



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:** 19 February 2018

**Original language:** English

**Classification:** Public

**THE PROSECUTOR**  
v.  
**SALIM JAMIL AYYASH**  
**HASSAN HABIB MERHI**  
**HUSSEIN HASSAN ONEISSI**  
**ASSAD HASSAN SABRA**

**WRITTEN REASONS FOR ADMITTING INTO EVIDENCE FOR THE SABRA  
DEFENCE TWO MTC SUBSCRIBER NOTES AND CALL DATA RECORDS FOR  
MOBILE '590'**

**Office of the Prosecutor:**

Mr Norman Farrell &amp; Mr Alexander Hugh Milne

**Legal Representatives of  
Participating Victims:**

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

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Mr Emile Aoun, Mr Thomas Hannis &amp; Mr Chad Mair

**Counsel for Mr Hassan Habib Merhi:**

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

**Counsel for Mr Hussein Hassan Oneissi:**

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

**Counsel for Mr Assad Hassan Sabra:**

Mr David Young, Mr Geoffrey Robert &amp; Ms Sarah Bafadhel



## INTRODUCTION AND BACKGROUND

1. On 7 February 2018, the Trial Chamber delivered a decision in court admitting into evidence, upon a Sabra Defence application, two Lebanese ‘Mobile Telecommunications Company’ (MTC) subscriber notes and call data records for a mobile number ending in 590.<sup>1</sup> These are the written reasons for that decision.
2. The amended consolidated indictment pleads that five interconnected mobile telephone groups were involved in the attack on the former Lebanese Prime Minister, Mr Rafik Hariri, and others in Beirut, on 14 February 2005. The Prosecution ‘colour-coded’ them. It pleads that the ‘purple phones’, a group of three mobile telephone numbers, were used to coordinate the false claim of responsibility for the attack. It attributes one of them, ‘Purple 018’, to the Accused, Mr Assad Hassan Sabra.<sup>2</sup>
3. The Trial Chamber has heard evidence from Prosecution analyst, Mr Andrew Donaldson (Witness PRH230), regarding the attribution of this number to Mr Sabra.<sup>3</sup> It has also admitted into evidence four investigators’ notes from the United Nations International Independent Investigation Commission (UNIIC), from late 2008 and early 2009, concerning information received from the Lebanese Internal Security Forces (ISF)<sup>4</sup> that the ISF first attributed (Purple) 018 to another person, whom the Sabra Defence describes as ‘alternative user 1’. In one investigator’s note, the ISF attributed another mobile, 590, to ‘alternative user 1’.<sup>5</sup>
4. Counsel for Mr Sabra sought the admission into evidence, under Rule 154 of the Special Tribunal’s Rules of Procedure and Evidence, of three documents relevant, according to them, to attribute number 590, from early 2007 to May 2010, to ‘alternative user 1’.

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<sup>1</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, transcript of 7 February 2018, pp 3, 42-45; F3392, Motion for the Admission of Three Documents relating to a Phone Number, 30 October 2017 (public with confidential annexes A and B) (‘Sabra Defence application’).

<sup>2</sup> F2720/A02, Redacted Amended Consolidated Indictment, 12 July 2016, paras 4, 14-15, in particular para. 15 (e); STL-11-01/PT/TC, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, F1077/PRV, Redacted Version of the Prosecution’s Updated Pre-Trial Brief, dated 23 August 2013, 31 October 2013, para. 55.

<sup>3</sup> See transcript of 22 June 2017, pp 97-99; transcript of 27 June 2017; transcript of 28 June 2017, pp 2-34. It also admitted into evidence Mr Donaldson’s attribution report, which examines evidence on the attribution of Purple 018 to Mr Sabra. Mr Donaldson’s evidence also concerns the attribution of two other numbers, 546 and 657, to Mr Sabra. See exhibit P1953 (‘Evidence of Telephone Attribution – Assad Hassan Sabra’, Version 4’).

<sup>4</sup> Transcript of 28 September 2017, pp 69-113; exhibits 5D413 (Investigator’s note from the UNIIC relating to a meeting on 12 November 2008 with the ISF); 5D414 (Investigator’s note from the UNIIC relating to information received on 22 November 2008 from the ISF); 5D415 (Investigator’s note from the UNIIC relating to information received on 23 December 2008 from the ISF); 5D416 (Investigator’s note from the UNIIC regarding information received on 8 January 2009 from the ISF).

<sup>5</sup> Exhibit 5D416 (Investigator’s note from the UNIIC regarding information received on 8 January 2009 from the ISF).

According to the Sabra Defence, the information in the documents is connected to evidence elicited during the testimony of Mr Donaldson on ‘alternative user 1’.<sup>6</sup> The Prosecution opposed the application.<sup>7</sup>

### **MR ANDREW DONALDSON’S EVIDENCE**

5. Mr Donaldson testified that ‘alternative user 1’—who is a male and whose first name is ‘Asaad’<sup>8</sup>—was the first person reported by the ISF as the user of number 018.<sup>9</sup>

6. According to the Sabra Defence, the difference between ‘alternative user 1’'s and Mr Sabra’s first names (‘Asaad’ versus ‘Assad’—which in Arabic are different names), is one of the reasons the ISF—according to an ISF internal memorandum admitted into evidence<sup>10</sup>—revised its attribution of (Purple) 018 to Mr Sabra.<sup>11</sup> The Trial Chamber admitted into evidence documents containing SMS text messages for 590, where this number’s user is addressed, or signs off, as ‘Assad’.<sup>12</sup>

7. In court, the Sabra Defence relied upon a Prosecution letter of 18 September 2013 and the existence of a MTC subscriber note supporting the attribution of 590 to ‘alternative user 1’. The Sabra Defence did not show the letter or the subscriber note to the witness, or the Trial Chamber, during Mr Donaldson’s testimony, nor did it seek their admission into

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<sup>6</sup> Sabra Defence application, paras 1, 3, 6-7.

<sup>7</sup> F3406, Prosecution Response to Sabra Defence ‘Motion for the Admission of Three Documents relating to a Phone Number’, 8 November 2017 (‘Prosecution response’). The Sabra Defence requested the Trial Chamber, under Rule 9 (A) (i), to reduce the time for filing any response to five days, in consideration of the lack of complexity of the motion, the previous in-court discussion of the subject and the advanced stage of the Prosecution case (*see* Sabra Defence application, para. 17). The Prosecution objected to this request in an email on 31 October 2017 to the Trial Chamber’s senior legal officer. Among other things, it did not accept the suggested lack of complexity and argued that the advanced stage of the Prosecution case does not create any urgency for the filing, as the Defence could as easily seek the admission of documents into evidence during the Defence case. The Sabra Defence, in a subsequent email to the Trial Chamber’s senior legal officer on the same day, withdrew its request for a shortened deadline—still noting that its application related to three documents that had been part of the Prosecution’s evidentiary material for several years. The Trial Chamber reduced the time for the response, requesting the Prosecution to file its submissions by 8 November 2017. The decision was conveyed to the Parties in an email from the Trial Chamber’s senior legal officer.

<sup>8</sup> Exhibit P1075 (Family personal status extract).

<sup>9</sup> Transcript of 28 September 2017, pp 65-66, 71, 75-76.

<sup>10</sup> Exhibit 5D417 (ISF response to request for assistance dated 22 July 2014 and attached ISF internal memorandum). *See* transcript of 7 February 2018, pp 3-4; F3571, Written Reasons for Admitting into Evidence Twenty Two Documents upon the Sabra Defence Application, 15 February 2018 (‘Written reasons of 15 February 2018’), paras 75-88, disposition.

<sup>11</sup> Transcript of 29 September 2017, pp 7-9, 41-42.

<sup>12</sup> Exhibits 5D423 (Excerpt of SMS content for number 590) and 5D424 (Spreadsheet containing the SMS content for number 590 from 14 June 2005 to 31 May 2010). *See* transcript of 7 February 2018, pp 3-4; Written reasons of 15 February 2018, paras 89-101, disposition.

evidence at that point. The Prosecution objected to the suggestion that it attributed 590 in its letter.<sup>13</sup>

8. Mr Donaldson stated that the asserted attribution of 590 to ‘alternative user 1’ has no evidential basis.<sup>14</sup> He testified that he looked at number 590, did not ignore it, but he had ‘not managed to complete the attribution for 590’.<sup>15</sup>

### **THE EVIDENCE**

9. The three documents are two MTC subscriber notes for mobile 590 and a set of call data records for this number for the period between 1 January 2007 and 31 May 2010.

*a) Subscriber note from MTC 2007 subscriber database*

10. The Sabra Defence extracted this subscriber note from a complete list of subscriber information (subscriber database) that MTC provided, in electronic format, to the UNIIC in 2007.<sup>16</sup> Touch is the trade name for the brand.<sup>17</sup> The subscriber note relates to number 590 and shows that the line was registered to an unnamed subscriber, with an activation date of 23 February 2007.<sup>18</sup>

*b) Subscriber note from MTC 2010 subscriber database*

11. The Sabra Defence extracted this subscriber note from a subscriber database provided by MTC, in electronic format, to the Prosecution in 2010. It relates to number 590 and records the registered subscriber as ‘an individual with similar given name and identical surname and father’s name’ as ‘alternative user 1’.<sup>19</sup> The subscriber’s first name is spelled ‘Assad’ (double ‘s’). The connection date of the card/IMSI in the Touch network is

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<sup>13</sup> Transcript of 29 September 2017, pp 43, 46-48.

<sup>14</sup> Transcript of 29 September 2017, pp 14, 42-43, 45-46.

<sup>15</sup> Transcript of 28 September 2017, p. 103; transcript of 29 September 2017, pp 55-56.

<sup>16</sup> Sabra Defence application, para. 11; annex A, item 1; *see*, with regard to the subscriber databases MTC/Touch provided in response to two requests for assistance, F2819, Decision on Prosecution Motion to Admit Documents relating to Telephone Subscriber Records from the Touch Company, 7 November 2016 (‘Decision on Touch Company records’), para. 26.

<sup>17</sup> *See* exhibit P826 (Witness Statement of Touch representative PRH705 dated 16 November 2015), para. 14.

<sup>18</sup> The type of line subscribed was ‘Magic Orange’. ‘Magic’ is the pre-paid line offered by MTC/Touch, and ‘Magic Orange’, specifically, is one of the two MTC/Touch pre-paid products. The subscriber note contains other information, such as the contract number. *See* exhibit P826 (Witness Statement of Touch representative PRH705 dated 16 November 2015), paras 275, 277; F2750, Reasons for Admitting Witness PRH705’s Statements and Annexes Into Evidence, 30 September 2016, para. 106.

<sup>19</sup> Sabra Defence application, paras 9, 11; annex A, item 2.

30 October 2009.<sup>20</sup> The document also contains information on the subscriber's address, including the area, region, street, building and floor.

*c) Call data records*

12. The call data records are for mobile 590 between 1 January 2007 and 31 May 2010. The Prosecution extracted them from its database of Lebanese call data records, specifically from one termed 'Golden Copy Structures Query Language' (GC-SQL-02). These call data records were first disclosed to the Defence pursuant to the Trial Chamber's decision of 4 December 2013.<sup>21</sup> The document is 347 pages long.

13. The call data records show, in chronological order, all calls made or received by number 590. They also record the IMEI and IMSI numbers for 590.<sup>22</sup>

*Sabra Defence submissions*

14. The Sabra Defence submits that the documents must be admitted at this juncture to allow it to present its case and for the Trial Chamber to fully assess the attribution of Purple 018, which forms the foundation of the Prosecution case against Mr Sabra. According to the Trial Chamber's decision of 25 September 2017, the Defence may seek the admission of documents under Rule 154 during the Prosecution case without any formal variation of the usual sequence for the presentation of evidence under Rule 146 (B).<sup>23</sup>

15. The tendered documents must be read together with, and in the context of, the SMS content of mobile 590 which was marked for identification during Mr Donaldson's cross-examination.<sup>24</sup> The SMS content includes: (i) a text message of 5 March 2007, introducing 590 as the user's new number; (ii) an outgoing text message of 11 July 2008,

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<sup>20</sup> See P953 (Response received from Touch in response to a request for assistance), providing the meaning of the field 'condat'—present in the 2010 subscriber database—as 'the date of connection of the Card/IMSI in Touch network'.

<sup>21</sup> Sabra Defence application, para. 13; annex A, item 3; STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, F1255, Prosecution Notice regarding Disclosure of Call Data Records pursuant to Rule 110(B) and in Compliance with the Trial Chamber's Decision of 4 December 2013, 6 December 2013, paras 2-3; F1252, Decision on Call Data Records and Disclosure to Defence (on Remand from Appeals Chamber), 4 December 2013, para. 27.

<sup>22</sup> IMEI is the 'international mobile equipment identity', which is a unique serial number of every mobile telephone handset. The IMSI is the 'international mobile subscriber identity'. The provided call data records also provide information on the other number involved in the call, the time of the calls, the duration, and the cell ID. See *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F2584, Decision on Prosecution Rule 154 Motion for the Admission of Documents relating to Telephone Subscriber Records from the Alfa Company, 3 May 2016, fn. 74; Decision on Touch Company records, fns 7, 85.

<sup>23</sup> Sabra Defence application, paras 3, 5.

<sup>24</sup> Now exhibits 5D423 (Excerpt of SMS content for number 590) and 5D424 (Spreadsheet containing the SMS content for number 590 from 14 June 2005 to 31 May 2010). See above, para. 6.

signing off with the first and last names of ‘alternative user 1’; and (iii) generally, text messages subsequent to the first subscription, identifying the user as ‘As(s)a(a)d’.<sup>25</sup>

16. The first subscriber note, when viewed together with the subsequent text messages—either identifying the user as ‘As(s)a(a)d’ or with the first and last names of ‘alternative user 1’—and the subsequent subscription, is relevant to support the *prima facie* attribution of 590 to ‘alternative user 1’ from early 2007 onwards.<sup>26</sup>

17. The name on the second subscriber note corroborates the SMS content since March 2007, which suggests that 590 is *prima facie* attributable to ‘alternative user 1’. The continuous use of 590 since 5 March 2007 allows the inference of a link between the named subscriber in the second subscriber note and the prior (unnamed) subscriber since 23 February 2007, setting the period when the number is attributable to ‘alternative user 1’.<sup>27</sup>

18. The call data records reveal a 28-day gap of activity between 3 February and 2 March 2007, and show that the IMSI and IMEI changed immediately after this gap. Otherwise, they show a continuous use of the number from 3 March 2007—including around 30 October 2009, when the new subscription began. The longest gap of activity lasted for three days in December 2008.<sup>28</sup> Taken together—the activity gap for this number, the change of IMSI and IMEI after this gap, and the text message of 5 March 2007 introducing 590 as a new number<sup>29</sup>—are relevant to demonstrate that the user of this number had likely changed in early 2007.<sup>30</sup>

19. The Prosecution’s letter of 18 September 2013—to which counsel for Mr Sabra referred during Mr Donaldson’s testimony—is annexed to the application. It responds to a letter from the Sabra Defence—seeking disclosure of the complete SMS content and call data records for 590—and states, among other things, that according to the subscriber database, 590 was subscribed three times: on 17 May 2005, 23 February 2007, and 30 October 2009.<sup>31</sup>

20. As to the reliability of the three documents, the Sabra Defence submits that it extracted the subscriber notes from the two MTC subscriber databases, and that the Trial Chamber has already admitted into evidence an MTC subscriber note produced by the Sabra Defence from

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<sup>25</sup> Sabra Defence application, para. 7; annex A, item 1.

<sup>26</sup> Sabra Defence application, annex A, item 1.

<sup>27</sup> Sabra Defence application, annex A, items 2-3.

<sup>28</sup> Sabra Defence application, para. 8; annex A, item 3.

<sup>29</sup> See exhibit 5D424 (Spreadsheet containing the SMS content for number 590 from 14 June 2005 to 31 May 2010).

<sup>30</sup> Sabra Defence application, para. 7; annex A, item 1.

<sup>31</sup> Sabra Defence application, para. 8, fn. 8; annex B.

the same source and in the same manner, without the Prosecution objecting to the methodology of its production. The call data records are the complete call records, post-2006, for number 590, in the Prosecution's possession and disclosed to the Defence.<sup>32</sup>

#### *Prosecution response*

21. The Prosecution objects to the admission of the three documents. It submits that the Sabra Defence has not demonstrated how the documents, which relate to telephone activity from 2007 to 2010, are relevant to refuting the Prosecution case that Mr Sabra was the user of Purple 018 between 22 November 2001 and 16 February 2005. They are not relevant to any activity between November 2001 and December 2006. The Sabra Defence appears to rely on these documents not to challenge the Prosecution case, but to advocate its own case theory.<sup>33</sup>

22. None of the documents were put to Mr Donaldson during his cross-examination, or to any other Prosecution witness. Contrary to the Sabra Defence's submission, no evidence on the use of number 590 was elicited from Mr Donaldson. Further, the Defence misreads the Trial Chamber's decision of 25 September 2017, which 'did not grant *carte blanche* to the defence to submit any material it wished during the Prosecution case'. The Sabra Defence must advance cogent reasons as to why the interests of justice warrant the variation of the usual sequence for the presentation of evidence.<sup>34</sup>

### **DISCUSSION AND DECISION**

#### *Admission of Defence evidence during the Prosecution case*

23. The Trial Chamber has previously found that a formal variation of the sequence for the presentation of evidence is not necessarily required for the Trial Chamber to receive some Defence evidence during the Prosecution case. There is no reason, in principle, preventing the Defence from tendering, under Rule 154, documents that are not witness statements, or preventing the Trial Chamber from admitting them into evidence. Provided that the proposed evidence is relevant and has some probative value, the Trial Chamber may, in principle, receive evidence from a Party during the opposing Party's case.<sup>35</sup>

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<sup>32</sup> Sabra Defence application, paras 11-14; annex A, item 3.

<sup>33</sup> Prosecution response, paras 1-2. The Trial Chamber notes that, as a result of an inadvertent mistake in the paragraph numbering, two are numbered '1'. For the purposes of this footnote, both paragraphs '1' are relevant.

<sup>34</sup> Prosecution response, paras 2-4.

<sup>35</sup> F3337, Decision Granting, in Part, Sabra Defence Motion for the Admission of Documents relating to Mr Ahmed Abu Adass – Character, Religious Beliefs and Associates, 25 September 2017 ('Decision of 25 September 2017'), paras 109, 111.

24. These are not witness statements. Further, similar to the documents considered in the decision of 25 September 2017 for admission into evidence under Rule 154,<sup>36</sup> these three documents originate from, or have been extracted from, documents in the Prosecution's possession, and which have been disclosed to the Defence.

25. As to the Prosecution's objection that none of the exhibits were shown to Mr Donaldson during his cross-examination, or to any other Prosecution witness, the Trial Chamber has already held that a Prosecution witness neither has to adopt nor accept the contents of a Defence document for it to be admissible as evidence for the Defence during the Prosecution case.<sup>37</sup> Further, no reason has been advanced to argue that Mr Donaldson could add any relevant information or explanation, and he was not the author of the documents. The Prosecution has used this argument to object to the Defence seeking the admission of documents through Prosecution witnesses.<sup>38</sup> Finally, Mr Donaldson testified that he could not complete the attribution for number 590.

26. Despite that, in the circumstances, the Defence could have preferably tendered the relevant subscriber notes and call data records during Mr Donaldson's cross-examination. This is because it now submits they should be read together with other documents put to him during his testimony, such as the SMS content for number 590,<sup>39</sup> or evidence elicited from him. Instead, during Mr Donaldson's cross-examination, the Sabra Defence merely referred to an MTC subscriber note supporting the attribution of number 590 to 'alternative user 1'.<sup>40</sup> However, this neither prevents the Sabra Defence from tendering the documents now, nor precludes the Trial Chamber from admitting them into evidence.

27. The standards that the Trial Chamber has previously adopted for admitting evidence 'from the bar table' under Rule 154, without requiring a witness to produce or to identify a document, apply to this decision.<sup>41</sup>

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<sup>36</sup> Decision of 25 September 2017, paras 107, 109.

<sup>37</sup> Decision of 25 September 2017, para. 111.

<sup>38</sup> See Written reasons of 15 February 2018, para. 8. See also *idem*, para. 10.

<sup>39</sup> The Trial Chamber notes that, with regard to the SMS content for mobile 590 (exhibit 5D424), the Sabra Defence relies on text messages which were not included in the separately tendered extract and were not shown to Mr Donaldson or pointed to when explaining the relevance and probative value of the document.

<sup>40</sup> Transcript of 29 September 2017, p. 43. See also *idem*, p. 46.

<sup>41</sup> F1876, Decision on Three Prosecution Motions for the Admission into Evidence of Mobile Telephone Documents, 6 March 2015, para. 33; F1350, Decision on Prosecution's Motion to Admit into Evidence Photographs, Questionnaires and Records of Victims, 28 January 2014, para. 7; F1308, Decision on Prosecution's Motion to Admit into Evidence Photographs, Videos, Maps, and 3-D Models, 13 January 2014, paras 4-6.

*Documents' admissibility*

28. The Trial Chamber has previously found the Touch subscriber databases, from which the Sabra Defence extracted the two MTC subscriber notes, *prima facie* reliable.<sup>42</sup> Similarly, after considering the evidence of Witness PRH705 (and Witness PRH707), the Trial Chamber also found that the call data records generated, maintained and provided by Touch (and Alpha) are *prima facie* reliable.<sup>43</sup> The call data records tendered in this motion were extracted by the Prosecution and disclosed to the Defence. The Prosecution does not object to the documents' reliability, and the Trial Chamber is satisfied that they are *prima facie* reliable.

29. As to their relevance and probative value, the Sabra Defence has demonstrated that the documents may *prima facie* attribute number 590 to 'alternative user 1'. The Sabra Defence's application does not explain, however, how the attribution of this number to 'alternative user 1' would assist in refuting the Prosecution case; and the Trial Chamber could reject it on this basis. However, it will consider the totality of the Sabra Defence's submissions—both those presented in court and in a separate application seeking the admission into evidence of documents it argues should be considered together with the proposed exhibits.<sup>44</sup>

30. The attribution of 590 to 'alternative user 1' appears to support the Sabra Defence's theory that the difference between the first name of the Accused, 'Assad', and of 'alternative user 1', 'Asaad', should not have ruled 'alternative user 1' out as a viable user of Purple 018. The Trial Chamber admitted the ISF internal memorandum, relied upon by the Sabra Defence to support a possible alternative attribution of Purple 018.<sup>45</sup> It also admitted the documents containing the SMS content for 590 as relevant to assessing the quality of the UNIIC's or the Prosecution's investigation and analysis.<sup>46</sup> In connection with this evidence, the Trial Chamber finds that the documents may be relevant to Purple 018's possible alternative attributions.

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<sup>42</sup> Decision on Touch Company records, para. 29.

<sup>43</sup> F2799, Decision on the Prosecution Motions for the Admission of the Call Sequence Tables related to the Five Colour-Coded Mobile Telephone Groups and Networks, 31 October 2016, para. 1; F2797, Decision on Four Prosecution Motions on Call Sequence Tables related to Salim Jamil Ayyash, Hassan Habib Merhi, Assad Hassan Sabra, Mustafa Amine Badreddine, and Five Witness Statements, 31 October 2016, paras 81, 102.

<sup>44</sup> See F3414, Sabra Defence Application for Admission into Evidence of Twenty Two Documents Marked for Identification, 16 November 2017 (public with confidential annexes A-H), paras 1, 6, 76.

<sup>45</sup> Exhibit 5D417 (ISF response to request for assistance dated 22 July 2014 and attached ISF internal memorandum). Written reasons of 15 February 2018, para. 87, disposition.

<sup>46</sup> Exhibits 5D423 (Excerpt of SMS content for number 590) and 5D424 (Spreadsheet containing the SMS content for number 590 from 14 June 2005 to 31 May 2010). Written reasons of 15 February 2018, paras 97, 101, disposition.

31. The Trial Chamber rejects the Prosecution's argument that, since the documents do not concern telephone activity between November 2001 and December 2006—when the Prosecution attributes three numbers to Mr Sabra—they are not relevant to refute the Prosecution case. The possibility that another person could be the user of Purple 018, or that this should have been investigated, appears relevant to the Prosecution case—of which telephone attribution is a key part. As previously held, any objection based on the alignment between the dates of tendered call records and the alleged attributable period of a number to an Accused, or the amended consolidated indictment period, is not relevant.<sup>47</sup>

32. This decision only concerns the admissibility into evidence of the proposed documents. The weight, if any, to be given to the evidence will be a matter to determine at a later stage.

### **CONFIDENTIALITY**

33. The Sabra Defence submits that annexes A and B to the application contain identifying information regarding 'alternative user 1' and mobile 590.<sup>48</sup> The Trial Chamber is satisfied that they should remain confidential. However, reiterating the public nature of the proceedings, it orders the Sabra Defence to file a public redacted version of these annexes. In particular, with regard to annex B, which contains *inter partes* correspondence, the Sabra Defence should first consult the Prosecution.<sup>49</sup>

### **DISPOSITION**

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

**ADMITTED** into evidence call data records for the mobile ending in 590 between 1 January 2007 and 31 May 2010 and two MTC subscriber notes for this number as exhibits 5D519, 5D520, and 5D521; and

### **ADDITIONALLY**

**ORDERS** counsel for Mr Sabra to file public redacted versions of the annexes to their application.

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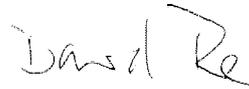
<sup>47</sup> Written reasons of 15 February 2018, para. 101.

<sup>48</sup> Sabra Defence application, para. 16.

<sup>49</sup> See *similarly* F3369, Decision Denying Sabra Defence Application for Certification to Appeal Decision Admitting Statements of Witness PRH103 under Rule 158, 20 October 2017, para. 8; F3320, Decision Denying Merhi Defence Motion Seeking Disclosure of Material relating to Potential Users of Purple Phone 231, 13 September 2017, para. 64; F3171, Decision on Merhi Defence Request for Disclosure of Documents concerning Witness PRH230, 2 June 2017, para. 104.

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

Leidschendam,  
The Netherlands  
19 February 2018



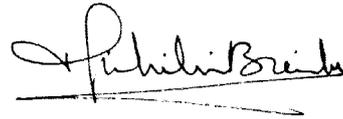
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Judge David Re, Presiding



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Judge Janet Nosworthy



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Judge Micheline Braidy

