial department that between 2004 and 2005, there were no measures in place to ensure the accuracy of subscriber details.

59. This section also covers the retrieval of subscriber information for the Special Tribunal.⁸⁴ Paragraphs 197, 200, and 202 explain that subscriber numbers are identified by the IMSI on the network and when a subscriber moves from one cell to another a signal is sent out, updating the subscriber's location.⁸⁵ Paragraph 206 explains that, starting in 2015, Touch offered a service for the subscriber's bill to be sent to their home address. Paragraph 214 provides a chart with the list of cells that were not on air in 2004 and therefore Witness 705 was unable to provide information on those cells. Paragraph 230 explains that to generate the shape files for the Special Tribunal's Prosecution, Touch responded by providing a CD map and an explanatory document outlining how the coverage was established.⁸⁶ Paragraph 242 relates to SMS content and states that the fields included in content records are the 'A' number, 'B' number, date, time, and content of the message.

60. Paragraphs 249 to 258 provide explanations for specific data related issues such as single row call data records (when a call or SMS is recorded as only one row of data in the call data records) and timing differences in the call data records in 2004-2005.⁸⁷ For example,

⁸⁰ Transcript of 21 July 2016, p. 37.

⁸¹ P826, para. 161; Transcript of 10 May 2016, p. 91; Transcript of 20 July 2016, p. 43.

⁸² Transcript of 10 May 2016, pp. 30-32; Transcript of 20 July 2016, p. 43; Transcript of 21 July 2016, p. 31-34.

⁸³ Transcript of 21 July 2016, pp. 31-32.

⁸⁴ P826, paras 197, 200, 202; Transcript of 11 May 2016, p. 57; Transcript of 20 July 2016, pp. 34.

⁸⁵ P826, para. 202; Transcript of 20 July 2016, p. 34;

⁸⁶ Transcript of 20 July 2015, para. 34.

⁸⁷ Transcript of 20 July 2016, pp. 34, 43, 44; Transcript of 21 July 2016, p. 55 (cross-examination by counsel for Mr Ayyash).

in 2004 and 2005, there was no IN system within the Touch Network in contrast to 2016 where an IN system manages all the pre-paid subscriptions.⁸⁸

61. In cross-examination, Witness 705 explained why he had altered his predecessor's statement to delete a reference to 'dropped calls', describing them as access failures.⁸⁹ He explained that usually a call data record for one call or an SMS has two rows of call data records, however, sometimes a call or SMS is recorded on just one row of data in the call data records. This is known as a single row call data record. This often occurs when a caller hears an announcement such as having insufficient funds on the account or that the pre-paid subscription is expired. These calls are considered invalid in the system and therefore there is no row for the incoming number.⁹⁰ Another explanation for a single row call data record is that when a call is not established, meaning a call not made when the network is congested, the call is too short for it to be considered an actual call, or the caller ends the call before it connects.⁹¹

62. Paragraph 260 explains that occasionally the best predicted coverage for certain cell sectors shows distinct patches coverage far from the actual cell tower recording the call.⁹² The Radio Team at Touch finds that overshooting in the best predicted server occurs when there is suboptimal configuration in the tilting of the antenna. This is a manual error that Touch tries to fix through its continuous updating of its network.⁹³

63. Paragraph 261 provides an explanation on the anomalies with the best predicted coverage for two cell sites in Harouf, namely Nabatiyeh_C and Nabatiyeh_D. Paragraph 262 is related to the sector Therese_A/B/C in Beirut and explains that records for this sector were created in May 2007.

64. In regard to SMS content, paragraph 263 describes that the call data records have a field that shows whether a text message has been delivered.⁹⁴ Paragraph 264 outlines that a delivery report is generated if requested by the sender and a call data record is created for delivery reports on the SMSC except when they are sometimes filtered out as a result of

⁸⁸ P826, para. 249; Transcript of 20 July 2016, pp. 43.

⁸⁹ Transcript of 21 July 2016, p. 55 (cross-examination by counsel for Mr Ayyash).

⁹⁰ P826, para. 250; Transcript of 20 July 2016, pp. 43-49.

⁹¹ P826, paras 256, 257; Transcript of 20 July 2016, pp. 34; Transcript of 21 July 2016, p. 55;

⁹² Transcript of 20 July 2016, p. 34.

⁹³ P826, para. 260; Transcript of 20 July 2016, p. 34.

⁹⁴ Transcript of 20 July 2016, p. 34.

processing.⁹⁵ Paragraph 265 describes that call data records display the delivery report as an incoming SMS but there is no record of a delivery report as an outgoing SMS.⁹⁶ Paragraphs 266 to 269 provide further information on SMS delivery reports, such as how it can be set up, how the user can choose to receive a confirmation text that the SMS was delivered, and what happens when the SMSC sends back a delivery report. Paragraph 270 explains possible discrepancies between the SMS content records and the call data records, for instance, when a Touch subscriber sends an SMS while roaming.⁹⁷ Paragraph 271 outlines that data messages within SMS content cannot be decoded into readable text. In paragraph 272, the witness explains that he was informed by Touch's IT department that it was not possible to determine the nature of a data message contained in a Prosecution request for assistance.⁹⁸

65. Annex 15, is a call data record life-cycle diagram, call data record rating process, and details of the call data record mediation process.⁹⁹ Annex 16 is comprised of Touch's backup information.¹⁰⁰ Annex 18 is the response from Touch to Prosecution requests for assistance with the updated list of subscriber information.¹⁰¹ Annex 19 is a response to a request for assistance in regard to cell site information.¹⁰² Annex 20 comes from Touch's radio planning team and provides cell information related to radio planning tools used by Touch in 2004.¹⁰³ Annex 21 is the Prosecution's original request for assistance and the response.¹⁰⁴ Annex 22 is a request for assistance response to the Prosecution's request for clarification of discrepancies in cell site data.¹⁰⁵

66. Annex 23 is a list of all the cells on air on 14 February 2005 and provides details on those sites.¹⁰⁶ Annex 24 is the Unicode Converter, which converts Unicode (a computing

⁹⁵ Transcript of 20 July 2016, p. 34.

⁹⁶ Transcript of 20 July 2016, p. 34.

⁹⁷ Transcript of 20 July 2016, p. 34.

⁹⁸ Namely, 2013/RFA0082.

⁹⁹ P826, para. 150. This annex is part of the normal business records of a telecommunications company, it is relevant and probative, and should be admitted into evidence.

¹⁰⁰ P826, para. 160. The Parties did not make additional submissions on this annex.

¹⁰¹ P826, para. 197. The Parties did not make additional submissions on this annex.

¹⁰² P826, Annex 19 (this annex appears in paragraph 209 of the statement which is not one of the paragraphs proposed for admission). As held above in paragraph 27, even if prepared for litigation, in this context, documents of this kind are business records.

¹⁰³ P826, para. 230. The Parties did not make additional submissions on this annex.

¹⁰⁴ P826, para. 230. The Parties did not make additional submissions on this annex.

¹⁰⁵ P826, Annex 22 (this annex appears in paragraph 231 of the statement which is not one of the paragraphs proposed for admission). As held above in paragraph 27, even if prepared for litigation, in this context, documents of this kind are business records.

¹⁰⁶ P826, Annex 23 (this annex appears in paragraph 235 of the statement which is not one of the paragraphs proposed for admission). As held above in paragraph 27, even if prepared for litigation, in this context, documents of this kind are business records.

industry standard for encoding, representation, and handling of text) characters to their Unicode and decimal representations, provided to the Special Tribunal on 22 September 2010.¹⁰⁷

67. Annex 25 is the response to a Prosecution request for assistance on the best predicted coverage, of which sector best provides service for a specified area—cell sectors Nabatiyeh_C and Nabatiyeh_D in Harouf.¹⁰⁸ Annex 26 is the response to a request for assistance explaining the definition of ‘Data Msg’ relating to a SMS message.¹⁰⁹

Annex 15 (exhibit P827)

68. Annex 15 is a diagram explaining the life-cycle of call data records. When read in conjunction with paragraphs 156 and 157 it describes the five steps in the call data record rating process: rating, suspense calls processing, discounting, archiving history, and aggregating. Rating is the process of converting call data records into monetary value for billing purposes. Next, suspense calls containing call data records that were previously unbillable are corrected and rated. Then, discounting rules are applied. Following this, calls and services are archived into a history database. Lastly, records that belong to the same user are grouped.¹¹⁰

69. The Defence contests the admission of these paragraphs and documents, and submitting in particular that Witness 705 was not involved in the creation of this document, that he merely adopted it with the rest of his statement.¹¹¹ The information contained in this diagram is not within his personal knowledge.¹¹² The annex therefore does not meet the threshold for reliability because the witness is so far removed from the practices illustrated in the document that the evidence cannot be sufficiently tested.¹¹³

70. The Prosecution submits that annex 15 is relevant to show how Touch uses call data records in its everyday operations and provides evidence relevant to the Trial Chamber’s

¹⁰⁷ P826, Annex 24 (this annex appears in paragraph 245 of the statement which is not one of the paragraphs proposed for admission). The Parties did not make additional submissions on this annex.

¹⁰⁸ P826, para. 261. The Parties did not make additional submissions on this annex.

¹⁰⁹ P826, para. 272. The Parties did not make additional submissions on this annex.

¹¹⁰ P826, para. 156.

¹¹¹ F2678, Ayyash Defence Submissions on the Evidence of Prosecution Witness 705, 29 July 2016, paras 49, and 51.

¹¹² F2678, Ayyash Defence Submissions, paras 49 and 51.

¹¹³ F2678, Ayyash Defence Submissions, para. 51.

assessment of those records.¹¹⁴ The annex is reliable because Touch confirmed its provenance and accuracy and Witness 705 provided sufficient explanatory information during his testimony.¹¹⁵

71. Witness 705 explained that between 2004 and 2005 and today, call data records were generated in a machine readable language and then mediated, and that the call data records were archived between 2004 and 2005 and 2016.¹¹⁶ Additionally, Touch never manually transferred call data records; the process was always done automatically.¹¹⁷

72. The Trial Chamber is satisfied from Witness 705's explanations that this diagram, annex 15, is relevant and probative. It describes the process by which call data records are generated. The Trial Chamber is satisfied, that notwithstanding that the witness did not personally create the document, that he is familiar enough with the relevant processes and the information in the document to make it *prima facie* reliable. This annex is helpful in the Trial Chamber's assessment of Touch's record keeping practices and the accuracy of the call data records generated. For the same reasons the Trial Chamber is satisfied of the *prima facie* reliability of the information contained in the paragraphs noted above.

Annex 19 (exhibit P815)

73. Annex 19 is a 2010 response from Touch to a Prosecution request for assistance regarding cell site information for specific Touch sites.¹¹⁸ The list of cell site information includes geographic coordinates and azimuth values and concerns the Touch network from 2004 and 2005. The annex is based on a Touch propagation model for network use.¹¹⁹

74. The Defence submits that the document does not meet the threshold level of reliability. Defence counsel highlighted that despite Witness 705's position in Touch, he was unable to confirm several details of Touch's practices in 2004-2005. The Prosecution failed to show that annex 19 is reliable, therefore violating the Accused's right to a fair trial.¹²⁰

¹¹⁴ F2690, Prosecution Response to "Ayyash Defence Submissions on the Evidence of Prosecution Witness 705," 15 August 2016, para. 19.

¹¹⁵ F2690, Prosecution Response, para. 20.

¹¹⁶ Transcript of 10 May 2016, pp. 77-78.

¹¹⁷ Transcript of 10 May 2016, p. 79.

¹¹⁸ P826, Annex 19 (This annex appears in paragraphs 100 and 209 of the statement which are not of the paragraphs proposed for admission). As held above in paragraph 27, even if prepared for litigation, in this context, documents of this kind are business records.

¹¹⁹ Transcript of 21 July 2016, p. 17 (cross-examination by counsel for Mr Ayyash).

¹²⁰ F2678, Ayyash Defence Submissions, paras 25-26.

75. The Prosecution submits that annex 19 is relevant to the Trial Chamber's assessment of cell information, shape files, and Touch's record keeping practices. Annex 19 meets the indicia for reliability because the witness confirmed that the radio planning unit produced the document and he provided specific evidence regarding cell sites and Touch's practices, such as the key performance indicators Touch uses today and in the past.¹²¹ Additionally, in his testimony, Witness 705 explained that he relied on the information in the document in respect to drive surveys and tests¹²² and calibration, used to obtain information from the cell site that is physically measured.¹²³

76. Witness 705 explained that before 2005, Touch used a network planning tool called Planet, and that Touch's technical department would have prepared the last updates in 2004.¹²⁴ The witness, who had worked himself with Planet, explained its method of calibration, namely starting with a standard calibration model and then performing drive tests. These are inputted into Planet and fine-tuned to meet the network key performance indicators (or KPIs).¹²⁵ Witness 705 did not personally know who, in 2004, was responsible for the calibration of Planet or indeed when it was actually last calibrated before 2004, but explained that an expert subcontractor usually did this; it would have been between 1997 and 2004.¹²⁶

77. Having reviewed the testimony of Witness 705 and this annex the Trial Chamber is satisfied that it is *prima facie* reliable. The documents contained in this annex were produced from Touch's business records, and are probative of Touch cell sectors used by relevant mobile telephones.

78. In his personal experience, although Planet and Asset Aircom are different, they usually give similar outputs and both are used to produce the best predicted coverage maps for networking planning and optimization.¹²⁷ The witness explained that Planet needs inputs to provide coverage maps. One of the inputs is the digital elevation model which is a map layer that is used to calculate the coverage for the cell site.¹²⁸ However, in 2004 the license for

¹²¹ F2690, Prosecution Response, paras 7-8.

¹²² Transcript of 16 February 2016, pp 71-74. Drive testing involves using a mobile testing device to physically measure the coverage of a particular station. The testing device takes automatic measurements of the coverage when the engineer makes a call, and records the coordinates of the area where the measurements are being taken. It is an alternative to creating shape files, but can also be used to fine tune and improve existing coverage.

¹²³ Transcript of 6 May 2016, p. 75.

¹²⁴ Transcript of 21 July 2016, p. 17 (cross-examination by counsel for Mr Ayyash).

¹²⁵ Transcript of 21 July 2016, p. 21 (cross-examination by counsel for Mr Ayyash).

¹²⁶ Transcript of 21 July 2016, pp. 21-22 (cross-examination by counsel for Mr Ayyash).

¹²⁷ Transcript of 6 May 2016, p. 4.

¹²⁸ Transcript of 6 May 2016, p. 66.

Planet expired.¹²⁹ The Trial Chamber is thus satisfied of the witness's explanation in relation to Planet insofar as it concerns the *prima facie* reliability test for the admission of documents into evidence. Before 2004, he had personal experience with Planet.¹³⁰

79. The Trial Chamber is satisfied with the witness's explanation about Planet, how it is calibrated, and its relevance to the case. Moreover the information in this annex, although prepared for the investigation or litigation, derives from the business records of Touch.

Annex 20 (exhibit P816)

80. Annex 20 is a response to a request for assistance from 2010 including shape files from 2004 produced by Touch.¹³¹ It includes cell information related to radio planning tools used by Touch after 2004.

81. The Defence submits that the response offers misleading and inaccurate evidence.¹³² The Prosecution has failed to establish its reliability because there are differing accounts as to who produced it. According to Touch, the technical department provided the information, however, according to the witness, the radio planning unit produced the document. The witness did not know how the files were actually produced and did not consult with anyone in the radio planning unit regarding the files.¹³³ Defence counsel also objected on the grounds of lack of foundation, because the witness only briefly reviewed the shape files and the map annexed to the statement but did not consult with anyone regarding this information, he lacked personal knowledge.¹³⁴

82. The Prosecution submits that annex 20 explains the files provided in the response to the request for assistance and the tools used by the radio planning unit to generate this information. This information is relevant to the Trial Chamber's analysis of the reliability of the cell information, shape files, and Touch's record storage practices.¹³⁵ Touch and Witness 705 confirmed its provenance and accuracy. Witness 705 provided evidence, based on his

¹²⁹ Transcript of 21 July 2016, p. 17 (cross-examination by counsel for Mr Ayyash).

¹³⁰ Transcript of 5 May 2016, pp. 88-89.

¹³¹ P826, para. 230. As held above in paragraph 27, even if prepared for litigation, in this context, documents of this kind are business records.

¹³² F2678, Ayyash Defence Submissions, para. 31.

¹³³ F2678, Ayyash Defence Submissions, paras 28-29.

¹³⁴ Transcript of 6 May 2016, p. 64-65, 67.

¹³⁵ F2690, Prosecution Response, para. 7.

personal knowledge, in addition to clarifying the process of measuring geographic coordinates.¹³⁶

83. The witness explained that a propagation model is assigned to each cell to give the most accurate coverage prediction, and described its calibration.¹³⁷ The propagation models are calibrated once and then used for the rest of the period unless there are significant changes in the country.¹³⁸ He described Touch's procedures in taking the geographic coordinates of its sites.¹³⁹ And, based on his personal experience and knowledge, he described the inputs used by Touch's radio planning unit to generate shape files are site locations, the sites and cells, parameters configuration, the propagation models, the terrain map, and the clutter map.¹⁴⁰

84. Having considered Witness 705's testimony and his knowledge of relevant industry practices, in this annex,¹⁴¹ the Trial Chamber is satisfied that the files are *prima facie* reliable. Touch produced the information from its business records. The Trial Chamber also considers that the files are necessarily probative of the locations of Touch cell masts and cell sectors used by telephones allegedly used in the planning and preparation of the attack against Mr Hariri.

Annex 22 (2) (exhibit P818)

85. Annex 22 (2) is a response to the Prosecution's request for assistance for a clarification of discrepancies in cell site data provided by Touch in July and September 2010.¹⁴² This annex explains the location, and azimuth value discrepancies, of basic cell information provided in response to the July 2010 request for assistance.

86. The Defence submits that the document does not have the requisite indicia of reliability. The information provided in this response is outside the scope of Witness 705's personal knowledge. Witness 705's testimony did not clarify the document nor explain how the data was produced, or its validity.¹⁴³ During his testimony, counsel for Mr Ayyash objected on the grounds of lack of foundation and lack of personal experience in regard to

¹³⁶ F2690, Prosecution Response, para. 9.

¹³⁷ Transcript of 6 May 2016, pp. 68-69

¹³⁸ Transcript of 6 May 2016, p. 71.

¹³⁹ Transcript of 9 May 2016, p. 6.

¹⁴⁰ Transcript of 9 May 2016, p. 10.

¹⁴¹ Transcript of 6 May 2016, p. 84; Transcript of 9 May 2016, pp 4-33.

¹⁴² P826, Annex 22(2) (this annex appears in paragraph 231 of the statement which is not one of the paragraphs proposed for admission). As held above in paragraph 27, even if prepared for litigation, in this context, documents of this kind are business records.

¹⁴³ F2678, Ayyash Defence Submissions, paras 33-36.

whether in 2004 and 2005 three azimuths changes over the course of the year would be normal, high, or low. Defence counsel argued that since it had not been established that regular records of azimuth changes in 2004 were kept at Touch, the Prosecution failed to lay a proper foundation before questioning the witness on this topic.¹⁴⁴

87. The Prosecution submits that the annex provides relevant information on Touch's detailed historical records and includes evidence relevant to the Trial Chamber's analysis of the reliability of azimuth and location information. This document is reliable because it was signed by the head of the legal department at Touch, confirmed by Witness 705, and explained in detail during his testimony.¹⁴⁵

88. Witness 705 explains that XY coordinates are the geographic coordinates of the cell sites and that the coordinates highlighted on the document represent the real location of the site.¹⁴⁶ He also gave his own personal knowledge and experience of the frequency of azimuth changes expected at the Touch network.¹⁴⁷

The Trial Chamber is satisfied that this annex is relevant and probative because this information comes directly from the business records at Touch and was extracted and put into the proper format for the purpose of the request for assistance. This annex is relevant to the Trial Chamber's assessment of Touch's record keeping practices and the accuracy of their records. Despite the witness not working at Touch when the annex was actually produced, he was informed of the document by other qualified Touch employees, and, importantly was able, in his testimony, to explain its significance and its technical details. The annex, as a business record, has the necessary *prima facie* indicia of reliability. The information contained in this frequency plan was generated and stored in the ordinary course of business at Touch. This, combined with Witness 705's testimony, provides the necessary degree of reliability to admit it into evidence.

¹⁴⁴ Transcript of 9 May 2016, pp. 46-47.

¹⁴⁵ F2690, Prosecution Response, para. 11-12.

¹⁴⁶ Transcript of 9 May 2016, pp. 39-41.

¹⁴⁷ Transcript of 9 May 2016, p. 50.

Annex 23 (1) (exhibit P819)

89. Annex 23 (1) is a list of all cells on air on 14 February 2005, including details on those sites, such as information on the location area codes, base station controllers and MSCs that related to each site.¹⁴⁸

90. The Defence submits that the annex does not have the sufficient indicia of reliability for admission into evidence. Although the document was produced by the Radio Planning Department, Witness 705 has never seen it and was unaware if it was common practice in 2004 and 2005 to include power and radiation measurements because he did not work there then. Because the witness cannot say with certainty how the document was produced, explain the source of data, or even recognize the document all together, it does not meet the requisite level of reliability.¹⁴⁹

91. The Prosecution submits that the list is relevant to the Trial Chamber's assessment of the reliability of Touch's cell site evidence and record keeping process. It meets the requisite level of reliability because it was provided by Touch and confirmed and clarified by the witness.¹⁵⁰

92. Witness 705 explained that in addition to his own research, Touch's Technical Department advised him of the information in the annex. Additionally, he confirmed that the document's contents were recorded as a normal business practice of Touch.¹⁵¹ The witness explained that the effective radiated power (ERP) is significant because it defines the power coming out of the cell site which ultimately means more power, more coverage.¹⁵²

93. The information contained in this annex were recorded as part of Touch's everyday business practices. Witness 705 also explained the technical aspects of the document. Thus, as with annex 22 (2) (exhibit P818) above, the Trial Chamber is satisfied from the explanations provided by Witness 705 in his evidence, and that the document is a Touch business record, of *prima facie* reliability. It may therefore be admitted into evidence.

¹⁴⁸ P826, Annex 23(1) (this annex appears in paragraph 235 of the statement which is not one of the paragraphs proposed for admission). As held above in paragraph 27, even if prepared for litigation, in this context, documents of this kind are business records.

¹⁴⁹ F2678, Ayyash Defence Submissions, paras 37-39.

¹⁵⁰ F2690, Prosecution Response, paras 13-14.

¹⁵¹ Transcript of 9 May 2016, p. 55.

¹⁵² Transcript of 9 May 2016, p. 58.

Annex 23 (2) (exhibit P820)

94. Annex 23 (2) is a frequency plan from 14 February 2005 which provides a further record of Touch's cell site information, in addition to frequency related information.¹⁵³

95. The Defence submits that Witness 705 lacks personal knowledge regarding this document. The witness was unable to provide any information as to who prepared the document, how it was prepared, or the source of the data. The Prosecution failed to meet its burden to show that it has the requisite level of reliability for the admission.¹⁵⁴

96. The Prosecution argues that it is relevant to the Trial Chamber's assessment of the reliability of Touch's record keeping. The annex is reliable because his predecessor as the representative of Touch provided the Prosecution with the document. Witness 705 confirmed the document was a Touch business record prepared by the radio planning unit with data from a Microsoft Access Database.¹⁵⁵

97. Witness 705 explained that the document came from Touch's business records. He provided further details on the document including that the integers represent the base station controller (BSC) number and that the base station controllers that Touch had in 2004 and 2005 do not have the same capacity as the current BSCs.¹⁵⁶

98. This annex is relevant to the Trial Chamber's assessment of the accuracy of Touch's records and its overall record keeping process. The document was prepared by Witness 705's predecessor as Touch's representative to the Special Tribunal and therefore the witness lacked personal knowledge as to how it was prepared. The document, however, is a business record. Touch's ordinary business practice is to keep a record of frequency plans. Despite his lack of personal knowledge as to its actual preparation, Witness 705 explained the document's technical aspects and its provenance. This, combined with the document's ordinary status as a business record, has provided the Trial Chamber with sufficient information to give it the necessary *prima facie* reliability for admission into evidence.

¹⁵³ P826, Annex 23(2) (this annex appears in paragraph 235 of the statement which is not one of the paragraphs proposed for admission). As held above in paragraph 27, even if prepared for litigation, in this context, documents of this kind are business records.

¹⁵⁴ F2678, Ayyash Defence Submissions, para. 41.

¹⁵⁵ F2690, Prosecution Response, paras 15-16.

¹⁵⁶ Transcript of 9 May 2016, pp. 61-62.

Discussion

99. The Trial Chamber is satisfied that these paragraphs and accompanying annexes are *prima facie* reliable. They describe the process by which the business records were generated, stored, and retrieved. The paragraphs in the statement explain the methods in which the business records were produced in the ordinary course of business. It is the regular practice of Touch to generate these records, and these records were created in 2004 and 2005.

100. The Trial Chamber dismisses the Defence's argument that, as the witness did not work at Touch 2004 and 2005 and was not involved in the generation of all of these annexes, the tendered paragraphs and annexes are unreliable. The paragraphs and annexes are reliable even though the witness does not have first-hand knowledge about all of the information in these paragraphs and annexes because they were generated by qualified Touch employees. Additionally, the witness provides, in his evidence, explanations satisfactory to the Trial Chamber for the purposes of establishing the *prima facie* reliability of the evidence.

Client Services and Customer Care Centres (paragraphs 273-275, 277-282, 284-287, 288-291, 300-308, 310, 312-321; annexes 27-28)

101. These paragraphs outline the different services and features offered by Touch and additionally, how pre-paid and post-paid systems are purchased and how they work.¹⁵⁷ The paragraphs and annexes described below are relevant and probative because this information is accessible to the public and its reliability undisputed. No specific Defence challenges were made to these paragraphs. They appear to be generally undisputed. They should therefore be admitted into evidence.

102. Paragraphs 273 to 275, 277 to 282, and 284 to 287 explain the different services and features Touch offers such as Touch pre-paid or post-paid lines, call waiting, credit transfer, internet, voice mail, roaming, etc. Paragraphs 288 to 291 describe Touch's customer care centres, their purpose, and their customer service telephone numbers. The Prosecution overlooked obtaining a declaration from the witness under Rule 156 in relation to these paragraphs. Notwithstanding this, the Trial Chamber will admit them into evidence. Paragraphs 300 to 308 provide an overview on the post-paid system such as how to purchase

¹⁵⁷ P826, paras 273-287, 308, 310, 312-321; Transcript of 11 May 2016, p. 2; Transcript of 19 July 2016, p. 95; Transcript of 20 July 2016, pp. 34, 46-47; Transcript of 21 July 2016, pp. 57-58.

a line, deactivation, suspension, what happens when a subscriber loses their phone, personal unblocking code (PUK) block, etc.

103. Paragraphs 310 and 312 to 320 outline Touch's pre-paid system. Paragraph 310 explains that in 2004 and 2005 the only way to recharge a Magic line was through a recharge voucher. Paragraphs 312 to 320 explain that in 2004 and 2005 it was not possible to add a service or feature to Touch Magic pre-paid line or to transfer pre-paid credits from one Magic line owner to another, and that the only method of recharging the line was through a recharge voucher. Further, Touch does not keep record of recharges or top-ups.¹⁵⁸ Paragraph 321 explains that interactive voice response is a prerecorded message that is used to notify subscribers of their remaining balance.

104. Annex 27 is a post-paid and pre-paid booklet outlining the different services Touch offers.¹⁵⁹ Annex 28 is a table summarising the different services and products that Touch offers.¹⁶⁰

105. The Trial Chamber finds the information contained in these paragraphs and annexes to be relevant and probative. They should be admitted into evidence.

Tariff Related Issues (paragraphs 327-337; annexes 29-30)

106. This category concerns tariff related issues with respect to the pre-paid and post-paid products available in 2004 and 2005.¹⁶¹ Paragraph 327 explains that in 2004 and 2005 Touch offered two pre-paid products, Magic Green and Magic Orange. In paragraph 328 the witness explains that he was informed by the commercial department that the price of calls was determined depending on the type of recharge and the applicable call rate. Paragraphs 329 to 332 relate to the changes that arose from the migration process from Magic Green to Magic Orange. For example, after migration it was possible to extend the top-up period.¹⁶² Paragraphs 333 to 337 relate to the purchase of credits, the methods available for the subscriber to check their balance, and how recycling of a pre-paid number works.

¹⁵⁸ P826, para. 312.

¹⁵⁹ P826, para. 274. The Parties did not make additional submissions on this annex.

¹⁶⁰ P826, para. 279. The Parties did not make additional submissions on this annex.

¹⁶¹ P826, paras 327-337; Transcript of 19 July 2016, p. 95; Transcript of 20 July 2016, pp. 34, 47.

¹⁶² P826, para. 330.

107. Annex 29 consists of the features relating to pre-paid subscriptions for all subscribers in February 2005.¹⁶³ Annex 30 contains the tariffs and fees for Magic Orange after the migration process.¹⁶⁴

108. These paragraphs and accompanying annexes are relevant and probative because they are undisputed facts regarding pre-paid and post-paid systems. The Prosecution omitted to obtain a declaration from Witness 705 under Rule 156 on paragraphs 322 to 326. However, for the same reasons in relation to a similar omissions concerning paragraphs 288 to 291, the Trial Chamber will admit them into evidence. These paragraphs and annexes should be received onto the court record. No specific Defence challenges were made to this evidence.

SIM card supply/distributors and storage (paragraphs 339-347, 348-356; annexes 31-32, 56-58)

109. This group of paragraphs explains how SIM cards are supplied, distributed, and stored.¹⁶⁵ Paragraph 339 explains that from 1997 until 2010 Touch's SIM card suppliers were Gemplus and Schlumberger.¹⁶⁶ In paragraph 340, Witness 705 explains that he was unable to generate copies of purchase orders from Schlumberger.¹⁶⁷ Paragraphs 348 to 356 explain Touch's security framework and how it relates to its security measures in 2004 and 2005.¹⁶⁸ In 2004 and 2005 an anti-fraud procedure or Fraud Management System was not in place within the billing system or for the core network.¹⁶⁹ Furthermore, between 2004 and 2005, there were no SIM card anti-cloning procedures or SIM card cloning detection procedures.¹⁷⁰

110. Annex 31 contains copies of six purchase orders for 455,000 SIM cards from November 2004 through October 2005.¹⁷¹ Annex 32 consists of a list of authorised distributors for Touch for 2004 and 2005.¹⁷² Annex 56 is a copy of Touch's security procedure.¹⁷³ Annex 57 is a copy of the Touch's security procedure describing the access

¹⁶³ P826, para. 329. The Parties did not make additional submissions on this annex.

¹⁶⁴ P826, para. 330. The Parties did not make additional submissions on this annex.

¹⁶⁵ P826, para. 339-347; Transcript of 20 July 2016, pp. 34, 47.

¹⁶⁶ Transcript of 20 July 2016, p. 47.

¹⁶⁷ Transcript of 20 July 2016, p. 34.

¹⁶⁸ Transcript of 20 July 2016, pp. 34, 48.

¹⁶⁹ P826, para. 352; Transcript of 20 July 2016, p. 48.

¹⁷⁰ P826, para. 353.

¹⁷¹ P826, para. 341; Transcript of 20 July 2016, p. 34. The Parties did not make additional submissions on this annex.

¹⁷² P826, para. 346; Transcript of 20 July 2016, p. 34. The Parties did not make additional submissions on this annex.

¹⁷³ P826, para. 354; Transcript of 20 July 2016, p. 34. The Parties did not make additional submissions on this annex.

control cards process.¹⁷⁴ Annex 58 is a chart describing the type, period, and location of security provided by three private security companies.¹⁷⁵

111. The Trial Chamber finds that these paragraphs are relevant they are probative because they consist of Touch's business practices relating to SIM cards and security and its usual method for supplying, distributing, and storing SIM cards. Additionally, Touch provided a list of authorised distributors for Touch for 2004 and 2005 (annex 32), a copy of Touch Security procedure (annex 56), and a document listing the type, period, and location of security provided by three private security companies (annex 58) giving further weight to the reliability of this evidence. The Defence did not make additional submissions on these paragraphs or annexes and they should be admitted into evidence.

Statement of 16 December 2015 (exhibit P1093)

112. Annexes 7, 9 and 11 to Witness 705's 16 December 2015 statement have already been admitted into evidence (as exhibit P467).¹⁷⁶ Paragraph 20 of this statement has been withdrawn by the Prosecution.¹⁷⁷

International Turnkey Systems and Touch (paragraphs 1-13, 16-17; annexes 1-6)

113. Paragraphs 1 through 10 provide introductory information about the witness. Paragraphs 11 through 13 and 16 through 17 provide information on the relationship between Touch and International Turnkey Systems, the Lebanese branch of an information technology company in Kuwait, in 2004 and 2005.¹⁷⁸ Paragraph 16 explains that International Turnkey System employees were working at Touch during 2004 and 2005 but Witness 705 is unsure exactly how many worked there. Paragraph 17 states that the International Turnkey Systems staff were in charge of billing, and had read and write access to the call data records.

¹⁷⁴ P826, para. 355; Transcript of 20 July 2016, p. 34. The Parties did not make additional submissions on this annex.

¹⁷⁵ P826, para. 356; Transcript of 20 July 2016, p. 34. The Parties did not make additional submissions on this annex.

¹⁷⁶ Transcript of 22 May 2015, p. 44; F2597, Written Reasons for the Trial Chamber's Decision on Prosecution Motion for the Admission of Statements by Witness PRH705, 13 May 2016, para. 25. Annex 7 is a Touch post-paid customer information form; Annex 9 is a request for subscription/pre-paid line of 23 February 2010; Annex 11 is a lost SIM card form.

¹⁷⁷ Transcript of 19 July 2016, p. 97.

¹⁷⁸ Transcript of 19 July 2016, p. 96.

114. Annexes 1 to 6 consist of the agreements between Touch and International Turnkey Systems for 2005, 2007, 2008, 2009, and 2010.¹⁷⁹ The witness was unable to locate the 2004 and 2006 agreements, however the 2007 contract contains an addendum related to the 2005 contract.¹⁸⁰ According to paragraph 12, this states that the 2005 contract was extended for 2006, and is evident from annex 2.¹⁸¹

115. These paragraphs and accompanying annexes are relevant and probative. Their indicia of reliability come from their status as business records generated in the normal course of business. These agreements are reliable in showing that International Turnkey Systems and Touch worked together in 2004 and 2005. No specific challenge was made to this evidence and it does not seem to be in dispute. They should be admitted into evidence.

Touch and Libancell Forms (paragraphs 18-19; annexes 8, 10, 12)

116. The following section highlights the company's practice for handling prepaid customer forms.¹⁸² In paragraph 18, the witness confirms that annexes 7 through 12 were produced by Touch and its predecessor, Libancell, a global system for mobile communications company that services Lebanon. The Parties made no submissions on these annexes. Paragraph 19 outlines Touch's practice for processing pre-paid customer forms. Annexes 8, 10, and 12 are information sheets for prepaid customers produced by Touch and Libancell.¹⁸³

117. These paragraphs and accompanying annexes are probative because they show the business practice of how Touch processes customer forms and the actual forms are business records. They either describe or are documents generated in the normal course of Touch's business. The Defence did not make further submissions on these paragraphs and annexes and they should be admitted into evidence.

¹⁷⁹ P1093, para. 12. The Parties did not make additional submissions on this annex.

¹⁸⁰ P1093, para. 12. According to paragraph 12, this states that the 2005 contract was extended for 2006 and is evident from annex 2.

¹⁸¹ P1093, para. 12.

¹⁸² P1093, paras 18-19;

¹⁸³ P1093, para. 18. The Parties did not make additional submissions on this annex.

Credits (paragraphs 21-22; annex 13)

118. In this section regarding credits, a chart in annex 13 relates to the credit balances and deactivation dates of specific phone numbers.¹⁸⁴ This annex is probative of Touch's record keeping. Furthermore, its IT department confirmed the information in the document as accurate. No specific Defence submissions were received. They should be admitted into evidence.

PUK and, PUK2 Codes, and IMEI (paragraphs 23, 24)

119. Paragraphs 23 and 24 provide information on the IMEI number, PUK, and PUK2 codes used for a specific telephone number. These paragraphs contain the specific dates that certain IMEI numbers were used.¹⁸⁵ These paragraphs provide undisputed information of Touch's business practices. This information is generated automatically and has been confirmed by Touch's IT department. The Trial Chamber did not receive any specific Defence submissions on these paragraphs. They are not specifically challenged. They should be admitted into evidence.

Roaming Short Code Explanations (paragraph 25; annex 14)

120. Paragraph 25 explains that annex 14,¹⁸⁶ a list of short codes used in the roaming call data records to designate a specific operator, was produced by Touch, as confirmed by Witness 705.¹⁸⁷ Touch produced the document in its normal business operations. The information contained in this paragraph is relevant and probative. The Defence did not make additional submissions on these paragraphs and annex, and they should be admitted into evidence.

Changing Cell IDs (paragraph 26; annex 15)

121. Paragraph 26 explains that annex 15 is a list of different names observed for specific cell IDs reviewed by Witness 705. Having consulted with the radio department, the witness explains why a cell name relating to a specific cell ID code may change over time.¹⁸⁸ The

¹⁸⁴ P1093, para. 21-22. The Parties did not make additional submissions on this annex.

¹⁸⁵ Transcript of 19 July 2016, p. 96.

¹⁸⁶ The Parties did not make additional submissions on this annex.

¹⁸⁷ P1093, para. 25; Transcript of 19 July 2016, p. 96.

¹⁸⁸ The Parties did not make additional submissions on this annex.

information contained in this paragraph is relevant and probative and appears not to be specifically disputed. They should be admitted into evidence with annex 14.

Statement of 3 February 2016 (exhibit P1094)

Telephone number 3020967 - subscriber identity module (SIM) card information (paragraphs 1-15)

122. Paragraphs 1 through 11 are introductory. Paragraphs 12 through 15 provide information regarding telephone number 3020967. The order date for the installation of the IMSI number for 3020967 was 18 December 2004; the line was issued on 4 January 2005, and purchased on 5 January 2005, as confirmed by Witness 705.¹⁸⁹

123. This information is relevant and probative to attribute a specific SIM card to a specific telephone number. These paragraphs provide information regarding a specific phone number, which is a business record. The information contained in these paragraphs was confirmed by the IT department.¹⁹⁰ These paragraphs appear undisputed, in the sense that the Defence did not make specific challenges to these paragraphs. They should be admitted into evidence.

Statement of 26 February 2016 (exhibit P1095)

Further Clarification on Evidence Contained in Witness Statement of 16 November 2015 (paragraphs 1-11, 17, 19; annex)

124. This section clarifies evidence contained in the 16 November 2015 witness statement.¹⁹¹ Paragraphs 1 through 11 are introductory. Paragraph 17 explains that Touch's IT department informed the witness that hypothetically if a call data record in ASN.1 format was edited by an ASN.1 editor, the system would not keep record of that edit. Touch does not have an ASN.1 editor nor the tools available to change a CDR.¹⁹² The actual subscriber database is located in annex 1 of this statement of 26 February 2016 (the annex has a photograph of a disk that contains all of Touch's subscriber's records).¹⁹³

125. The paragraphs are *prima facie* reliable because the paragraphs merely clarify evidence that the Trial Chamber has already found reliable. The annex is also *prima facie*

¹⁸⁹ P1094, para. 14; Transcript of 19 July 2016, p. 96.

¹⁹⁰ P1094, para. 15; Transcript of 19 July 2016, p. 96.

¹⁹¹ P1095, paras 1-11, 17, 19; Transcript of 11 May 2016, p.18; Transcript of 19 July 2016, p. 96.

¹⁹² P1095, para. 17; Transcript of 19 July 2016, p. 96; Transcript of 11 May 2016, p.18.

¹⁹³ The Parties did not make additional submissions on this annex.

reliable because it is a business record produced by Touch in the ordinary course of business. The Trial Chamber did not receive further submissions from the Defence on these paragraphs or annex. They should be admitted into evidence.

Statement of 4 May 2016 (exhibit P1096)

Clarifications

126. This statement clarifies Witness 705's 16 November 2015 statement and its annexes.¹⁹⁴ Paragraphs 1 through 11 are introductory. Paragraphs 12 and 13 clarify that annex 23 formerly described as a frequency plan should actually be described as cell sites radio database and in annex 23 (2) some of the cells are shaded without any accompanying reasoning for the shading. Paragraph 14 clarifies that page two is missing from annex 55. Paragraphs 15 through 17 make a few minor corrections to Witness 705's employment history in his curriculum vitae.

127. These clarifications assist the Trial Chamber to accurately assess the reliability of Touch's record keeping and the reliability of Witness 705's statements and testimony. No challenge was made to this statement. The statement should be admitted into evidence.

CONCLUSION

128. For the reasons detailed above, the Trial Chamber was satisfied of the relevance of the specified paragraphs in Witness 705's statements and attached annexes, and that each has probative value. In assessing their probative value, the Trial Chamber was satisfied that each paragraph and annex had the necessary *prima facie* reliability to provide that probative value. The documents have therefore been admitted into evidence. The Trial Chamber stresses, however, that the mere admission into evidence of these documents now is not determinative of any weight that it may ultimately give to them. It will assess this evidence at the appropriate point in the proceedings and provide reasons for its reliance on, or rejection of, any of the documents.

¹⁹⁴ P1096, paras 1-17.

WORD LIMIT

129. In its consolidated response, the Prosecution requested an additional 1,000 words to the normal word limit of 6,000 words,¹⁹⁵ but then filed a consolidated response of 10,460 words, plus additional submissions in an annex. Given the complexity of the issues, the Trial Chamber grants the Prosecution's request for an extension of the word limit.

CONFIDENTIALITY

130. The Trial Chamber reiterates the public and open nature of these proceedings. The Parties are therefore ordered to file public redacted versions of their submissions and annexes, or to reclassify them as public.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

ADMITTED formally into evidence on 8 September 2016 under Rule 155 (C) or Rule 156:

- a) Exhibit P826: Witness 705's 16 November 2015 statement,
 - paragraphs 1-20, 23-24, 27-30, 55, 57, 59-61, 64-65, 67-74, 76-81, 103-106, 112-114, 116, 126-129, 131, 134-138, 147-148, 156, 160-161, 179, 181, 196-197, 200, 202, 206, 214, 230, 242, 249-258, 260-262, 263-275, 277-282, 284-287, 288-291, 300-308, 310, 312-321, 322-326, 327-337, 339-347, 348-356; and
 - annexes 1, 3, exhibit P825 (annex 4), 6, 8, 9, 11, 12, 13, exhibit P827 (annex 15), 16, 18, exhibit P815 (annex 19), exhibit P816 (annex 20), 21, exhibit P818 (annex 22(2)), exhibit P819 (annex 23(1)), exhibit P820 (annex 23(2)), exhibit P1098 (annex 24), 25, 26, 27, 28, 29, 30, 31, 32, 56, 57 and 58;
- b) Exhibit P1093: Witness 705's 16 December 2015 statement,
 - paragraphs 1-13, 16-19, 21-26; and
 - annexes 1, 2, 3, 4, 5, 6, 8, 10, 12, 13, 14 and 15;
- c) Exhibit P1094: Witness 705's 3 February 2016 statement,

¹⁹⁵ STL-PD-2010-01/Rev. 2, Practice Direction on the Filing of Documents Before the Special Tribunal for Lebanon, 14 June 2013, Article 5.

- paragraphs 1-15;
- d) Exhibit P1095: Witness 705's 26 February 2016 statement,
- paragraphs 1-11, 17, 19; and
- e) Exhibit P1096: Witness 705's 4 May 2016 statement; and

ORDERS the allocation of exhibit numbers to the annexes to Witness 705's statements that have not yet received exhibit numbers.

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

Leidschendam,
The Netherlands
30 September 2016

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

