

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: 10 October 2016

Original language: English

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THE PROSECUTOR

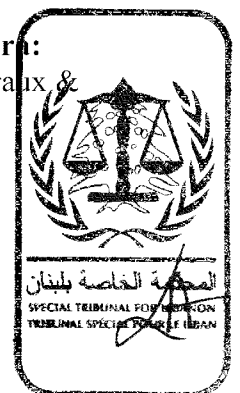
v.

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

WRITTEN REASONS FOR ADMITTING WITNESS PRH707'S STATEMENTS AND ANNEXES INTO EVIDENCE

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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
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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 Witnesses PRH705 and Witness PRH707 including specified paragraphs in their witness statements and their annexes.¹ These are the written reasons for the decision in relation to Witness 707.

2. Witness 707² is an employee and officially designated representative to the Special Tribunal of Alfa, a Lebanese mobile telecommunications company and communications service provider. The witness made three statements for the Prosecution relating broadly to Alfa's mobile telephone network, business practices and records and testified before the Trial Chamber over 17 days in 2016.

3. On 30 September 2016, the Trial Chamber issued a similar written decision to admit the evidence of Witness 705, who was the equivalent corporate representative of Witness 707, but for Touch, another Lebanese communications service provider.³ As with Witness 705, Witness 707's evidence 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 the former Lebanese Prime Minister Rafik Hariri and others.⁴ 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 communications service providers.

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 collection of call data records obtained from Alfa, 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 communications service providers, and another on the Prosecution's production of the call sequence tables.⁵ Similarly, the Prosecution seeks the admission of cell site evidence—system-related

¹ Transcript of 8 September 2016, pp. 3-4.

² See STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F2376, Decision on Prosecution Motion to Add Witness PRH707 to its Witness List, 11 December 2015, confidential.

³ See F2750, Reasons for Admitting Witness PRH705's Statements and Annexes into Evidence, 30 September 2016.

⁴ Amended Consolidated Indictment, paras 14-19.

⁵ 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 UNIIC and the STL's Prosecution, 6 May 2015, Disposition.

telecommunications data that permits inferences to be drawn as to the location of telephone users at the time of a given call.⁶ The two relevant Lebanese telecommunications witnesses were Witnesses 705 and 707; the Prosecution also called several Prosecution analysts in relation to producing call sequence tables.⁷

5. Witness 707's evidence, like that of Witness 705, was a precondition to admitting the cell site evidence and the call data records into evidence. And, as with Witness 705, and to complement and supplement his in-court testimony, the Prosecution requested the admission of Witness 707's three statements into evidence. The Defence objected to certain paragraphs of the statements, and on 15 April 2016, the Trial Chamber denied the Prosecution's request to admit the statements in their entirety.

6. It held that the following paragraphs of Witness 707's three 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:⁸

- a) 11 November 2015 statement,
 - paragraphs 1-16, 22, 29-54, 58, 59 (D), 62, 72, 75, 90-96, 105, 111, 116, 120-128, 132-134, 140-143, 146, 151-152, 155, 157-160, 162-164, 166-171, 178-179, 181-199, 201-257, 260-286 and 292-298;
- b) 29 December 2015 statement,
 - paragraphs 1-10, 12-14 and 20-22; and
- c) 25 January 2016 statement,
 - paragraphs 1-11, 17-23 and 25-27.

7. Witness 707 appeared before the Trial Chamber in January, February, April, May and July 2016 and, like Witness 705, 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

⁶ F2004, Corrected Version of "Prosecution Motion for the Admission of Cell Site Evidence", 23 June 2015.

⁷ See Transcript of 20-21 of July 2016 (testimony of Kei Kamei); Transcript of 21 July 2016 (testimony of Andrew Donaldson); Transcript of 22 July 2016 (testimony of Lachlan Christie); Transcript of 22 July 2016 and Transcript of 27 September 2016 (testimony of Helena Habraken).

⁸ F2552, Decision on Prosecution Motion for the Admission of Statements by Witness PRH707 and on Ayyash Defence Motion to Strike the Prosecution Reply, Disposition, 15 April 2016; 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, Disposition, 11 May 2016.

testimony.⁹ His testimony covered those paragraphs of his three statements and the 48 accompanying annexes that are relevant to this decision.¹⁰

8. The witness testified extensively on many matters concerning his employer, Alfa. The content of his testimony was similar to that of Witness 705, and included an overview of Alfa; its network architecture, network components, call setup and cell tower selection; the records and data it generated, retained, stored and used in its business operations and its retrieval for the Special Tribunal. He also explained specific issues including call data records, cell sites and SMS content, Alfa's client services and features, its customer relations centres and its post and pre-paid systems, its tariff related issues, and SIM card supply, distributors and storage. Witness 707 testified as to the accuracy of the information in his three statements and annexes and explained its provenance, and specifically, who or which department in Alfa provided the information that was not within his personal knowledge. The Prosecution tendered relevant exhibits through his testimony.

9. Because he lacked personal knowledge of some aspects of Alfa's records, and to answer certain further questions, the Trial Chamber permitted Witness 707—as it did Witness 705 during his testimony—to clarify parts of his evidence with other Alfa staff. The Prosecution simultaneously sought further information from Alfa concerning some of the paragraphs in his statements and annexes ruled admissible by the Trial Chamber.

10. The Trial Chamber received further Defence submissions in relation to the evidence obtained from Lebanese communications service providers.¹¹ Counsel for Mr Salim Jamil Ayyash, joined by counsel for Mr Hassan Habib Merhi and Mr Assad Hassan Sabra, and counsel for Mr Hussein Hassan Oneissi, also joined by counsel for Mr Merhi,¹² filed

⁹ See Transcript of 12 February 2016, pp. 5-6.

¹⁰ Comprising over 1,214 pages of transcript (in English). Some annexes to his statements are already in evidence; consequently, only 48 annexes are relevant to this decision: *see below* paras 60-61.

¹¹ Transcript of 21 July 2016, p. 73.

¹² F2683, Ayyash Defence Further Submissions on Prosecution Motions Related to Evidence from Communications Service Providers, 8 August 2016 ('Ayyash Communications Service Providers Submissions'); F2684, Adjonction de la Défense de Merhi aux "Ayyash Defence Further Submissions on Prosecution Motions Related to Evidence from Communications Service Providers", 8 August 2016; F2685, Sabra Joinder to "Ayyash Defence Further Submissions on Prosecution Motions Related to Evidence from Communications Service Providers", 8 August 2016; F2676, The Defence for Hussein Hassan Oneissi Supplemental Submissions in Relation to the Admissibility of Call Sequence Tables, Cell Site Data and Annexes to PRH707's Witness Statements, 29 July 2016 ('Oneissi Communications Service Providers Submissions'). The Oneissi Defence requested, and were granted, an extension to the word limit: F2671, The Defence for Hussein Hassan Oneissi Request for Extension of Word Limit for Supplemental Submissions in Relation to the Admissibility of Call Sequence Tables, Cell Site Data and Annexes to PRH707's Witness Statement, 28 July 2016; E-mail from Senior Legal Officer to Oneissi Defence, 28 July 2016). F2682, Merhi Defence Joinder to the "The Defence for

submissions, to which the Prosecution responded¹³ and counsel for Mr Oneissi replied.¹⁴ Counsel for Mr Ayyash, joined by counsel for Mr Sabra, and counsel for Mr Oneissi, joined by counsel for Mr Merhi, also filed submissions analysing Witness 707's evidence with respect to specific exhibits.¹⁵ The Prosecution then responded.¹⁶

11. Similar to Witness 705, the Defence submissions concerning Witness 707's evidence go to Alfa telecommunications evidence generally, and to specific portions of his statements, annexes and exhibits marked for identification during his testimony.

ALFA TELECOMMUNICATIONS EVIDENCE GENERALLY

Defence submissions

12. The Defence arguments are generally similar to those filed challenging Witness 705's evidence. These are summarized here to make this decision more comprehensible. Defence counsel challenged the witness's ability to provide evidence for Alfa, the accuracy of the information provided, and hence the accuracy and reliability of the Alfa cell-site evidence.

13. Defence counsel argued largely that, despite his characterization as a corporate or company witness, most of Witness 707's evidence was not based on his personal knowledge but on hearsay given to him or to his predecessor as Alfa's representative to the Special Tribunal. Moreover, he did not work at Alfa in 2004 and 2005, thus precluding meaningful cross-examination on the underlying information relating to those years.¹⁷

14. The Defence submits that 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

Hussein Hassan Oneissi Supplemental Submissions in Relation to the Admissibility of Call Sequence Tables, Cell Site Data and Annexes to PRH707's Witness Statements", 5 August 2016 ('Merhi Joinder').

¹³ 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').

¹⁴ F2705, Reply to Consolidated Prosecution Response to Defence Submissions in Relation to the Admission of Call Sequence Tables and Evidence Obtained from Lebanese Communication Services Providers, 29 August 2016 ('Oneissi Communications Service Providers Reply').

¹⁵ F2677, Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH707, 29 July 2016 ('Ayyash Witness 707 Submissions'); 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 ('Sabra Joinder'); F2676, Oneissi Communications Service Providers Submissions; F2682, Merhi Joinder.

¹⁶ F2689, Prosecution Response to "Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH707", 15 August 2016.

¹⁷ F2683, Ayyash Communications Service Providers Submissions, paras 22-23, 32; F2676, Oneissi Communications Service Providers Submissions, paras 21, 23, 25, 35.

establish their provenance or reliability.¹⁸ The Prosecution did not lead any evidence of who precisely retrieved Alfa's call data records, how and when they were retrieved, or what protocols were followed, or the steps taken to ensure that they were copied faithfully and accurately. No evidence was led about the positions, qualifications, experience or competence of whomever in Alfa provided the information to Witness 707. Nor could the Trial Chamber have found that it came from suitably qualified personnel.¹⁹

15. The witness should have but failed to provide evidence as to the provenance of Alfa's call data records, including its gathering, retrieval and storage, and its transferral to the United Nations International Independent Investigation Commission (UNIIC) and the Special Tribunal from his personal knowledge, and not simply relayed information provided by others who could not be cross-examined.²⁰

16. As a result, according to the Defence submissions, Witness 707 could not answer many questions posed by Defence counsel on the various components of the Alfa network, and thus the provenance of the Alfa-related evidence, including that in his statements and annexes.²¹ Where no direct evidence was provided as to the provenance of the information, the mere fact that the relevant exhibits tendered through Witness 707 came from Alfa did not make them reliable on that basis alone.²²

17. Witness 707, in his testimony expressed his faith in Alfa's working methods in retrieving the relevant information. However, according to Defence counsel, his general confidence in the methods that would have been employed by the relevant Alfa departments cannot be relied upon by the Trial Chamber, as the witness did not know who was employed at the relevant times, or their experience in the relevant technical matters. His evidence on these matters was therefore speculative.²³

18. As an example, exhibit P774 (annex 7 to Witness 707's 11 November 2015 statement) is an exhibit showing how Alfa complied with Prosecution requests for assistance seeking

¹⁸ F2683, Ayyash Communications Service Providers Submissions, paras 27-28, 31, 33, 35; F2676, Oneissi Communications Service Providers Submissions, para. 35.

¹⁹ F2683, Ayyash Communications Service Providers Submissions, paras 24, 32-34.

²⁰ F2683, Ayyash Communications Service Providers Submissions, paras 21, 23, 26, 33.

²¹ F2676, Oneissi Communications Service Providers Submissions, paras 24-34, 64.

²² F2683, Ayyash Communications Service Providers Submissions, para. 25.

²³ F2676, Oneissi Communications Service Providers Submissions, para. 36.

2006 and 2007 data. Witness 707 could only testify about that request and not to requests or responses relating to the 2004 and 2005 data.²⁴

19. The Defence also highlights the lack of contemporaneous records for 2004 and 2005. This required Alfa to work backwards to reconstruct documents. No Alfa employee could confirm crucial 2004 and 2005 values, nor account for relevant changes in Lebanon since 2005.²⁵ There was no evidence that Witness 707 reviewed the relevant seven cell-site related documents tendered by the Prosecution in its motion to admit the cell site evidence.²⁶

20. Concerning cell site evidence, Defence counsel submit that the Trial Chamber should consider whether it is ever capable of use as the Prosecution intends, namely, to prove the location of an Accused person beyond a reasonable doubt.²⁷ Given the absence of corroborating evidence as to the movement of the Accused, the *prima facie* probative value of the data will not be rehabilitated at trial by other Alfa employees, experts or other evidence. It should be determined purely on its own merits.²⁸

21. Predictive coverage plots for cellular networks such as Alfa's show the best predicted server coverage for cellular networks. In plain terms, they show the area over which one cell site should provide the strongest signal—compared to neighbouring cells—to mobiles connecting to the network.

22. Defence counsel submitted that Witness 707's evidence demonstrated the inherent unreliability of the cell site evidence. Even if the underlying data was accurate, the predictive coverage plots were merely estimates and could not confirm the location of a mobile. Consequently, Alfa cannot confirm the reality on the ground.²⁹ Witness 707 estimated the accuracy of such data, and thus the location of a mobile user, to be only 60% to 70%.³⁰

23. Witness 707 testified that the Prosecution's telecommunications data was incomplete and for more accuracy, further information was necessary. Numerous factors can cause Alfa's

²⁴ F2683, Ayyash Communications Service Providers Submissions, para. 34.

²⁵ F2683, Ayyash Communications Service Providers Submissions, para. 40; F2676, Oneissi Communications Service Providers Submissions, paras 27-28, 30-32, 66.

²⁶ See F2004, Corrected Version of "Prosecution Motion for the Admission of Cell Site Evidence", 23 June 2015. The Defence notes that 11 cell-site related documents were tendered from the bar table through this motion, but Witness 707 testified only about four of them, namely, exhibits P775, P778, P780 and P799. Only those which are annexes to the statements of Witness 707 are addressed in this decision.

²⁷ F2676, Oneissi Communications Service Providers Submissions, para. 18.

²⁸ F2676, Oneissi Communications Service Providers Submissions, para. 22.

²⁹ F2683, Ayyash Communications Service Providers Submissions, paras 41-42; F2676 Oneissi Communications Service Providers Submissions, paras 41, 53.

³⁰ F2676, Oneissi Communications Service Providers Submissions, paras 38-40, 55, 67.

network to behave in an unpredictable manner. He also acknowledged inaccuracies and errors in predicted server coverage.³¹

24. Defence counsel pointed out that Alfa's 2004 and 2005 predicted coverage was reconstructed in 2010 by using material sourced from different time periods. Other factors such as the input of information, the date of the information used, changes in topography in Beirut, and call traffic on 14 February 2005 led to errors, or the potential for error, misreadings, or affected cell site behaviour.³²

25. Witness 707 confirmed that the software that produced the data and files relied upon by the Prosecution was regularly subject to minor changes. This, the Defence argues would cause the predicted coverage to deviate from that in 2004 and 2005. Further, there is no proof of whether the Alfa network was working as it should have been at the times relevant to the Prosecution's case.³³

26. These matters, Defence counsel contend, are a barrier to admission and not simply the weight of the seven cell-site related documents tendered by the Prosecution. No evidence was led as to their provenance and reliability—how they were created, what values they were based upon, whether the values could be confirmed, who created them and when. The Prosecution has not presented a witness as to the underlying information, as required by the Trial Chamber, to ascertain the reliability of the evidence.³⁴ The Trial Chamber cannot safely infer from them the material fact that a mobile user was located in a particular area at a particular time; it cannot admit the evidence and use it for this purpose.

27. Witness 707's evidence that 60% or 70% accuracy was 'good' and acceptable should be viewed through Alfa's commercial business interests in providing adequate coverage throughout Beirut, rather than the Prosecution's forensic interest in establishing the location of mobile users to prove its allegations in the amended consolidated indictment.³⁵

28. Defence counsel also challenge that the Alfa telecommunications evidence generally can be categorised as business records and submit that they retain the inherent unreliability of hearsay evidence. Relying on United States (US) Federal Rules of Evidence, they argue that the cell site evidence was not contemporaneously produced or produced in the ordinary course

³¹ F2676, Oneissi Communications Service Providers Submissions, paras 42-44.

³² F2676, Oneissi Communications Service Providers Submissions, paras 45-48, 51, 54, 67.

³³ F2676, Oneissi Communications Service Providers Submissions, paras 50, 52.

³⁴ F2683, Ayyash Communications Service Providers Submissions, para. 43.

³⁵ F2676, Oneissi Communications Service Providers Submissions, paras 55-57.

of business but rather was created upon the Prosecution's request many years after the attack. The call data records were extracted much later and their accuracy could not be confirmed. An evidence custodian was not presented to attest to the conditions under which the evidence could be classified as business records. The source, method and circumstances of the preparation of the Alfa telecommunications evidence lack trustworthiness.³⁶ Further, the evidence suffers from deficiencies which renders it speculative and unreliable and should be rejected in light of rational and compelling US case law in the case of *United States v. Evans*.³⁷

Prosecution submissions

29. The Prosecution's response is generally similar to that filed in relation to comparable challenges to Witness 705's evidence. The Trial Chamber has already recited these arguments in its decision on Witness 705,³⁸ but repeats them here for clarity and understanding of its reasons.

30. The Defence arguments go to the weight of the evidence, not to its admissibility. 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, it should be admitted.³⁹ The Trial Chamber 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 707 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, as well as the Alfa telecommunications evidence generally, should be viewed on the totality of the evidence submitted by the Prosecution. The Defence misinterprets the Trial Chamber's directions.⁴⁰

31. Further, Defence counsel fail to demonstrate how admitting the evidence would be inconsistent with the rights of the Accused. As with Witness 705, Defence counsel had the opportunity to challenge the provenance of the underlying material and to cross-examine this witness. The failure to follow certain lines of inquiry during cross-examination did not

³⁶ F2676, Oneissi Communications Service Providers Submissions, paras 58-60, 64.

³⁷ F2676, Oneissi Communications Service Providers Submissions, paras 61-63 (relying on US District Court, Northern District of Illinois – Eastern Division, *United States v. Evans*, 892 F.Supp.2d 949, 29 August 2012).

³⁸ F2750, Reasons for Admitting Witness PRH705's Statements and Annexes into Evidence, 30 September 2016, paras 14-17.

³⁹ F2700, Prosecution Communications Service Providers Response, paras 4, 15-16, 21, 24-25, 27.

⁴⁰ F2700, Prosecution Communications Service Providers Response, paras 18-19, 23.

establish the alleged unreliability of the Prosecution's evidence.⁴¹ The Prosecution was not obliged to present a witness with full and direct personal knowledge of every possible issue that the Defence wished to address and neither was the Prosecution required to lead evidence that the Defence wanted to address. No authority has been cited for this proposition.⁴²

32. The Oneissi Defence's argument that the Alfa evidence does not constitute business records is unfounded and its real purpose is to express disagreement with the Trial Chamber's decisions on the admissibility of hearsay.⁴³ The US case law relied upon is irrelevant as it concerns a method of cell site analysis not used in this case.⁴⁴

33. In any event, Witness 707, testifying on behalf of Alfa, corroborated the reliability of the Alfa telecommunications evidence. The Defence mischaracterizes his testimony and or the evidence in his statements, including Alfa's cell site record keeping practices, the accuracy of cell site evidence generally, the retrieval of call data records, confirmation of cell site data from 2004 and 2005, and accounting for changes that have taken place in Lebanon since 2005.⁴⁵

34. The Prosecution also requests an extension of the word limit for its consolidated response.⁴⁶

Defence reply

35. Counsel for Mr Oneissi replied, objecting to the Prosecution exceeding the word-limit prescribed by the applicable Practice Direction.⁴⁷ They also disagreed with the Prosecution's argument that a *prima facie* reliability standard is required at this stage of proceedings.

36. The Prosecution will not be presenting any additional witnesses, documents or information to establish the reliability of the evidence; at this stage, the issue is not whether it is *prima facie* reliable, but whether it is reliable. The reliability of the call sequence tables depends upon the provenance and reliability of the raw data from which they were created. The Prosecution cannot prove the provenance, authenticity, integrity and reliability of this raw

⁴¹ F2700, Prosecution Communications Service Providers Response, paras 5, 30-31.

⁴² F2700, Prosecution Communications Service Providers Response, para. 29

⁴³ F2700, Prosecution Communications Service Providers Response, para. 22.

⁴⁴ F2700, Prosecution Communications Service Providers Response, para. 26.

⁴⁵ F2700, Prosecution Communications Service Providers Response, paras 6, 32-33, 35, 38-39.

⁴⁶ F2700, Prosecution Communications Service Providers Response, para. 40.

⁴⁷ F2705, Oneissi Communications Service Providers Reply, para. 1 namely, STL-PD-2010-01/Rev. 2, Practice Direction on the Filing of Documents Before the Special Tribunal for Lebanon, 14 June 2013, Article 5.

data.⁴⁸ Further, the evidence of Witness 707—the only witness to testify on the issue—is merely hearsay or double hearsay. He did not work for Alfa in 2004 or 2005, and the Alfa network in 2016 is different to that of 2004 and 2005, and no records were kept of the situation at the time. Neither the maps nor the predicted coverage can be considered reliable, *prima facie* or ever.⁴⁹

37. Counsel for Mr Oneissi reiterated their previous submission that cell site related data cannot be compared to commercial documents or business records as this material is information generated automatically and generically. Alfa’s predicted coverage map results from a computing calculation process conditioned on multiple variables introduced into simulation software; it was therefore reconstructed by a best approximation. They also restated their reliance on US case law to support the conclusion that the coverage range of a cellular antenna could not be considered reliable, even when the provenance of the data was established. Regardless of the reliability of the source used or the method employed, the predicted coverage map of a mobile network is always approximate.⁵⁰

38. Moreover, by requesting the Trial Chamber to decide on *prima facie* reliability based solely on hearsay and circumstantial evidence or other similar material not in evidence, the Prosecution is arguing for a new and unprecedented standard for admitting communication service provider evidence. It is the only category of evidence so far where a contextual assessment has been requested by the Prosecution. Such an assessment would not change the fact that the predicted coverage, information on cell tower and call data records were reconstructed theoretically and relying on extra contemporaneous data. The provenance of the evidence therefore cannot be established. Moreover, the inferred estimate of the location of a mobile is only an approximation.⁵¹

Discussion—general objections and admissibility

39. Like Witness 705, Witness 707 was called to testify as a corporate witness. And he too had a predecessor as the special representative of his company who had also prepared a statement—for example annex 14 (1) to his statement of 11 November 2015 (exhibit P800), is

⁴⁸ F2705, Oneissi Communications Service Providers Reply, paras 2-3.

⁴⁹ F2705, Oneissi Communications Service Providers Reply, para. 4.

⁵⁰ F2705, Oneissi Communications Service Providers Reply, paras 5-6.

⁵¹ F2705, Oneissi Communications Service Providers Reply, para. 7.

his predecessor's statement, made on 27 July 2010. Witness 707 candidly stated that to prepare his own statement, he had to go back to the previous statement of his predecessor.⁵²

40. Defence counsel argue generally that Witness 707, as an official Alfa 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. His evidence consists of hearsay.

41. As the Trial Chamber has already held, and repeated in relation to Witness 705,⁵³ Witness 707 was not called to testify about things of which he has only personal knowledge. Rather, he testified as a corporate witness—someone attesting to Alfa's business practices, records and storage, and to Alfa's telecommunications evidence generally.

42. Witness 707's curriculum vitae and his evidence about his long technical experience in the telecommunications industry demonstrates that he is qualified to give evidence on many of the technical aspects set out in his statements.⁵⁴ Because of his position in the company and his technical expertise in the industry, it appears to the Trial Chamber that Witness 707 was an appropriate corporate representative to provide evidence of the *prima facie* reliability of various documents related to the Alfa's business practices and its network generally.

43. The Trial Chamber has previously observed that it is unaware of any international criminal case law regarding business records and this is the first time a Prosecution's case relies heavily on information and data obtained from corporate entities, including telecommunications companies. International criminal case law therefore lacks, relevant precedent with respect to the principles that underlie *prima facie* reliability for the purposes of admissibility.⁵⁵

44. Generally, the Trial Chamber, has already ruled on the substantive Defence objections to the hearsay evidence of corporate witnesses, in decisions concerning both Witness 705—as the official representative of Touch—and Witness 707. The Trial Chamber reiterates these principles, namely that:

⁵² Transcript of 20 April 2016, p. 57 (cross-examination by counsel for Mr Sabra).

⁵³ F2750, Reasons for Admitting Witness PRH705's Statements and Annexes into Evidence, 30 September 2016, para. 19.

⁵⁴ Statement of 11 November 2015, paras 10-13; P768, Curriculum Vitae; Transcript of 29 January 2016, pp. 64-68.

⁵⁵ See F2552, Decision on Prosecution Motion for the Admission of Statements by Witness PRH707 and on Ayyash Defence Motion to Strike the Prosecution Reply, 15 April 2016, para. 54.

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.⁵⁶

45. And in relation to 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 types 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.⁵⁷

46. The Trial Chamber has held that business records, by the fact alone that they have been produced in the normal course of business of the relevant organisation or workplace, possess the necessary indicia of reliability for admission into evidence.⁵⁸ This indicia, however, may be challenged or undermined. 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 its reliability.⁵⁹

⁵⁶ F2552, Decision on Prosecution Motion for the Admission of Statements by Witness PRH707 and on Ayyash Defence Motion to Strike the Prosecution Reply, 15 April 2016, para. 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.

⁵⁷ F2552, Decision on Prosecution Motion for the Admission of Statements by Witness PRH707 and on Ayyash Defence Motion to Strike the Prosecution Reply, 15 April 2016, paras 55-56.

⁵⁸ 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. 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.'

⁵⁹ 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. ... the Respondent's expert evidence relating to the share certificates and the

47. As with Witness 705, the Defence submission about Witness 707, and in particular that he lacked personal knowledge of some of the evidence, does not of itself render the documents *prima facie* unreliable.

48. 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, in the Trial Chamber's view, the Defence challenges concern the weight that may be given to the evidence, rather than its admissibility.

49. For similar reasons to those in respect of Witness 705's evidence and the Touch documents, the Trial Chamber holds that such Alfa telecommunications evidence—including the cell site evidence and call data records—on which Witness 707 has testified, is *prima facie* reliable.⁶⁰ These records are business records, notwithstanding that some may have been produced for the purpose of investigation or litigation.⁶¹ 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.

50. As the Trial Chamber has already held with respect to Witness 705,⁶² given the scope and breadth of telecommunications evidence generally, no-one could possess such knowledge in a telecommunications company. As previously noted, 'finding the originator of many of the records will be an impracticality bordering on the impossible.'⁶³ Otherwise, multiple additional witnesses, assuming that they could even be identified, would have to be called. To do so would be overly cumbersome and impractical and would be an unjustified use of the Trial Chamber's, and Alfa's, time and resources.

stock transfer ledger is not sufficient to dislodge the presumption that Gulf Associates' company records are as they appear on their face.'

⁶⁰ 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 UNIIC 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.

⁶¹ 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. 62 (4).

⁶² F2750, Reasons for Admitting Witness PRH705's Statements and Annexes into Evidence, 30 September 2016, para. 26.

⁶³ 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. 56.

51. The Trial Chamber, however, has also held that business ‘records expressly produced by a business for the purposes of litigation may be treated differently.’⁶⁴ Some of the annexes to Witness 707’s statements were produced by Alfa, upon request, for use in a criminal investigation or in the Prosecution’s case in court.

52. Yet, as the Trial Chamber has already held with respect to these documents, 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.’⁶⁵ Indeed, the underlying material contained in most of these documents comprises business records fashioned in a manner beneficial for use in a court. As with the Touch records,⁶⁶ 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.

53. In addition, the Trial Chamber held, in relation to a previous Defence attempt to rely on the US Federal Rules of Evidence, that ‘domestic laws ... are binding on neither the Parties nor the Chambers of the Special Tribunal. Binding the Trial Chamber would undermine its judicial discretion to admit evidence at trial.’⁶⁷ This applies equally here.

54. But further and substantively, the evidentiary rules of domestic jurisdictions, particularly those of the common law systems such as the US, are premised on rules that hearsay evidence is generally inadmissible in criminal proceedings. That is not the case in international criminal courts and tribunals using international criminal procedural law. Moreover, in common law systems, records produced in the ordinary course of business are considered as exceptions to the general rule against hearsay and are generally admissible in criminal proceedings without requiring the maker of the document to testify.⁶⁸

⁶⁴ 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. 55.

⁶⁵ 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. 66.

⁶⁶ F2750, Reasons for Admitting Witness PRH705’s Statements and Annexes into Evidence, 30 September 2016, para. 27.

⁶⁷ 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. 52.

⁶⁸ See e.g. C. Tapper, *Cross and Tapper on Evidence*, 12th Edition (Oxford University Press, 2010), pp. 610-613; E. W. Cleary, *McCormick on Evidence*, 3rd Edition (St. Paul, West Publishing Co., 1984), pp. 870-887; R. Pattenden, ‘Hearsay in Criminal Proceedings’, in H. M. Malek (ed.), *Phipson on Evidence*, 17th Edition (London, Sweet & Maxwell/Thomson Reuters, 2010), pp. 936-942; P. Murphy and R. Glover, *Murphy on Evidence*, 12th

55. Additionally, the US case law cited by the Defence is also distinguishable as it concerns a method of cell site analysis different to that employed here. *United States v. Evans* concerns the theory of ‘granulization’, a method of cell site analysis that the Prosecution submits has not been used in this case. Defence counsel do not dispute this.

56. Defence counsel, however, have not referred the Trial Chamber to a conflicting line of US case law that has ‘reached the opposite conclusion to the *Evans* court regarding the reliability of an agent’s methodology in estimating cell sectors where the agent has used cell-phone records’.⁶⁹ The Trial Chamber will place no reliance on the singular US case cited by the Defence; the request to apply US law is therefore rejected.

57. The general Defence objections to receiving the Alfa telecommunications documents into evidence are therefore dismissed.

WITNESS 707’S WITNESS STATEMENTS AND ANNEXES

58. Under Rules 149 (C) and (D) of the Special Tribunal’s Rules of Procedure and Evidence, the Trial Chamber may admit relevant evidence deemed to have probative value that is not substantially outweighed by the need to ensure fair trial.

59. The Trial Chamber, under Article 21 of the Statute of the Special Tribunal and Rules 149 (C) and (F), may admit the proposed paragraphs into evidence to supplement and compliment Witness 707’s oral evidence. In particular—and in relation to this witness—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).’⁷⁰ This permits a Party to present the *viva voce* evidence of a witness in court while also admitting their written statement in whole or in part. The Trial Chamber also allowed this with Witness 705’s evidence.

60. The following annexes to Witness 707’s 11 November 2015 statement were in evidence before the Trial Chamber’s decision of 8 September 2016:

Edition (Oxford University Press, 2011), pp. 291-294; S. Odgers, *Uniform Evidence Law*, 11th Edition (Pymont, Lawbook Co./Thomson Reuters, 2014), pp. 309-325.

⁶⁹ US, District Court, Southern District of Florida, *United States v. Davis*, No. 11-60285-CR, 2013 WL 2156659, 17 May 2013, p. 6. See also US, District Court, District of Columbia, *United States v. Machado-Erao*, 950 F.Supp.2d 49, 17 June 2013, p. 57.

⁷⁰ F2552, Decision on Prosecution Motion for the Admission of Statements by Witness PRH707 and on Ayyash Defence Motion to Strike the Prosecution Reply, 15 April 2016, paras. 28-42.

- **annex 6** (exhibit P772), a dictionary that translates every call data record field in the database into data that can be put through mediation;
- **annex 7**, (exhibit P774), a response to a request for assistance providing bulk call data records covering all of Lebanon from 1 January 2006 to 31 December 2007;
- **annex 8 (2)** (exhibit P771), call data records after August 2004;
- **annex 12 (b)** (exhibit P783), a response to a request for assistance providing Alfa's subscriber database;
- **annex 16 (c) - (e)** (exhibit P799), a response to a request for assistance providing a list of cell tower names and cell global identities (CGIs), explaining the discrepancies of cells in annex 16;
- **annex 17** (exhibit P800), a response to a request for assistance which states that the SOLIDR site in Beirut was a mobile base transceiver station (BTS), and was likely stationed in the area of MARTYR or RIAD el SOLOH square;
- **annex 18** (exhibit P801), a response to a request for assistance providing information about cell sector MOVPIK1 in Beirut;
- **annex 22** (exhibit P802), a response to a request for assistance regarding certain cells observed in a call data record and whether these calls were routed to interactive voice response (IVR); and
- **annex 23** (exhibit P803), a response to a request for assistance clarifying whether certain call data records reflected call forwarding to another number.

61. Likewise, the following annex of Witness 707's 25 January 2016 statement was already in evidence before the Trial Chamber's 8 September 2016 decision:

- **annex C** (exhibit P798), a chart showing which Alfa mobile switching centre (MSC) is linked to which cell site.

62. Having reviewed the relevant paragraphs and the other annexes of Witness 707'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 in them.

63. Consequently, the Trial Chamber's 8 September 2016 decision admitted specific paragraphs of Witness 707's three statements, and annexes previously marked for

identification, into evidence.⁷¹ None of the statements were given marked for identification exhibit numbers in court. Consequently, from Witness 707's statement of 11 November 2015:

- **annex 5**, a response to a request for assistance regarding cell site PHENMB1 in Beirut, became exhibit P777;
- **annex 8 (1)**, Alfa's call data records before to August 2004, became exhibit P770;
- **annex 13**, a response to a request for assistance regarding cell tower information, became exhibit P778;
- **annex 14 (2)**, a list of 192 Alfa cell towers with details of the site ID, became exhibit P775;
- **annex 16 (b)**, coverage maps for Lebanon and the greater Beirut area in May 2007, became exhibit P779;
- **annex 19**, clarification on the correct azimuth degree for 20 Alfa sectors and correct location for seven towers, became exhibit P776; and

From Witness 707's statement of 25 January 2016:

- **annex B**, credit remaining at specified times for specific mobile numbers, became exhibit P784.

Witness 707's statement of 11 November 2015

64. The Trial Chamber has carefully examined each of the paragraphs in Witness 707's statement that it has admitted into evidence. The pertinent information—and any relevant court testimony—is extracted below.

Witness and Company Information (paragraphs 1-16; annexes 1-3)

65. The first paragraphs, 1 to 13, are introductory and describe Witness 707's educational background, employment history, and his role at Alfa. Paragraphs 14 through 16 explain that since 2004 Alfa managed the First Mobile Network in Lebanon (Mobile Interim Company 1-MIC1), the network name for Alfa, and since 2009 Mobile Interim Company 1 has been managed by ORASCOM Telecom Holding, an international telecommunications company based in Egypt.

66. Annex 1 is the letter delegating Witness 707 as the authorised representative of Alfa.⁷² Annex 2 is the 2004 Management Agreement between Lebanon and Consortium DeTeCon

⁷¹ Transcript of 8 September 2016, pp. 3-4.

International GMBH, Fal Holdings Arabia Co. Ltd. and DeTeCon Al Saudia Co. Ltd.⁷³ Annex 3 is the agreement contracting Orascom to manage MIC1.⁷⁴

67. The Trial Chamber is satisfied that the information in these paragraphs and annexes is relevant and probative. The witness has first-hand knowledge of general company information from his time at Alfa. These appear to be undisputed as the Defence made no specific submissions on these paragraphs or annexes; they should be admitted into evidence.

Network Architecture Overview (paragraphs 22, 29-54, 58, 59 (D), 62; annexes 4-5)

68. The general background information regarding Alfa's network architecture is similar to that of Touch, as described in Witness 705's statement, exhibit P826.⁷⁵ This information describes the general technical details of a mobile telecommunications network.

69. Paragraph 22 provides an overview of the components of Alfa's network architecture such as the base transceiver station (BTS), base station controller (BSC), mobile switching centre (MSC), short message service centre (SMSC), gateway mobile switching centre (GMSC), home location register (HLR), visitor location register (VLR), pre-pay Intelligence Network (IN) platform, mediation device (MD), billing system, and data warehouse.

70. Paragraphs 29 to 54 explain international and mobile subscriber identity (IMSI) and SIM, how they complete a call, and how subscribers are identified by their IMSI and SIM. The IMSI is stored inside the SIM card and is used in conjunction with the mobile station international subscriber directory number (MSISDN) to identify a mobile subscriber.⁷⁶

71. Each mobile has an international mobile equipment identifier (IMEI) number which is automatically transmitted when it is requested by a network. Together, the IMEI and MSISDN are recorded in the call data records.⁷⁷ Once a SIM card is inserted into the mobile and it is powered on, it will search for the closest mobile cell tower or BTS.⁷⁸ When a call is made from one Alfa subscriber to another, the mobile sends a call set up request message to Alfa through the closest mobile phone cell mast and BSC. The MSC then further handles the call set up request. Next, the MSC checks the subscriber's details using the HLR. The MSC

⁷² Statement of 11 November 2015, para. 13 (Defence counsel made no additional submissions on this annex).

⁷³ Statement of 11 November 2015, para. 15 (Defence counsel made no additional submissions on this annex).

⁷⁴ Statement of 11 November 2015, para. 16 (Defence counsel made no additional submissions on this annex).

⁷⁵ See F2750, Reasons for Admitting Witness PRH705's Statements and Annexes into Evidence, 30 September, 2016, paras 6, 18, 31, 37, 40, 41.

⁷⁶ Statement of 11 November 2015, para. 36.

⁷⁷ Statement of 11 November 2015, para. 36.

⁷⁸ Statement of 11 November 2015, para. 45.

then routes the call. When a call is made from an Alfa subscriber to a roaming mobile, the call set up process is the same except the VLR contains the records for subscribers.⁷⁹

72. Paragraphs 58, 59 (D), and 62 relate to how ‘directed retry’⁸⁰ functions and what retry settings Alfa used between 2004 and 2005. Alfa did not retain a history for measurements related to directed retry between 2004 and 2005 and does not have any historical information on directed retry for those years.⁸¹ In cross-examination, Witness 707 explained that the period of congestion or the highest traffic or peak traffic could differ between sites. Directed retry is activated only if there is no empty or available channel on the best cell, regardless of the peak congestion time. This feature is activated automatically. Alfa has no historical information on the prevalence of directed retry in 2004 and 2005 as it is not reflected in the call data records. However, it can be generated from specific statistics from the BSCs.⁸² Directed retry will try to make the call on the best cell, then the second best, and then if that station does not have available channels, the third.⁸³ Additionally, the network has improved since 2005 and added technologies and features that did not exist then. Alfa added maybe tenfold the number of stations that it had in 2005.⁸⁴

73. The Trial Chamber is satisfied that the information in these paragraphs is relevant and probative, and that it comes from business records. Defence counsel made no specific submissions in relation to these paragraphs. The information appears to be generally undisputed; they should be admitted into evidence.

74. Annex 4 (exhibit P773)⁸⁵ is a logical schematic of the Alfa network in 2004 and 2005.⁸⁶ No specific challenge was made to the reliability of this document. It is an Alfa business record containing the necessary indicia of reliability and should be admitted into evidence.

⁷⁹ Statement of 11 November 2015, paras 47-50.

⁸⁰ Directed retry is a procedure used when the network is congested and a mobile phone cannot connect to the selected cell. Statement of 11 November 2015, para. 58.

⁸¹ Statement of 11 November 2015, para. 62; Transcript of 12 February 2016 p. 62; Transcript of 19 April 2016 p. 7; Transcript of 22 April 2016 p. 43.

⁸² Transcript of 22 April 2016, p. 43 (cross-examination by counsel for Mr Sabra).

⁸³ Transcript of 22 April pp. 45-46 (cross-examination by counsel for Mr Sabra).

⁸⁴ Transcript of 22 April 2016, pp. 58-59 (cross-examination by counsel for Mr Sabra).

⁸⁵ This annex was inadvertently omitted from the Trial Chamber’s decision of 8 September 2016 admitting into evidence, among other things, various annexes from Witness 707’s statement of 11 November 2015.

⁸⁶ Statement of 11 November 2015, paras 18, 23. The Parties did not make submissions on this annex.

Annex 5 (exhibit P777)

75. Annex 5 is a response to a request for assistance explaining PHENBM1, a cell in Beirut near the location of the explosion on 14 February 2005—and the location of a relay station—including information on when it was installed and removed, whether it was working on 14 February 2005, how much power it had, and which frequencies it used.⁸⁷

76. Witness 707 testified that the cell stopped working as a result of the explosion. The Alfa teams he had consulted were unable to find any records relating to the extent of the damage, but records showed that it was back in service at six or seven that evening.⁸⁸

77. Counsel for Mr Ayyash and Mr Sabra submit that the reliability of this annex cannot be ascertained because the witness could not provide any information on the document.⁸⁹ The Trial Chamber should not admit this document into evidence because insufficient information exists about its reliability.⁹⁰

78. The Prosecution submits that this annex is relevant and probative to show that the cell was used by a number of numbers relevant to the ‘red network’ of mobile telephones as pleaded in the amended consolidated indictment. This document is reliable because it is signed by Alfa’s Managing Director and Chief Executive Officer, and was confirmed by the witness.⁹¹ Witness 707 explained that in 2004 and 2005 Alfa, to avoid financial loss, limited the time of any station going out of service. Factors contributing to a longer maintenance period included difficult access to some sites, and snowstorms. Regarding the accuracy of this annex, Witness 707 explained that although he was not working for Alfa at the time, it would have been normal for the station to stop working due to the scale of the explosion. The maintenance team put the station in service again between six and seven in the evening.⁹² The witness provided sufficient evidence as to the damage and repairs to the network and the installation and dismantling of PHENMB1.⁹³

79. For the reasons given in the witness’s evidence, the Trial Chamber finds that this annex meets the threshold of reliability. The information is probative regarding the status of

⁸⁷ Statement of 11 November 2015, para. 28.

⁸⁸ Transcript of 11 February 2016, pp. 90-91.

⁸⁹ F2677, Ayyash Witness 707 Submissions, para. 27; F2680, Sabra Joinder, para. 1; Transcript of 11 February 2016, pp. 90-96.

⁹⁰ F2677, Ayyash Witness 707 Submissions, para. 27; F2680, Sabra Joinder, para. 1.

⁹¹ F2689, Prosecution Response, paras 12-13.

⁹² Transcript of 11 February 2016, pp. 90-92.

⁹³ F2689, Prosecution Response, para. 13; Transcript of 11 February 2016, pp. 91, 94.

the relay station on 14 February 2005. Although extracted from a request for assistance, the information comes directly from the business records of Alfa and therefore contains the necessary indicia of reliability to make it probative. The Defence cross-examination did not undermine this indicia for admission into evidence. It should be admitted into evidence.

Business Records—Data Generated and Use within Business Operations (paragraphs 72, 75, 90-96)

80. Under the heading ‘Business records’, ‘Call types’, Witness 707, in paragraph 72, lists the files that Alfa provided to the Special Tribunal for corresponding call types—namely, Call In, Call Out, SMS In, SMS Out, Tap In and Divert (Call Forwarding).

81. Paragraph 75—under the sub-heading ‘Missed Call data’—explains that Alfa has never preserved missed call data, as no call data record is generated, and it is not commercially useful. An unanswered call is not recorded in call data records. However, although a call of less than two seconds will not be recorded in the billing system it will still appear in the call data record.⁹⁴ The MSC generates a call data record for any event that goes through to the MSC.⁹⁵ The MSC creates the call data record and does not distinguish between a call of two seconds or more.⁹⁶

82. Paragraphs 90, 91 and 92 are under the headings ‘Other types of call-related information’, ‘Voice mail contents’ and ‘Recharge data’. They explain Alfa’s SMS Centre number and that Alfa does not retain voice mail content. Voice mail content is kept for a short time for the subscriber’s use, however once the subscriber deletes the voicemail it no longer exists. Alfa, however, did retain recharge data (when a subscriber tops up their account) for pre-paid customers between 2004 and 2005.⁹⁷

83. In paragraphs 93 through 96, headed ‘IMEI’, the witness describes how IMEIs are stored. IMEI data is not generated by Alfa but rather the IMEI in the call data records is produced by the mobile itself when a call is made. Then, IMEI data is filtered out from the call data records and sent to the billing system. During the authentication process, Alfa checks for the IMEI to block any blacklisted numbers.

⁹⁴ Transcript of 10 February 2016, p. 72.

⁹⁵ Transcript of 10 February 2016, p. 70.

⁹⁶ Transcript of 10 February 2016, p. 73.

⁹⁷ Statement of 11 November 2015, paras 91-92.

84. No specific Defence challenge was made to these paragraphs. The Trial Chamber is satisfied that Witness 707 provided evidence of their *prima facie* reliability. They are business records of Alfa, are relevant and probative, and therefore should be admitted into evidence.

Details on the storage and retrieval of Alfa's business records (paragraphs 105, 111, 116, 120-128, 132-134, 140-143, 146, 151-152, 155, 157-160, 162-164, 166-171, 178-179; annexes 8-16)

85. Paragraphs 105 and 111 are under the heading 'Data flow from MSC to billing'. These explain how data flows from the MSC to the Alfa billing systems.

86. Paragraph 105 explains that cell IDs are collected for billing purposes. Paragraph 111 illustrates that call data records are not aggregated at the MSC, however, some call data records can be divided into subfolders. Consolidation of call data records is an automatic process built into the software. Paragraph 116 explains that mediated call data records are stored and backed up monthly. However, once the backup is done, the related raw call data records are deleted from the billing system and the backups are saved in safes in the Alfa building basement.

87. Paragraphs 120 through 126 are headed 'Write access points', that is, the ability to modify or edit. In 2004 and 2005 Alfa's vendor, Ericsson, provided support to troubleshoot software problems and could view but had no write-access to the call data records at the MSC. At each MSC an inbuilt facility allows Alfa to trace a problem. The trace facility is read-only, it cannot be accessed, and it does not affect the call data records. Furthermore, call data records are transferred from the MSC to the MD (mediation device) automatically without human involvement.⁹⁸

88. Under 'Retrieval of CDRs for STL' paragraphs 127 and 128 explain the process Alfa used to retrieve call data records for the Special Tribunal, and in particular 'end cell data'. A tape reader was used to restore the call data records then Alfa read the codes in the raw call data record to determine which code equated to the end cell data—the last cell ID information included in the call data record.⁹⁹ Alfa faced occasional problems and the analyst conducting the retrieval found errors on the call data records when retrieving end cell data. For example,

⁹⁸ Statement of 11 November 2015, para. 123; Transcript of 11 February 2016, p. 44.

⁹⁹ Statement of 11 November 2015, para. 127; Transcript of 11 February 2016, p. 44; Transcript of 18 April 2016 p. 73.

in retrieving the data, the analyst found one corrupted backup file for July 2004 which could account for some missing events that month.¹⁰⁰

89. In paragraphs 132 and 133—headed ‘Distinguishing between bulk data and individual text files’—Witness 707 explains the procedure for retrieving the data from Alfa’s data warehouse when searching for a specific number. A command (GRAB) is used and the data is filtered. Ten to twelve employees have access to this system. System administrators have access to everything but it is impossible to change the source of data.

90. Under ‘Clock synchronisation’, paragraph 134 explains that annex 9 is the response for a request for assistance asking Alfa about ‘clocks for call data records’(among other things) namely, whether the times on the call data records were synchronized with other clocks. Call data records are based on the clock of the corresponding MSC which is set manually.¹⁰¹ In cross-examination, Witness 707 explained that he did not personally have the information himself but that Alfa answered each request for assistance with the information it could find.¹⁰²

91. Counsel for Mr Badreddine objected to paragraph 132 because Witness 707 was not alone in the interview and someone else may have answered the question in this paragraph. Counsel for Mr Ayyash joined the objection on the grounds that the witness did not work for Alfa in 2004 and 2005 and because most of the information was given to him, he lacks first-hand knowledge.¹⁰³

92. Under the heading ‘Subscriber information – Name of DB Jupiter Billing System’, the witness explains in paragraphs 140 and 141 that Alfa has two databases, one for the billing system and one for the subscriber technical profile. The billing system database was used to produce the subscriber database for the Prosecution.¹⁰⁴

93. Paragraphs 142 and 143—under the sub-heading ‘Collection of subscriber information’—outline the documentation and information required to purchase a prepaid or post-paid line, divided into Lebanese-residential customer, minors under 18, foreign customers and companies. Paragraph 146—under the sub-heading ‘Data input and storage’—provides clarifications from Alfa’s customer relations department in relation to Alfa

¹⁰⁰ Statement of 11 November 2015, para. 128.

¹⁰¹ Statement of 11 November 2015, annex 9.

¹⁰² Transcript of 3 May 2016, p. 44 (cross-examination by counsel for Mr Badreddine).

¹⁰³ Transcript of 29 January 2016, pp. 69-75.

¹⁰⁴ Statement of 11 November 2015, para. 141; Transcript of 17 February 2016, pp. 36-49.

subscriber databases provided to the UNIIC and Special Tribunal's Prosecutor in 2005, 2008 and 2010. These relate to the fields in Alfa's old and new billing systems.

94. The sub-heading 'updating process' relates to updating customer information. Paragraph 151 explains that data input related to a subscriber goes through the provisioning system, the interface between the billing system and home location register (HLR). The billing system then feeds the provisioning system which talks to the HLR. Whenever there is an update or a change to the billing system, an update is triggered and the change is made.¹⁰⁵ Paragraph 152 clarifies that the HLR holds only the subscriber's technical profile and not personal information.

95. Under the sub-heading, 'customer billing', paragraphs 155 and 157 to 160 describe this process. Paragraph 155 explains that customer bills are generated automatically on the billing system and that from 2004 until 2005 there were four or five billing cycles. Paragraph 157 states that each month Alfa issues its invoices on four dates. Paragraph 158 clarifies that a receipt with 'down payment' written on it refers to an interim payment made by a customer on their account. Paragraph 159 explains that 'retention' means that the credit time has expired on the line but the customer wishes to keep the number. Paragraph 160 outlines the information that appears on a receipt; the receipt number, date and time, Alfa details, client name and number, amount paid, method of payment, invoice number, client's telephone number(s), and user name of Alfa employee entering the details.

96. The next section, headed 'Cell Site Data', was specifically objected to by Defence counsel. Paragraphs 162 to 163 are under the sub-heading, 'Generation of azimuth values and geographic coordinates'. In paragraph 162 the witness explained that Alfa's radio department had informed him that azimuth values specified in a particular response to a request for assistance were manually measured on site by a radio engineer, and that cell tower coordinates are in a grid format. He explains in paragraph 163 that the response in annex 14 (2), relating to 192 cell towers was extracted from Alfa's working site database.

97. Regarding paragraph 162, Witness 707 stated that the values related to the location of a station are done primarily in the planning phase and measured on site after establishing the site. The sub-contractor was ordered to follow a specific azimuth with a specific tilt. Once the station is activated, Alfa does the actual manual measurement. If the execution and planning

¹⁰⁵ Statement of 11 November 2015, para. 151.

was correct, the values should conform. Antennas will be changed if a station is not covering a specific region.¹⁰⁶ Regarding the cell BRANJE in Beirut, the witness stated that the cell was established in 1995 and there would have been regular visits but he could not say (in court) what its values were in 1995. The date of measuring a change in an azimuth was not important for the network.¹⁰⁷ Witness 707 explained that the shape files were not 100% accurate. The witness stated, ‘There is a margin error of 5%, 10%, I don’t know, but the margin of error in the shape files is still the same. And of course, it has an impact.’¹⁰⁸

98. Paragraphs 164 and 166 to 171, headed ‘Generation of cell coverage files’, explain how azimuth values, geographic coordinates, and cell coverage files are generated.

99. During cross-examination, Witness 707 was asked about drive tests (also called drive surveys) which are conducted immediately after a cell site is installed to confirm that the coverage of a cell site is close to the predicted coverage. He explained that ‘drive tests are the best way to make sure the station was playing the role it was supposed to do.’ Alfa did not retain drive tests conducted five years ago because they were not important information to the company at the time.¹⁰⁹

100. The witness explained that Alfa provided the Special Tribunal with best predicted server coverage in three batches, in July 2010—in respect of 718 cells sectors for 2005, 2007 and 2010; in February 2013—with shape files for 292¹¹⁰ cells; and in June 2015—with 938 shape files for 2005. This information came from Alfa’s information request unit. Alfa had advised the Prosecution in 2010 that it did not have a digital site database for 2005 so the mapping, on ArcGIS polygon shape files, has been produced by approximation. The oldest working databases date back to 29 January 2007, so only cells on air in 2005 were considered.¹¹¹

101. Counsel for Mr Sabra objected that paragraph 164 was written by Witness 707’s predecessor and that the witness was not then working at Alfa. Witness 707 was not involved in preparing the information in paragraph 164 or annexes 14 (1) and (2), a response to a

¹⁰⁶ Transcript of 3 May 2016, p. 80.

¹⁰⁷ Transcript of 3 May 2016, pp. 84-86.

¹⁰⁸ Transcript of 3 May 2016, pp. 85-86.

¹⁰⁹ Transcript of 21 April 2016, p. 85.

¹¹⁰ In the Transcript of 20 April 2016 on page 55, the Prosecution corrects paragraph 164 of the 11 November 2015 statement that there are 292 cell towers, not 192.

¹¹¹ Statement of 11 November 2015, para. 164.

request for assistance regarding cell tower information on 292 Alfa cell towers.¹¹² This is analysed below at paragraphs 127 to 140.

102. In cross-examination, the witness explained that the azimuths and coordinates were manually measured. The 2004 and 2005 tilt and azimuth values cannot be confirmed as 100% accurate.¹¹³ Witness 707 was informed by Alfa's radio department that the azimuth values were from the planning phase and were manually measured by a radio engineer on site.¹¹⁴ Alfa provided the Special Tribunal with the best predicted server coverage for 718 cell sectors in 2005, 2007, and 2010. To generate the coverage array for 2005, only the cells on air until the end of 2005 were considered, while cells from 2006 until 29 January 2007 were omitted.¹¹⁵

103. The basic methodology used to generate the shape files obtained in 2010 is identical to the methodology used to generate them in 2013 and 2015.¹¹⁶ Witness 707 was informed by the radio department that all three coverage sets have small discrepancies in the size and shape of the cell polygons. Witness 707 confirmed that in Annex 16 (b), a response to a request for assistance providing coverage maps of Lebanon and the greater Beirut area in May 2007, the maps were generated using the Asset Aircom tool.¹¹⁷ Asset Aircom is a radio network planning tool for optimizing mobile networks. This witness and Witness 705 testified about its general use by communications service providers.¹¹⁸

104. In paragraph 171, Witness 707 explained that the map generated by Asset Aircom 'did not take into account height or shape of buildings, although modern tuning models do.' In cross-examination, he explained that today these factors are considered, for example, in Google Earth. Asset Aircom recognized that a building existed, but not necessarily details about the building such as its type and height. He agreed that the detail of the buildings was

¹¹² Transcript of 20 April 2016, pp. 47-61.

¹¹³ Transcript of 3 May 2016, pp. 49-50 (cross-examination by counsel for Mr Badreddine).

¹¹⁴ Statement of 11 November 2015, para. 162.

¹¹⁵ Statement of 11 November 2015, para. 164; Transcript of 20 April 2016, pp. 47-48, 56, 61, 64, 67, 71.

¹¹⁶ Statement of 11 November 2015, para. 169; Transcript of 12 February 2016, pp. 74-82; Transcript of 18 April 2016, pp. 78-79.

¹¹⁷ Statement of 11 November 2015, para. 171; Transcript 12 February 2016, pp. 74-82; Transcript of 19 April 2016, pp. 78-79; Transcript of 22 April 2016 pp. 26-28.

¹¹⁸ Transcript of 22 April 2016, pp. 24-27 (Witness 707); Transcript of 6 May 2016, pp. 3-4, 71-76 (Witness 705).

very important to planning engineers, although everyone accepted that there was always a margin of error.¹¹⁹

105. In cross examination, the witness was asked about the propagation model (also known as the clutter model), which factors in the type of ground over which the radio waves will propagate, and takes into account ‘clutter’ such as water, forest, urban, and suburban terrain. The propagation model is based upon the Okumura-Hata computation method.¹²⁰ All the propagation models use this method, but operators also take measurements on the ground to adapt the model to the current situation.¹²¹

106. The next sub-section is headed ‘Changes observed in the Cell Global Identity (CGI) and the Cell ID’. Paragraphs 178 and 179 summarize the changes observed in the CGI and the cell ID provided to the Special Tribunal in 2010. Witness 707 notes some discrepancies for Alfa cells (in the LAC, or Local Area Code) between the files provided to the Special Tribunal in 2005 and 2010.¹²²

107. Defence counsel did not specifically dispute or challenge the following annexes, responses to requests for assistance:

- **annex 10** —Alfa’s subscriber records;¹²³
- **annex 11** and **annex 12 (1)**—Alfa’s subscriber database;¹²⁴
- **annex 16 (c)**, exhibit P799—cover letter for the request for assistance;¹²⁵
- **annex 16 (d)**, exhibit P799—a list of 16 cells where discrepancies were identified in the cell ID;¹²⁶ and
- **annex 16 (e)**, exhibit P799—an explanation about the discrepancies in the 16 cells.¹²⁷

108. The Trial Chamber has considered the general Defence objections that these paragraphs and annexes are unreliable because the witness did not work at Alfa in 2004 and

¹¹⁹ Transcript 22 April 2016, pp. 26-28. *See also* See F2750, Reasons for Admitting Witness PRH705’s Statements and Annexes into Evidence, 30 September 2016, para. 78.

¹²⁰ The Okumura-Hata computation method is used to predict the behaviour of cellular transmissions in urban areas.

¹²¹ Transcript of 22 April 2016, pp. 29-30.

¹²² Statement of 11 November 2015, para. 178; Transcript of 19 April 2016, p. 55, Transcript of 18 April 2016, p. 80.

¹²³ Statement of 11 November 2015, para. 141. Defence counsel made no additional submissions on this annex.

¹²⁴ Statement of 11 November 2015, para. 141. Defence counsel made no additional submissions on this annex.

¹²⁵ Statement of 11 November 2015, para. 178. Defence counsel made no additional submissions on this annex.

¹²⁶ Statement of 11 November 2015, para. 179. Defence counsel made no additional submissions on this annex.

¹²⁷ Statement of 11 November 2015, para. 179.

2005 and that he was not alone in the interview. The information is technical and the evidence was compiled by more than one Alfa employee. For the purposes of the *prima facie* reliability of the documents, the Trial Chamber is satisfied with the witness's explanation that employees at Alfa who either provided him with the information contained in these paragraphs and annexes or verified it, were qualified to do so.

109. The Trial Chamber is satisfied that the information contained in the specified paragraphs and annexes is relevant and probative of Alfa's record keeping practices, and, more specifically, how these business records were stored and retrieved. The information, whether it was extracted for the purposes of investigation or litigation, comes from Alfa's business records. In the Trial Chamber's view it has the necessary *prima facie* indicia of reliability for admission into evidence.

Annex 8 (1) (exhibit P770)

110. Annex 8 (1) is a response to a request for assistance consisting of call data records before August 2004. The information in this lengthy annex was obtained from Alfa's billing system, or its data warehouse.¹²⁸

111. Counsel for Mr Badreddine objected to the admission of this annex arguing that the Prosecution failed to lay a proper foundation and that the witness neglected to answer various questions regarding the document.¹²⁹ Counsel for Mr Ayyash and Mr Sabra argued that the Prosecution should not be allowed to tender this document into evidence as an example of a call data record extracted from Alfa's billing system because this annex could not have been taken from the billing system. Additionally, the witness gave inconsistent answers regarding the document despite the Prosecution's attempts to refresh his recollection. It is unclear where this document was derived from, who created it, and when and how.¹³⁰ As a specific in-court objection, counsel for Mr Badreddine objected to Witness 707 refreshing his memory from annex 8, submitting that it was produced by the head of Alfa's request unit, rather than the witness himself.¹³¹

112. According to the Prosecution, this annex is relevant and probative to the Trial Chamber's assessment of the reliability of the call data records. Witness 707 provided

¹²⁸ Statement of 11 November 2015. Annex 8 is referred to in paragraph 131 which was not proposed for admission into evidence.

¹²⁹ Transcript of 9 February 2016, pp. 85-86.

¹³⁰ F2677, Ayyash Witness 707 Submissions, para. 13; F2680, Sabra Joinder, para. 1.

¹³¹ Transcript of 10 February 2016, pp. 21-22.

sufficient evidence as to how the call data records were generated, archived, and retrieved. This annex was extracted from Alfa company records, from its billing system.¹³²

113. The Trial Chamber has carefully reviewed the witness's evidence in relation to this document. It is satisfied that the witness provided sufficient information about its provenance. Witness 707 explained that it came from Alfa's billing system and that the main source of the numbers and information was the MSC. He consulted Alfa's billing system team and this information comes directly from Alfa's business records.¹³³

114. The Trial Chamber is satisfied that the witness's testimony is sufficient to provide the evidence with a *prima facie* degree of reliability. The annex comes from records that Alfa generates and, therefore, it is a business record. This annex should be admitted into evidence.

Annex 9

115. Annex 9 is a response to a request for assistance providing an explanation of internal clock timings for call data records.¹³⁴ The time that appears on the call data records for voice calls is based on the clock of the related MSC, which is set manually. Clocks for call data records may differ from one region to another in Lebanon.¹³⁵

116. Counsel for Mr Ayyash argue that it is unclear what this document is because it has no signature, contains no date, and lacks information regarding its reliability. The Trial Chamber has insufficient evidence as to the reliability of this document and therefore it should not be admitted into evidence.¹³⁶

117. The Prosecution submits that this annex is relevant and probative of the Trial Chamber's assessment of the reliability of the call data records and Alfa's record keeping practices.¹³⁷ This document is reliable because the witness provided sufficient evidence regarding Alfa's network architecture in 2004 and 2005, such as the means and clock adjustments, the anticipated discrepancies between the clocks, in addition to synchronisation of the SMSC.¹³⁸

¹³² F2689, Prosecution Response, paras 6-7.

¹³³ Transcript of 10 February 2016, p. 24.

¹³⁴ Statement of 11 November 2015, para. 134.

¹³⁵ Statement of 11 November 2015, annex 9.

¹³⁶ F2677, Ayyash Witness 707 Submissions, para. 42; F2680, Sabra Joinder, para. 1.

¹³⁷ F2689, Prosecution response, para. 20.

¹³⁸ F2689, Prosecution Response, para. 21; Transcript of 9 February 2016, pp. 70-74.

118. The Trial Chamber dismisses the Defence's argument that the document is unclear and therefore unreliable. In his testimony, Witness 707 explained that he consulted with the department in charge of operating MSCs in order to answer this request for assistance. He confirmed that this information is correct because he has personal knowledge of synchronisation.¹³⁹

119. The Trial Chamber is satisfied that this document is reliable. Although it was created for the purpose of litigation, it provides specific information regarding Alfa's business records. It has the necessary *prima facie* indicia of reliability for admission into evidence. This document is relevant and probative to the Trial Chamber's assessment of Alfa's record keeping in regard to call data records.

Annex 13 (exhibit P778)

120. Annex 13 is a response to a request for assistance regarding cell tower information including azimuth values, geographic coordinates, sector values, and tower type. This lengthy annex, according to Witness 707, came from Alfa's radio department.¹⁴⁰

121. Counsel for Mr Oneissi and Mr Mehri submit that annex 13 does not meet the requisite level of reliability because the witness could not confirm its accuracy.¹⁴¹ Alfa did not keep records of the origin of data in the annex nor did the witness have any information regarding its drafting.¹⁴²

122. Counsel for Mr Ayyash and Mr Sabra argue that this annex does not meet the threshold for reliability because the witness testified that he had no information as to the source of the document or how it was produced other than that it was usual for these values to come from Alfa's radio department. This document should not be admitted into evidence because Alfa does not have the records to confirm the information in this annex.¹⁴³

123. Counsel for Mr Sabra and Mr Badreddine also objected to the admission of this annex because the witness could not confirm the accuracy of the information obtained in 2007. Witness 707 was not then working at Alfa and therefore lacks first-hand knowledge.¹⁴⁴

¹³⁹ Transcript of 19 April 2016, p. 9.

¹⁴⁰ Statement of 11 November 2015. Annex 13 is referred to in paragraph 161 which was not proposed for admission into evidence.

¹⁴¹ F2676, Oneissi Communications Service Providers Submissions, para. 32; F2682, Merhi Joinder, paras 1-2.

¹⁴² F2676, Oneissi Communications Service Providers Submissions, para. 32; F2682, Merhi Joinder, paras 1-2.

¹⁴³ F2677, Ayyash Witness 707 Submissions, para. 29; F2680, Sabra Joinder, para. 1.

¹⁴⁴ Transcript of 12 February 2016, pp. 12-13.

124. The Prosecution submits that this document is relevant and probative to show the location of relevant Alfa cell towers and their coverage at the relevant times.¹⁴⁵ According to Witness 707 the values sent to the Prosecution in 2007 should coincide with those set in the planning phase.¹⁴⁶ This document is reliable because the witness provided sufficient evidence as to the provenance of the document, how the values were recorded, and how the values were used in the company.¹⁴⁷

125. The Trial Chamber is satisfied that this annex is reliable because it is a business record. Alfa extracted this information from its business records. In its ordinary course of business, Alfa kept records of cell site information. This annex is a business record and should be admitted into evidence.

Exhibit 5D242

126. Exhibit 5D242 is a 2010 request for assistance asking Alfa to provide information about 292 Alfa cell towers such as the cell towers site name, cell types, cell region, cell ID, azimuth details, maps indicating cell coverage and tower location in 2005 and 2007, etc.¹⁴⁸ In his testimony, Witness 707 was unable to recall either this request for assistance or its response. The witness explained that although the information request unit received the request for assistance, the radio planning team actually produced the requested information.¹⁴⁹ The response to this request for assistance is Annex 14 (2) to Witness 707's 11 November 2015 statement. According to paragraph 163 of this statement, the azimuth values and geographic coordinates in the response to the request for assistance were extracted from Alfa's working site database.¹⁵⁰

Annex 14 (1)

127. Annex 14 (1) relates to cell tower information and cell coverage files.¹⁵¹ It is the witness statement of a senior Alfa employee and Witness 707's predecessor as the special representative of Alfa—who did not testify—describing the mapping information possessed by Alfa for 2005. It also provides information in response to a request for assistance regarding subscriber information relating to 13 GSM numbers—mobile numbers, subscriber names and

¹⁴⁵ F2689, Prosecution Response, para. 15; Transcript of 12 February 2016, pp. 7-8.

¹⁴⁶ Transcript of 3 May 2016, pp. 53-54.

¹⁴⁷ F2689, Prosecution Response, para. 15; Transcript of 12 February 2016, pp. 7-22.

¹⁴⁸ Transcript of 20 April 2016, pp. 54-55; Transcript of 21 April 2016, pp. 4-5.

¹⁴⁹ Transcript of 20 April 2016, p. 56.

¹⁵⁰ Statement of 11 November 2015, para. 163.

¹⁵¹ Statement of 11 November 2015, para. 164.

the dates of bills. In paragraph 164 of his statement, Witness 707 extracted the relevant part of the senior Alfa employee's statement.

128. Counsel for Mr Ayyash and Mr Sabra objected to its admission into evidence arguing that the annex is a statement of another witness who the Prosecution is not calling, and further, it has not provided a legal basis for admitting the statement.¹⁵²

129. In cross-examination, Witness 707 stated that although he did not work at Alfa in 2005 he could explain the best approximation method. For example, when Alfa received a request about coverage for 2005, the engineer preparing the maps would take into account all the stations activated in 2005 and those active before 2005.¹⁵³

130. The Prosecution submits that this document is relevant and probative to the Trial Chamber's assessment of the reliability of Alfa's cell site information. This document is reliable because it is signed by the predecessor witness, and Witness 707 provided additional evidence on the generation of the shape files.¹⁵⁴ It is submitted for the truth of its contents.

131. The Prosecution relies on the cell site evidence in this annex, specifically the mapping of coverage shape files for 2005.¹⁵⁵ The statement explains the process for mapping information for 2005, 2007, and 2010¹⁵⁶ and is relevant to the Trial Chamber's assessment of the reliability of Alfa's cell tower information.

132. The Trial Chamber has carefully considered the arguments of Defence counsel regarding this annex. The purpose of this annex, in the Trial Chamber's view, is not to provide evidence from a witness who is not testifying but rather to provide context to Witness 707's evidence as to the provenance of the information in his statement. In this respect Witness 707 could provide the same evidence in court. The Trial Chamber is satisfied that the information in this annex is relevant and probative of Alfa's systems.

133. During his testimony, Witness 707 explained that in regard to best predicted coverage, the system will give an approximation of the best coverage at the time, but it is not 100% accurate. The Trial Chamber acknowledges that it is impossible to confirm this data with 100% accuracy but is satisfied that nonetheless Alfa provided the best available

¹⁵² F2677, Ayyash Witness 707 Submissions, para. 43; F2680, Sabra Joinder, para. 1.

¹⁵³ Transcript of 20 April 2016, pp 53, 57 (cross-examination by counsel for Mr Sabra).

¹⁵⁴ F2689, Prosecution Response, paras 22-23; Transcript of 9 February 2016, pp. 24-25.

¹⁵⁵ F2689, Prosecution Response, para. 22.

¹⁵⁶ Annex 14 (1), paras 11-13.

approximation.¹⁵⁷ This annex is reliable because the information either derives directly from Alfa's business records or was produced using Alfa's records. The Trial Chamber is therefore satisfied of its *prima facie* reliability. Despite the Defence objections, it should be admitted into evidence. Witness 707 was cross-examined on this document and the Trial Chamber will in due course assess the weight that it may give to it.

Annex 14 (2) (exhibit P775)

134. Annex 14 (2) is a list of 292 Alfa cell towers with details of the site ID. The information contained in this lengthy annex was extracted from Alfa's radio department's working site database.¹⁵⁸ Witness 707 testified that Alfa did not have a complete database for 2004 and 2005.¹⁵⁹

135. Counsel for Mr Oneissi and Mr Mehri submit that annex 14 (2) is not reliable because the witness was unable to confirm the provenance and accuracy of the document. Its provenance has not been properly established and therefore it should not be admitted into evidence.¹⁶⁰

136. Counsel for Mr Ayyash and Mr Sabra submit that this document is unreliable because Alfa did not retain contemporaneous files that responded to the request for assistance but rather had to recreate the information to provide a response to the Prosecution. The information contained in this annex came from 2010 and therefore is not an accurate representation of information on the cell sites from 2004 and 2005. This annex is not a reliable document because the Prosecution failed to show where the database is located, who maintained it, how the geographic coordinates of cell sites were validated, and how the material was generated. This document should not be considered a business record despite it coming from Alfa's business records because it has been modified in a way which was not during the everyday business practices at Alfa.¹⁶¹ Counsel for Mr Badreddine objected to this annex on the grounds that it references a witness statement from someone who is not appearing in court.¹⁶²

¹⁵⁷ Transcript of 20 April 2016, p. 61.

¹⁵⁸ Statement of 11 November 2015, paras 163-164.

¹⁵⁹ Transcript of 20 April 2016, p. 59.

¹⁶⁰ F2676, Oneissi Communications Service Providers Submissions, paras 30, 35; F2682, Merhi Joinder, paras 1-2.

¹⁶¹ F2677, Ayyash Witness 707 Submissions, para. 21-22; F2680, Sabra Joinder, para. 1.

¹⁶² Transcript of 16 February 2016, p. 4.

137. In cross-examination when the witness was asked whether it was possible that some of the azimuths, or all of them, were from 1995, 1997, 1999 or some of them were from after 2005, he responded that it was possible.¹⁶³ Asset Aircom had a 60% or 70% predicted server coverage accuracy for 2004 and 2005.¹⁶⁴ Witness 707 stated that the engineer preparing the request would have taken into account all stations active in the relevant year, namely 2005.¹⁶⁵

138. In 2007, Alfa received the request relating to coverage in 2005. As Alfa did not have a complete database for 2005 it removed all stations for 2005 and 2006; those remaining were active in 2005. That would give a best predicted coverage, but that would be an approximation.¹⁶⁶ He explained in cross-examination that Alfa did not have all the information underlying the request for assistance.¹⁶⁷ However, the call data records from 2005 make it very easy to establish which cells were on air at the time.¹⁶⁸ Counsel suggested that 13 cells in northern Beirut were wrongly added, for example, MOVNPK, CLMNSO, PHENMB, and BHSQAR, and that there were also 17 individual errors.¹⁶⁹

139. The Prosecution submits that this annex is relevant to the Trial Chamber's assessment of the reliability of Alfa's records. This document is reliable because it was provided and signed by the predecessor representative witness of Alfa. Witness 707 provided sufficient evidence as to Alfa's reasons for storing basic cell information in addition to explaining what systems were used and how they were used.¹⁷⁰

140. The Trial Chamber has carefully considered the Defence cross-examination of Witness 707 and written Defence challenges to this annex, and has noted the discrepancies. The Trial Chamber finds this annex to be reliable as a business record; this information was extracted directly from Alfa's records. This information is relevant and probative to the Trial Chamber's assessment of the accuracy of Alfa's business records and overall record keeping practices. The Defence challenges have not undermined its *prima facie* indicia of reliability to eliminate its probative value. The Trial Chamber will carefully consider each point when it later evaluates this document. It should be admitted into evidence.

¹⁶³ Transcript 3 May 2016, p. 86 (cross-examination by counsel for Mr Badreddine).

¹⁶⁴ Transcript 3 May 2016, pp. 90-91 (cross-examination by counsel for Mr Badreddine).

¹⁶⁵ Transcript 20 April 2016, p. 58 (cross-examination by counsel for Mr Sabra).

¹⁶⁶ Transcript of 20 April 2016, pp. 59-61 (cross examination by counsel for Mr Sabra).

¹⁶⁷ Transcript of 20 April 2016, p. 63; Transcript 21 April 2016, p. 11 (cross examination by counsel for Mr Sabra).

¹⁶⁸ Transcript of 20 April 2016, pp. 77-78 (cross examination by counsel for Mr Sabra).

¹⁶⁹ Transcript 21 April 2016, pp. 16-18 (cross examination by counsel for Mr Sabra).

¹⁷⁰ F2689, Prosecution Response, paras 8-9.

Annex 15 and Annex 16 (a)

141. Annex 15 is the covering letter to a response to a request for assistance for 292 shape files for Alfa cell sectors.¹⁷¹ Annex 16 (a) is a response to a request for assistance with a CD containing 938 shape files for 2005.¹⁷²

142. Counsel for Mr Ayyash and Mr Sabra argue that these two annexes are unclear and that they are not business records. Although the documents contained in these annexes derive partially from documents kept in the everyday business practices of Alfa, they are from different time periods. The maps contained in these annexes are unreliable because data was extracted from different time periods for the purpose of reconstructing a map.¹⁷³ Witness 707 was unable to testify as to the source of the information for the shape files.¹⁷⁴ The witness lacks personal knowledge as to the values contained in these shape files.¹⁷⁵

143. The Prosecution submits that these annexes are relevant and probative to the Trial Chamber's assessment of the shape files. These annexes form an inseparable part of Witness 707's evidence as the representative of Alfa. These documents provide valuable context because they supplement the digital shape files.¹⁷⁶

144. The shape files are integral to the Trial Chamber's assessment of the reliability of Alfa's records of its network coverage in 2004 and 2005. It has carefully considered the Defence objections to this evidence and dismisses the argument that the two annexes are not business records. The fact that they are from different time periods does not diminish their reliability.

145. Although Witness 707 did not generate these shape files, he is clearly knowledgeable about their generation. He confirmed that the data on each station is verified, and to ensure the highest level of accuracy, all information that could potentially impact the radio waves is taken into account.¹⁷⁷

146. The Trial Chamber finds these annexes to be reliable because they derive from Alfa's business records. During the ordinary course of business, Alfa kept records of shape files.

¹⁷¹ Statement of 11 November 2015, para. 164.

¹⁷² Statement of 11 November 2015, annex 16 (a).

¹⁷³ F2677, Ayyash Witness 707 Submissions, paras 45-46; F2680, Sabra Joinder, para. 1.

¹⁷⁴ F2677, Ayyash Witness 707 Submissions, para. 47, referring to transcript of 29 January 2016, p. 122; F2680, Sabra Joinder, para. 1

¹⁷⁵ F2677, Ayyash Witness 707 Submissions, para. 49; F2680, Sabra Joinder, para. 1.

¹⁷⁶ F2689, Prosecution response, paras 24-26.

¹⁷⁷ Transcript of 15 February 2016, p. 7.

Although data was extracted from different time periods, it came directly from Alfa's records and therefore should be admitted into evidence.

Annex 16 (b) (exhibit P779)

147. Annex 16 (b) is a response to a request for assistance providing coverage maps of Lebanon and the greater Beirut area in May 2007. These maps were generated by Alfa using Asset Aircom.¹⁷⁸

148. Counsel for Mr Oneissi and Mr Mehri argue that Annex 16 (b) does not meet the requisite level of reliability because the witness was unable to confirm the provenance of the maps. The witness also did not consult whoever produced the maps. Although the witness relies heavily upon information obtained from other Alfa employees, he did not know them and therefore cannot with certainty testify as to the reliability of the information.¹⁷⁹ Counsel for Mr Ayyash and Mr Sabra submit that the Prosecution failed to establish the reliability of the maps. Further, the witness was unable to testify with certainty as to the accuracy of the maps. These documents do not meet the requisite level of reliability because it is unclear who created the maps, what values the maps were based on, and how the maps were created. Admitting them into evidence would violate the fair trial rights of the Accused.¹⁸⁰

149. Counsel for Mr Badreddine objected to the admission of this annex on the grounds that the employee who produced this map no longer works at Alfa. Witness 707 cannot testify regarding the competence of the people who produced this map, how it was produced, and when it was produced.¹⁸¹

150. The Prosecution submits that since this annex was produced in 2007 it would more closely reflect the situation on the ground on 14 February 2005.¹⁸² This is relevant and probative to the Trial Chamber's assessment and comparison of Alfa's predictive shape files.¹⁸³ This document is reliable because the witness confirmed its accuracy and that it was produced by Alfa.¹⁸⁴

¹⁷⁸ Statement of 11 November 2015, para. 171.

¹⁷⁹ F2676, Oneissi Communications Service Providers Submissions, paras 33-35; F2682, Merhi Joinder, paras 1-2.

¹⁸⁰ F2677, Ayyash Witness 707 Submissions, paras 34, 53; F2680, Sabra Joinder, para. 1.

¹⁸¹ Transcript of 16 February 2016, pp. 14-15.

¹⁸² F2689, Prosecution Response, para. 16.

¹⁸³ F2689, Prosecution Response, para. 16.

¹⁸⁴ F2689, Prosecution Response, para. 17; Transcript of 16 February 2016, pp. 12-14, 25-29.

151. The Trial Chamber has carefully considered Witness 707's testimony about this document. In cross-examination he agreed that the annex was a computer generated map purporting to show some best sever coverage plots in Beirut in different colours, and that the maps are less accurate than those used at present in 2016. These maps were used by radio engineers in, for example, planning a new network.¹⁸⁵

152. The Trial Chamber does not agree with the Defence argument that these maps should not be admitted because the employee who produced them no longer works at Alfa. The Trial Chamber is satisfied that the witness was able to provide sufficient evidence regarding these maps despite not producing them himself. The witness sufficiently explained the document and its reliability. Although Witness 707 does not have first-hand knowledge of the maps, he was testifying not as an individual, but rather as Alfa's representative, and an Alfa employee produced the maps. The reliability of the maps depends not wholly on who specifically created the maps but rather on the process—how they were made, when they were made, and what department produced them. The Trial Chamber is satisfied for the purposes of admitting the document into evidence, namely, its *prima facie* reliability, that the witness adequately explained this process.

153. The Trial Chamber is satisfied that these maps are relevant and probative for the Trial Chamber's assessment of the accuracy of Alfa's shape files and records. These maps are reliable and therefore should be admitted into evidence.

Discussion

154. The Trial Chamber is satisfied, generally, that these paragraphs and accompanying annexes are relevant and probative. Witness 707's statement and accompanying testimony, describe how the business records were generated, stored, and retrieved. The statement explains how the business records were produced in the ordinary course of business. Alfa's regular practice is to generate these records that were created between 2004 and 2005.

155. The Trial Chamber rejects the Defence's argument that because the witness did not work at Alfa in 2004 and 2005 and was not involved in generating all of these annexes, the paragraphs and annexes are unreliable. Witness 707 satisfactorily explained how they would have been created. The annexes were generated by qualified Alfa employees in the ordinary course of business. The Trial Chamber dismissed Defence counsel's objections on the

¹⁸⁵ Transcript of 21 April 2016, pp. 49, 51.

grounds that hearsay is admissible and that even though the witness did not work at Alfa between 2004 and 2005, he was provided the information by qualified Alfa employees.

156. The Trial Chamber is satisfied that these paragraphs and annexes are probative of the business practices of Alfa. They are *prima facie* reliable even though the witness does not have first-hand knowledge concerning all of the information in these paragraphs and annexes. They should be admitted into evidence.

Explanations for Specific Data-Related Issues (paragraphs 181-199; annexes 17-20)

157. In the section, ‘Explanations for Specific Data Related Issues’ and the sub-heading, ‘end cell data’, paragraphs 181 to 193 explain specific data-related issues, such as differences in the time of the start of the call, differences in duration, prefixes preceding the mobile number, start cell data for incoming calls, calls that exist only in the end cell source, not in the start cell source. Paragraphs 194 to 198, under the headings ‘Cell Sites’ and sub-headings ‘Dispersed coverage patches’, ‘Discrepancies in shape files’ and ‘Discrepancies in azimuth values’, explain these concepts.

158. In paragraph 199—under the heading, ‘SMS Content’—the witness confirms that a delivery receipt is a normal SMS generated once the SMS has reached its destination, has expired, or has been deleted.

159. The information in these paragraphs contains explanations of business records, and is therefore *prima facie* reliable as an explanation of records kept by Alfa in the ordinary course of business.

160. The Trial Chamber finds that the explanations of Alfa’s business records and business practices are useful in assessing Alfa’s record keeping practices. The information in Witness 707’s statement and testimony is technical and these explanations assist the Trial Chamber in its understanding and assessment.

161. The annexes in this section are all responses to requests for assistance. Annex 17 is already in evidence as exhibit P800 and provides information regarding azimuth values and specific details for three cell sectors in Beirut, SOLIDR1, SOLIDR2, and SOLIDR3.¹⁸⁶ Annex 18 provides information on a cell sector MOVPIK1 such as that it was operational from 7 September 2004 until 22 April 2005, but not from 9 July 2004 until 22 April 2005, and

¹⁸⁶ Statement of 11 November 2015, para. 196. For its admission into evidence see transcript 19 April 2016, p. 63.

its longitude and latitude.¹⁸⁷ This annex appears to be generally undisputed as Defence counsel made no specific submissions challenging these annexes. It is probative and should be admitted into evidence. Annex 19 explains the differences in coordinates and azimuth values of Alfa cells,¹⁸⁸ while annex 20 explains the delivery receipts for SMS messages.¹⁸⁹ Both were challenged by Defence counsel.

Annex 19 (exhibit P776)

162. Annex 19 lists the correct azimuth degree for 20 Alfa cell sectors and the correct location for seven cell towers, providing differences in azimuth direction and location.¹⁹⁰

163. Counsel for Mr Oneissi and Mr Merhi argue that annex 19 does not meet the requisite level of reliability because the witness was unable to confirm the accuracy of the document.¹⁹¹

164. Counsel for Mr Ayyash and Mr Sabra submit that this annex does not provide any information as to the azimuth values for 2004 and 2005, the years relevant to this case. The Prosecution erroneously submits that this annex shows that a stable network existed in 2004 and 2005 because the azimuth values between 2007 and 2010 did not change. This document should not be considered a business record because it was not a record kept in the everyday business practices of Alfa, but rather was created for the purposes of litigation. Admitting this document would violate Mr Ayyash's fair trial rights.¹⁹²

165. Counsel for Mr Sabra and Mr Badreddine objected to the document because the witness testified that it was not possible to determine the accuracy of the information in this document.¹⁹³

166. The Prosecution submits that this document is relevant to the Trial Chamber's assessment of the accuracy of the azimuth values and location information.¹⁹⁴ It is reliable because the witness provided sufficient evidence as to Alfa's record keeping for azimuth and location values of its sites.¹⁹⁵

¹⁸⁷ Statement of 11 November 2015, para. 197. Defence counsel did not make additional submissions on this annex.

¹⁸⁸ Statement of 11 November 2015, para. 198.

¹⁸⁹ Statement of 11 November 2015, para. 199.

¹⁹⁰ Statement of 11 November 2015, para. 198.

¹⁹¹ F2676, Oneissi Communications Service Providers Submissions, para. 31; F2682, Merhi Joinder, paras. 1-2.

¹⁹² F2677, Ayyash Witness 707 Submissions, paras 20, 26; F2680, Sabra Joinder, para. 1.

¹⁹³ Transcript of 11 February 2016, pp. 87-88.

¹⁹⁴ F2689, Prosecution Response, para. 10.

¹⁹⁵ F2689, Prosecution Response, para. 11; Transcript of 11 February 2016, pp. 69-72.

167. In testifying, Witness 707 explained how the measurements are taken and that azimuths do not change on a regular basis, and how Alfa can change the direction of antennas to cover previously uncovered areas.¹⁹⁶ He also summarized why there were minimal differences in the data received in May 2007 and May 2010 from Alfa in regard to azimuths, and the process of measuring and storing geographic coordinates.¹⁹⁷ He explained that 20 sectors out of 992 had azimuth changes, and that this does not occur daily, but rather only in specific cases such as after a subscriber complaint of weak coverage.¹⁹⁸

168. The Trial Chamber is satisfied that the witness sufficiently explained this annex to provide it with the requisite degree of *prima facie* reliability. The witness had the necessary technical ability to explain the document. Although this information was produced for the purpose of litigation, the information comes directly from Alfa's business records. This annex is relevant and probative of the Trial Chamber's assessment of the accuracy of Alfa's records and should be admitted into evidence.

Annex 20

169. Annex 20 explains delivery receipt messages in SMS content messages and how they are displayed in call data records.¹⁹⁹ A delivery receipt is a SMS generated by the SMSC to the sender once the message reaches the receiving number, or has expired or has been deleted. Delivery receipt messages appear on call data records as an incoming SMS.

170. Counsel for Mr Ayyash and Mr Sabra submit that this annex should not be admitted into evidence because it does not have a signature, a date, nor any information regarding its reliability.²⁰⁰

171. The Prosecution submits that this annex is relevant to the Trial Chamber's assessment and interpretation of the call data records. This document is reliable because it was signed by Alfa's Managing Director and Chief Executive Officer and delivered to the Prosecution through the Ministry of Telecommunications and the Lebanese Prosecutor-General.²⁰¹

172. The Trial Chamber is satisfied that this annex is relevant and probative to the Trial Chamber's assessment of Alfa's call data records. Business records are *prima facie* reliable

¹⁹⁶ Transcript of 11 February 2016, pp. 71-72.

¹⁹⁷ Transcript of 11 February 2016, pp. 74-76.

¹⁹⁸ Transcript of 11 February 2016, pp. 71-72.

¹⁹⁹ Statement of 11 November 2015, para. 199.

²⁰⁰ F2677, Ayyash Witness 707 Submissions, para. 54; F2680, Sabra Joinder, para. 1.

²⁰¹ F2689, Prosecution Response, paras 27-28.

when they are records kept in the ordinary course of a company's business. This annex is reliable because it explains a business record. It should be admitted into evidence.

Client Services and Features (paragraphs 201-257, 260-286; annexes 21-23)

173. The paragraphs in this section appear to be generally undisputed. Paragraphs 201 to 257 highlight the various services that Alfa offers to pre-paid and post-paid customers. Some examples of these services include: call waiting, message box, mobile internet, multi-party conference, roaming, logo and ringtones, SMS, etc.²⁰² Paragraphs 260 to 261 list the various customer service centres and their telephone numbers.

174. In paragraphs 262 to 267 the witness explains Alfa's post-paid system, known in 2004 and 2005 as 'Alfa Classic'. Post-paid SIM cards are recycled after they have been unused for four months, and a post-paid subscription allowed constant access to Alfa's services. Paragraphs 268 to 277 explain the pre-paid system, in 2004 and 2005 called 'Alfa Active'—a pre-paid card with no subscription fee or bill.²⁰³ These paragraphs explain when SIM cards are recycled, how to recharge a pre-paid line, and what happens when a subscriber uses all of their credit, and the retention period.²⁰⁴

175. Paragraphs 278 to 280 explain Alfa's IVR. IVR is a recorded message a caller hears when the receiver of the call fails to answer or insufficient credit exists to make the call. In a 2008 request for assistance, Alfa was asked about specific calls in a call data record and whether the calls were sent to IVR. The request for assistance response states that the 'A' number is a pre-paid caller with insufficient credit and consequently, the call was sent to IVR. For the called or 'B' number there is no record of the incoming call.²⁰⁵

176. Paragraphs 281 to 283 list the different numbers for features such as call waiting, call divert, message box, etc. Paragraphs 284 to 286 explain call forwarding and that it generates a call data record on the MSC of 'call forwarding' that includes the calling party number, the redirected number, and the called party number.

177. Annex 21 is Alfa's contract with Jibayat, a Lebanese collection agency contracted by Alfa on 27 October 1998. Post-paid contract subscribers were offered an option for their

²⁰² Statement of 11 November 2015, paras 201-257.

²⁰³ Statement of 11 November 2015, paras 262-264, 269; Transcript 18 April 2016, pp. 61-63.

²⁰⁴ Statement of 11 November 2015, paras 268-277; Transcript 18 April 2016, pp. 63-64.

²⁰⁵ Statement of 11 November 2015, para. 280; Transcript 18 April 2016, p. 75; Transcript of 19 April 2016, p. 65.

subscription to be collected by or paid to Jibayat.²⁰⁶ Annex 22, exhibit P802, is a response to a request for assistance about certain calls in a call data record and whether they were routed to interactive voice response.²⁰⁷ Annex 23, exhibit P803, is a response to a request for assistance about whether certain call data records reflected call forwarding to another number.²⁰⁸

178. These paragraphs and annexes contain information common to communications service providers. No specific challenge was made to these paragraphs and annexes. They appear not to be in dispute. They contain the necessary *prima facie* indicia of reliability and should be admitted into evidence.

SIM Card Supply/Distributors and Storage (paragraphs 292-298; annexes 24-48)

179. Under the general heading, ‘SIM Card Supply/Distributors and Storage’, paragraphs 292 to 296 relate to the supply of SIM cards. In 2004 and 2005, Alfa had only pre-paid and post-paid systems. For pre-paid SIM cards, Alfa received the SIM cards from the manufacturer and delivered them to the distributor once they were paid for. For post-paid SIM cards, the customer visited a Point of Sale and asked for a post-paid line. The customer then signed the contract and provided their identification.²⁰⁹ Paragraphs 297 and 298 list the authorised distributors and unauthorised points of sale for Alfa phone lines. Annexes 24 through 41 are contracts between Alfa and authorised distributors.²¹⁰ Annexes 42 to 48 list unauthorised points of sale.²¹¹

180. The information in these paragraphs and annexes is generally undisputed, and Defence counsel made no specific submissions about this evidence. These paragraphs and annexes are uncontroversial. They are relevant and probative, and should be admitted into evidence.

Witness 707’s statement of 29 December 2015

Witness Information and Subscriber Database Provided in 2010 to the Special Tribunal (paragraphs 1-10)

181. As with the previous witness statement, paragraphs 1 to 9 are introductory. In paragraph 10, the witness corrects an error in paragraph 146 of his 11 November 2015

²⁰⁶ Statement of 11 November 2015. Annex 21 is referred to in para. 259 which was not tendered.

²⁰⁷ Statement of 11 November 2015, para. 279.

²⁰⁸ Statement of 11 November 2015, para. 284.

²⁰⁹ Statement of 11 November 2015, para. 294; Transcript of 19 April 2016, pp. 45-46.

²¹⁰ Statement of 11 November 2015, para. 297; Transcript of 19 April 2016, p. 46. Defence counsel did not make additional submissions on this annex.

²¹¹ Statement of 11 November 2015, para. 298; Transcript of 19 April 2016, pp. 46-47. Defence counsel did not make additional submissions on this annex.

statement. The field 'service name' erroneously lists the telephone number of the subscriber.²¹²

182. These paragraphs are relevant and probative. No specific Defence objections were received. They should be admitted into evidence.

Clarification on the Network Architecture and Cell Sites (paragraphs 12-14, 20-22; annex 1)

183. Witness 707, in paragraph 12, clarifies that annex 4 (exhibit P773) of his statement of 11 November 2015 depicts a schematic of the Alfa network in 2004 and 2005. The annex shows where MSC1 and MSC2 are located.²¹³

184. The witness confirms that although the two MSCs are different and each one has its own internal clock, they were synchronised to one external clock.²¹⁴ Paragraphs 13 and 14 clarify the CGI, and on air and off dates of cell sites SOLIDR1 and SOLIDR2 in the Phoenica Hotel, St George Hotel area in Beirut, next to the scene of the explosion. Between September 2004 and February 2005 only two cell sites were installed in that area, namely SOLIDR1 and SOLIDR2. PHENMB was installed on 27 July 2004 and put on air on 29 July 2004.²¹⁵

185. In paragraphs 20 and 21 the witness makes specific technical confirmations in regard to annex 16 (e) of the 11 November 2015 statement (exhibit P799), and IMEI numbers for specific phone numbers. Paragraph 22 explains that annex 1, 'abonne_all' was taken from Alfa's subscriber database. The Defence did not make additional submissions regarding annex 1.

186. These paragraphs and annexes are relevant and probative because they are related to the business practice of the Alfa Network. These paragraphs are not specifically disputed by Defence counsel. They have the *prima facie* indicia of reliability and should be admitted into evidence.

²¹² Witness Statement, 29 December 2015, para. 10.

²¹³ Witness Statement, 29 December 2015, para. 12.

²¹⁴ Witness Statement, 29 December 2015, para. 12.

²¹⁵ Witness Statement, 29 December 2015, paras 13-14.

Witness 707's statement of 25 January 2016

Recharge Cards and Credit Balance and Recharge Information (paragraphs 1-11, 17-18); annex B

187. Paragraphs 1 to 11 are introductory. Witness 707, under the heading, 'Recharge cards', describes in paragraph 17 the different validity periods for the various types of recharge cards. Recharge validity dates were formerly 16 months from the production date but in 2016 are 24 months. Different batches of SIM cards have different validity dates based on when they were produced.²¹⁶

188. Paragraph 18 relates to credit balance and recharge information. The documents containing recharge information for 44 phones were taken from the prepaid management system. Additionally, Witness 707 confirms that the following documents are accurate:²¹⁷

- an Excel document showing the credit remaining at the time of deactivation for 14 GSM numbers was produced by Alfa;
- an Excel document showing the remaining credits for number 3196742;
- a document showing the conversion of credit units to US dollars;
- a document pertaining to the recharge data for number 3193428, and the 32 documents showing the IMEIs with various telephone numbers;
- copies of 31 original contract documents Alfa provided to the Special Tribunal in 2010;
- 91 receipts of payments Alfa provided to the Special Tribunal in 2010;
- three documents dealing with various Alfa services and procedures in relation to the loss or replacement of a SIM card; and
- an Excel document Alfa provided to the Special Tribunal in 2010 concerning information on specific numbers;

189. Annex B shows the credit units remaining for specified mobile phones and dates.²¹⁸

190. These paragraphs and annex B are not specifically disputed by the Defence. They are relevant and probative, and should be admitted into evidence.

²¹⁶ Witness Statement, 25 January 2016, para.17.

²¹⁷ Witness Statement, 25 January 2016, paras 18-23.

²¹⁸ Witness Statement, 25 January 2016, Annex B is referred to in para.18 which the Prosecution did not seek to tender into evidence. Counsel for Mr Ayyash take no position on this annex.

Handset (IMEI information), Mobile Phone Contracts, and Receipt of Payments (paragraphs 19-21); annex A

191. Annex A includes information regarding coverage and drive tests, credit balance and recharge information, handset IMEI information, mobile telephone contracts, receipt of payments, services and procedures, and subscriber information.²¹⁹ In cross-examination, counsel for Mr Badreddine informed Witness 707 that one of the 31 original contracts, exhibit P466, was provided to the Special Tribunal by the Lebanese Internal Security Forces (ISF).²²⁰ The witness had no information about that, however, he thought it was unlikely that Alfa had given the ISF access to its internal archive.²²¹

192. In paragraph 19 the witness confirms the accuracy of the information in relation to the 32 documents displaying IMEIs used with various numbers in section three of annex A. In paragraph 20 the witness confirms that the contracts in section 4 of annex A are from the Alfa archives. They were provided to the Special Tribunal in 2010. In paragraph 21 the witness confirms that the receipts in section five of annex A were generated from the cashier application used by Alfa's employees.

193. These paragraphs and the annex are relevant and probative. The Trial Chamber is satisfied of their *prima facie* reliability. They appear not to be specifically disputed and accordingly should be admitted into evidence.

Services and Procedures and Subscriber Information (paragraphs 22-23); annex A

194. In paragraph 22, under the heading, 'Services and procedures', the witness confirms that the documents in section six of annex A relating to various Alfa services and procedures represent Alfa's policies in 2004 and 2005. Witness 707 confirms in paragraph 23 that the documents in section seven of annex A is accurate. One of the documents was produced by the data warehouse and the other from the sales department

195. These paragraphs and annex appear not to be specifically disputed by Defence counsel. In the Trial Chamber's view they are relevant and have the *prima facie* reliability to be probative. They should be admitted into evidence.

²¹⁹ Witness Statement, 25 January 2016, para. 19. Counsel for Mr Ayyash take no position on this annex.

²²⁰ Exhibit P466 is the Libancell GSM Cellular Agreement and a copy of a Lebanese Individual Civil Extract identification document.

²²¹ Transcript 4 May 2016, pp. 46-47.

Additional Information (paragraphs 25-27)

196. The witness confirms in paragraph 25 that the ‘Twin Card’ service was available in 2004 and 2005. In paragraph 26 he states that in 2004 and 2005, Alfa offered an incentive to prepaid SIM card wholesalers when they returned their completed subscriber application forms with their identification. In paragraph 27, he states that annex C was provided as per Alfa’s 2007 records and that it does not usually re-route sites internally.

197. These paragraphs also appear to be undisputed, and are relevant and probative because they either describe, or, are documents generated in the normal course of Alfa’s business. The information contained in these paragraphs and annexes is undisputed and should be admitted into evidence.

CONCLUSION

198. The Trial Chamber was satisfied of the relevance of the specified paragraphs in Witness 707’s statements and attached annexes, and that each has probative value. The Trial Chamber has assessed the relevance and *prima facie* reliability of each paragraph and document. For the reasons detailed above, it is satisfied each has the necessary *prima facie* reliability for admission into evidence. The documents have therefore been admitted into evidence.

199. As with the decision in relation to Witness 705’s evidence, the Trial Chamber stresses that admitting these documents into evidence now does not determine the weight, if any, that it may ultimately give to them. This will be assessed at the appropriate point in the proceedings.

WORD LIMIT

200. In its consolidated response, the Prosecution requested an additional 1,000 words to the normal word limit of 6,000 words,²²² 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.

²²² STL-PD-2010-01/Rev. 2, Practice Direction on the Filing of Documents Before the Special Tribunal for Lebanon, 14 June 2013, Article 5.

CONFIDENTIALITY

201. 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:

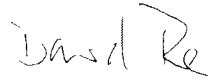
- a) From Witness 707's statement of 11 November 2015,
 - paragraphs 1-16, 22, 29-54, 58, 59 (D), 62, 72, 75, 90-96, 105, 111, 116, 120-128, 132-134, 140-143, 146, 151-152, 155, 157-160, 162-164, 166-171, 178-179, 181-199, 201-257, 260-286, 292-298; and
 - annexes 1, 2, 3, exhibit P773 (annex 4), exhibit P777 (annex 5), exhibit P770 (annex 8 (1)), 9, 10, 11, 12 (a), exhibit P778 (annex 13), 14 (1), exhibit P775 (annex 14 (2)), 15, 16 (a), exhibit P779 (annex 16 (b)), exhibit P776 (annex 19), 20, 21, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47 and 48;
- b) From Witness 707's statement of 29 December 2015 ,
 - paragraphs 1-10, 12-14, 20-22; and
 - annex 1; and
- c) From Witness 707's statement of 25 January 2016 ,
 - paragraphs 1-11, 17-23, 25-27; and
 - annex A and exhibit P784 (annex B).

ORDERS the allocation of exhibit numbers to Witness 707's statements and their annexes that have not yet received exhibit numbers; and

FURTHER to the decision delivered on 8 September 2016, orders the admission into evidence of exhibit P773 MFI (annex 4 to Witness 707's statement of 11 November 2015).

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

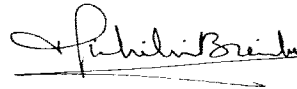
Leidschendam,
The Netherlands
10 October 2016



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

