

BEFORE 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**

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THE PROSECUTOR

v.

SALIM JAMIL AYYASH,
HASSAN HABIB MERHI
HUSSEIN HASSAN ONEISSI &
ASSAD HASSAN SABRA

**Public Redacted Version of Prosecution Motion for the Admission of Call Sequence
Tables Related to the Accused Badreddine and Related Statements**

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I. INTRODUCTION

1. The Prosecution respectfully requests the admission of 22 Call Sequence Tables (“CSTs”), 10 Short Message Service CSTs (“SMS CSTs”), and three related witness statements, pursuant to Articles 19, and 21(1) to (3) of the Statute and Rules 149(C), 154, and 155 of the Rules of Procedure and Evidence (“Rules”).¹
2. The CSTs present the Call Data Records (“CDRs”)² of:
 - a) twelve mobile phones which the Prosecution contends were used by the Accused Mustafa Amine Badreddine during the relevant time, and
 - b) eight mobile phones used by associates and acquaintances of Mr. Badreddine (“Third Party Phones”).
3. The SMS CSTs present the SMS content of:
 - a) three of the twelve mobile phones (in para. 2 a. above) the Prosecution alleges were used by Mr. Badreddine: 3966663, 3833354 and 3121486.
 - b) seven mobile phones (in para. 2 b. above) attributed to associates and acquaintances of Mr. Badreddine.
4. The Prosecution respectfully submits that the CSTs and SMS CSTs, read with other evidence, including the CST of Green 023, are capable of supporting a finding that Mr. Badreddine was the user of Green 023 during the period relevant to the planning and execution of the 14 February 2005 attack.³

¹ For ease of reference, the Prosecution has collected the material that it seeks to have admitted Exhibit List and will disclose it to the Trial Chamber and the parties after submitting this motion for filing via Legal Workflow. Regardless, all material has been previously disclosed.

² CDRs are the electronic business records maintained in the usual and ordinary course by the three Lebanese communication service providers (“CSPs”). These are Ogero, the government subsidiary responsible for the administration of landline telephones; Mobile Interim Company 2 SAL (MIC2), previously trading as ‘Mobile Telecommunication Company’ and currently trading as ‘Touch’ (“Touch”), and Mobile Interim Company 1 SAL (MIC1) trading as Alfa (“Alfa”).

³ The CST for Green 023 was tendered in STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/T/TC, F1832, Prosecution Motion for the Admission of Green Network Related Call Sequence Tables and Related Statement, 29 January 2015. The Trial Chamber rendered its decision on that and other motions tendering the Network phone CSTs in 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 UNIIIC

5. The CSTs and SMS CSTs are detailed in Annex A. The CSTs and SMS CSTs are on the Rule 91 Exhibit List, with one exception: a recently re-produced CST which replaces a previous version.⁴ The Prosecution requests the addition of this CST to its Rule 91 Exhibit List, as a prerequisite to its admission. The underlying material used to produce the CSTs and SMS CST is detailed in Annex B, and material related to the chain of custody and reliability of the underlying material is listed in Annex C.
6. Prosecution analysts Andrew Donaldson, Kei Kamei and Nadine Stanford produced the CSTs and Mr. Donaldson, Ms. Stanford and Mr. Carnus produced the SMS CSTs by extracting the relevant information from the underlying material and formatting it to present the data in an accessible, uniform and comprehensive manner.⁵ Prosecution analysts PRH431 and PRH512 selected text messages for inclusion in the reduced SMS CSTs produced for two Third Party Phones.⁶ Prosecution analyst Helena Habraken queried the SQL database for SMS content for several phones, including for Green 023, which the Prosecution alleges is attributable to Mr. Badreddine. Producing the CSTs and SMS CSTs was a standardized process, and the reliability of the CSTs as representations of the underlying material can be verified against the raw records, as detailed in the analysts' statements, which are listed in Annex D.
7. In its 6 May 2015 Decision, the Trial Chamber held that the statements regarding the creation of CSTs, and the statement of Ms. Kamei on the production of SMS CSTs, are "*prima facie* relevant to the allegations pleaded in the consolidated indictment"

and STL's Prosecution, 6 May 2015, paras. 116-118 and Disposition ("6 May 2015 Decision") which was affirmed on appeal: F0007-AR126.9, Decision on Appeal by Counsel for Mr. Oneissi Against the Trial Chamber's Decision on the Legality of the Transfer of Call Data Records, 28 July 2015 ("28 July 2015 Decision on Appeal").

⁴ CST-0403 for SMP [redacted]429, which replaces the previous version CST-0191.

⁵ Mr. Donaldson's statement on CST production with ERN 60303130-60303166 was marked P00525 MFI on 21 July 2015, p. 80:8-10. Ms. Kamei's statement on CST production with ERN 60303208-60303242 was marked P00516 MFI on 23 July 2015, p. 4:19-21. Ms. Stanford's 14 January 2015 statement on the production of Call Sequence Tables with ERN 60303243-60303265, was marked P00531 MFI on 22 January 2015. See transcript, 22 January 2015, p. 84, and her statement on SMS CST production was tendered in STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/T/TC, F2123, Prosecution Motion for the Admission of Call Sequence Tables related to the Accused Ayyash, 18 August 2015; Mr. Carnus' statement on the production of SMS CSTs and the querying of SMS content with ERN 60303441-60303451 was marked as exhibit P00530 MFI on 23 July 2015, see transcript, p. 4:19-21. Mr. Donaldson's statement on the production of SMS CSTs was tendered in F2126, Prosecution Motion for the Admission of Call Sequence Tables related to the False Claim of Responsibility, 19 August 2015.

⁶ SMS CST 0138 for [redacted] and SMS CST 0139 for [redacted].

and “admissible under Rule 155(C) or Rule 156.”⁷ Further, and pursuant to the 6 May 2015 Decision, Ms. Kamei gave evidence on the creation of CSTs and SMS CSTs from text files and from the SQL database, on 20 and 21 July 2015.⁸

8. The Prosecution requests the admission of the statement of Ms. Habraken regarding the querying of SMS content, and the statements of PRH431 and PRH521 regarding the selection of SMS for inclusion in the reduced SMS CSTs produced for [redacted] and [redacted], pursuant to Rule 155, on the basis of their relevance to the reliability of the SMS CSTs, and the cumulative nature of the evidence contained in the statements.⁹
9. Finally, the Prosecution requests authorization to exceed the word limit of 6000 words¹⁰ for this submission by 1400 words, based on the breadth of the motion.

II. SUBMISSIONS

A. The CSTs and SMS CSTs Are Admissible Pursuant to Rule 154

10. Rules 149(C), (D), and 154 permit the admission of the CSTs as relevant, probative, and reliable evidence. The Trial Chamber has held that “[a]dmitting evidence ‘from the bar table’ is a well-established practice before international courts and tribunals.”¹¹ The Rules, and specifically Rule 154, “do not mandate that documents must be tendered into evidence through a witness”.¹²

⁷ 6 May 2015 Decision, paras. 116-118 and Disposition. At paragraph 118, the Trial Chamber requested « further contextual evidence » that the Prosecution will provide in due course, and it held that « [i]f the Trial Chamber finds the call data records reliable and declares the call sequence tables admissible, it follows that these statements will be declared admissible as integral associated exhibits.”

⁸ See transcript, 20-22 July 2015. Mr. Donaldson also gave evidence on the production of CSTs: see transcript, 21 July 2015.

⁹ *Supra*, fn 6. Ms. Kamei’s statement on the production of SMS CSTs with ERN 60303431-60303440 was marked P00516 MFI, 23 July 2015, see transcript p. 4: 19-21. Mr. Carnus’ statement on the production of SMS CSTs and the querying of SMS content with ERN 60303441-60303451 was marked as exhibit P00530 MFI on 23 July 2015, see transcript, p. 4:19-21.

¹⁰ Practice Direction on Filing of Documents Before the Special Tribunal for Lebanon, 14 June 2013, Article 5(3).

¹¹ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/T/TC, F1308, Decision on Prosecution’s Motion to Admit into Evidence Photographs, Videos, Maps, and 3-D Models, 13 January 2014 (“13 January 2014 Decision”), paras.4, 6. *See also*, F1350, Decision on Prosecution’s Motion to Admit into Evidence Photographs, Questionnaires and Records of Victims, 28 January 2014, para.5 and F1876, Decision on

11. In order to be admitted through the bar table, pursuant to Rule 154, documents must meet the basic requirements for admission of evidence: the evidence needs to be relevant, probative, and bear sufficient indicia of reliability.¹³ Additionally, its probative value must not be outweighed by the need to ensure a fair trial.¹⁴
12. The CSTs and SMS CSTs render the communications evidence accessible and capable of presentation and analysis. The CSTs present chronological and complete sequences of calls relating to a particular phone number (the “target” number) over a specified period of time. They detail each call, including the other number the target number was in contact with, the time of the call, the type of call (voice or SMS), its duration, information on the handset used by the target number (International Mobile Equipment Identity, or IMEI), and the cell ID and cell sector¹⁵ used by the target number at the start of the call, and, in certain instances, the cell ID and cell sector used at the end of the call (“end cell” data), where that data was available and relevant.
13. The SMS CSTs present the SMS content sent by a Touch phone related to the target phone number over the relevant date range in a consistent, accessible format.¹⁶ The SMS CSTs provide the time of the SMS, the other number involved, the direction of the SMS and the content. The SMS records are not easily accessible in their raw format.
14. The Trial Chamber held that “[t]he call data records - and their derivative call sequence tables as demonstrative evidence - are [...] admissible as evidence in the

Three Prosecution Motions for the Admission into Evidence of Mobile Telephone Documents, 6 March 2015 (“6 March 2015 Decision”), para.33.

¹² 13 January 2014 Decision, para.5.

¹³ 6 March 2015 Decision, para. 33 and 13 January 2014 Decision, para.8 (stating that “[s]ufficient indicia of reliability are all that is required”). See Annex C and D and 6 May 2015 Decision, para. 111.

¹⁴ 6 March 2015 Decision, para. 33 and 13 January 2014 Decision, paras.6, 8.

¹⁵ The CSTs contain “Cell ID”, a unique number contained within the CDRs to identify the cell sector used for each phone call, as well as “Cell name” information: a short-form alphanumeric convention used by the CSP providing the data and which corresponds to a particular Cell ID.

¹⁶ The only SMS content records in OTP custody are from the CSP Touch. Therefore, only contents sent by a Touch phone will be available for reproduction in an SMS CST. In other words, Alfa to Alfa message contents and Alfa to Touch message contents are not available; Touch to Alfa and Touch to Touch message contents are available.

case if the Trial Chamber is satisfied that they are relevant and probative.”¹⁷ As further demonstrated below, each CST and SMS CST constitutes evidence relevant to the charges in the Indictment, and their admission at this stage in the proceedings will not prejudice the fair trial rights of the Accused.

1. The CSTs and SMS CSTs provide Evidence Relevant to Telephone Attribution

15. As detailed in the Ayyash CST Motion,¹⁸ telephone attribution is the process of establishing that an individual (the “phone user”) used a particular SIM card, identified by its International Mobile Subscriber Identity (IMSI) number and its associated telephone number (“target number”), over a specified period of time (“attribution period”). In the coming months, the Prosecution will present the expert, documentary and witness evidence it relies upon to link the Accused Badreddine to the *actus reus* of the crimes as charged in the Indictment.

2. The CSTs and SMS CST are Relevant and Probative

16. Read in conjunction with other evidence, the CSTs and SMS CSTs are capable of supporting the attribution of Green 023 to Mr. Badreddine from 6 September 2004 to 14 February 2005.

(a) **CSTs and SMS CSTs of phones attributable to Mr. Badreddine**

17. The Prosecution tenders the CSTs and SMS CSTs of two Personal Mobile Phones (“PMPs”)¹⁹ and the CSTs of ten Sequential Mobile Phones (“SMPs”),²⁰ and the SMS CST of one SMP,²¹ which the Prosecution alleges were used by Mr. Badreddine.
18. It is the position of the Prosecution that a comparison of the PMPs and the SMPs could support a finding that Mr. Badreddine used multiple phones at a given time, and that he used those phones for different purposes. Specifically, PMPs were used over

¹⁷ 6 May 2015 Decision, para. 110.

¹⁸ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/T/TC, F2123, Prosecution Motion for the Admission of Call Sequence Tables related to the Accused Ayyash, 18 August 2015, paras. 15-20.

¹⁹ 3966663 and 3833354.

²⁰ [redacted]128, 3293944, 3103195, 3476683, 3121486, 3442593, [redacted]074, [redacted]473, [redacted]491 and [redacted]429.

²¹ 3121486.

extended periods with a wide range of contacts, and had a high volume of calls and SMS messages. In contrast, pre-paid SMPs were used relatively sparingly over limited periods of time, and replaced frequently.

19. The time period covered by each CST and SMS CST, and the alleged attribution period are as follows:

Telephone #	CST	ERN/ Rule 91	Time Period of CST	Attribution Period
PMP 3966663	CST-0377	D0390140- D0395531	01/01/2001 – 31/12/2009	26/02/2001 – 08/06/2009
	SMS CST- 0047	R91-800128	01/02/2004 – 16/06/2009	
PMP 3833354	CST-0389	D0395532- D0398015	01/01/1997 – 31/12/2008	01/01/1997 – 20/02/2008
	SMS CST- 0046	R91-800127	01/02/2004 – 19/11/2008	
SMP [redacted]128	CST-0187	R91-800085	01/01/2003 – 31/12/2004	17/01/2003 – 04/03/2004
SMP 3293944	CST-0376	D0388914- D0389045	09/03/2004 – 10/03/2005	09/03/2004 – 09/03/2005
	CST-0202	R91-800100	10/03/2005 – 31/12/2005	(POST- ATTRIBUTION)
SMP 3103195	CST-0198	R91-800095	08/03/2005 – 26/03/2005	08/03/2005 – 26/03/2005
SMP 3476683	CST-0196	R91-800093	28/03/2005 – 27/06/2005	28/03/2005 – 27/06/2005
SMP 3121486	CST-0197	R91-800094	25/06/2005 – 28/09/2005	25/06/2005 – 28/09/2005

Telephone #	CST	ERN/ Rule 91	Time Period of CST	Attribution Period
SMP 3442593	CST-0195	R91-800092	05/09/2005 – 28/11/2005	05/09/2005 – 28/11/2005
SMP [redacted]074	CST-0188	R91-800086	08/11/2005 – 12/02/2006	22/11/2005 – 25/01/2006
SMP [redacted]473	CST-0264	R91-804348	27/01/2006 – 06/04/2006	27/01/2006 – 06/04/2006
SMP [redacted]491	CST-0190	R91-800088	29/03/2006 – 26/06/2006	07/04/2006 – 09/06/2006
SMP [redacted]429	CST-0403	n/a	30/05/2006 – 08/11/2006	09/06/2006 – 13/08/2006

(i) Probative Value of CSTs and SMS CSTs of the two PMPs

20. The CSTs of the two PMPs, 3966663 and 3833354, are capable of supporting a finding that the phones were used over extended periods by a single user, whom the Prosecution submits the evidence as a whole will show is Mr. Badreddine. The CSTs record that the phones shared common contacts and a geographic profile. Additionally, over a three year period, the PMPs moved in concert with each SMP during that SMP's period of attribution.

21. Further, it is the position of the Prosecution that, upon comparing the records of the PMPs against those of Green 3140023 and SMP 3293944, it would be open to the Trial Chamber to find that Mr. Badreddine simultaneously used PMPs, Green 3140023 and SMP 3293944 during the material time. The following diagram illustrates the overlapping attribution periods alleged by the Prosecution:

Mobile Number	1997 to 2002	2003	2004	2005 onward
PMP 3833354	1-Jan-97 to 29-Jun-07; 09-Jan-08 to 20-Feb-08			
PMP 3966663		26-Jan-02 to 08-Jun-09		
SMP 3293944			09-Mar-04 to 09-Mar-05	
Green 3140023			06-Sep-04 to 14-Feb-05	

(ii) Contact Profile of PMPs

22. The PMPs share several contacts. The Prosecution will present evidence permitting a finding that these contacts included acquaintances of Mr. Badreddine when he was a registered student at the American Lebanese University in 2004 and 2005; female acquaintances; and employees of the Samino Jewellery shops in Beirut, which the Prosecution alleges were owned and operated by Sami Issa. It is the position of the Prosecution that the contact profile of the PMPs, considered in combination with other evidence, is capable of supporting the inference that “Sami Issa” was an alias of the Accused Mustafa Badreddine, who was the actual phone user.

(iii) Geographic Profiles

23. The CSTs are also capable of showing that the PMPs share a similar geographic profile. Witness Andrew Donaldson relies on the CSTs to conduct cell site analysis to determine patterns of telephone movements over the eight years of overlapping use,

comparing the geographic profile to other evidence related to the Accused, including text messages. The evidence is capable of supporting the inference that the phones share a distinct “footprint”, or areas of frequent use, during the material time, including near the Samino Jewellery shops in Beirut, the Lebanese American University, and an apartment in the coastal town of Jounieh and particular locations in south Beirut. Further, the CSTs show consistent patterns of use across the PMPs over eight years.

24. Additionally, the CST for PMP 3833354²² records there was a brief but significant change in the movements of PMP 3833354 from 29 June 2007 to 9 January 2008. During this period, the phone predominantly used two cell sites in south Beirut. Read with other evidence, including SMS content, the CST supports the inference that, while Mr. Badreddine was the main phone user, during this six-month period his PMP 3833354 was used by one of his children.

(iv) Co-location of PMP 3966663, PMP 3833354 and Green 3140023

25. The Prosecution further submits that a comparison of the two PMP CSTs records consistent co-location between the two phones.²³ Further, a comparison of the PMP CSTs and the CSTs for Green 023 and SMP 3293944 reflects that all four phones moved in concert and would permit a finding that the phone activity is consistent with use by a single person.²⁴

(v) Change in handset on 05/09/2005

26. The IMEI information²⁵ contained in the CSTs for PMP 3966663 and SMP 3121486 further supports a finding that the phones were used by the same person. Specifically, the CST for PMP 3966663 records a brief change of handset on 5 September 2005. On the same date, SMP 3121486 received a text message providing a numeric

²² CST-0389.

²³ PRH230 conducted cell site analysis of the PMPs and found that the phones moved in concert for 1,215 of the 1,229 days upon which they were both used, including between September 2004 and February 2005.

²⁴ R91-801452, see for example para. 35.

²⁵ International Mobile Equipment Identity.

Personal Unlock Key (“PUK”)²⁶ that witness evidence will show relates to PMP 3966663.²⁷ The evidence permits an inference that Mr. Badreddine used both PMP 3966663 and SMP [redacted]586 on 5 September 2005.²⁸

(vi) Text messages

27. The Prosecution further relies on the PMP SMS CSTs as evidence that Mr. Badreddine operated these phones using the alias “Sami Issa” and associated nicknames. The following examples illustrate how the SMS content is utilized as part of the attribution process.
- A comparison of the SMS CSTs for the PMPs shows the receipt of near identical text messages on at least ten occasions between 2004 and September 2005.²⁹
 - The SMS CST for PMP 3966663 shows the receipt of birthday greetings on 6 April. The Prosecution will present evidence that Mr. Badreddine was born on 6 April 1961, and that the man known as ‘Sami Issa’ also celebrated his birthday around 6 April.³⁰
 - The SMS CST of PMP 3833354 records text messages received from *Pia Mia* and *Straight Boutique*, two shoe and clothing stores. The Prosecution will tender other evidence permitting a finding that Sami Issa is listed in the stores’ customer database with PMP 3833354 provided as his contact number.³¹
 - The SMS CST of PMP 3966663 includes texts suggesting the user attended university and was known as “Safi” to some university students. Prosecution witnesses are expected to testify that ‘Sami Issa’ studied political science at the Lebanese American University in 2004. Further evidence will permit a finding that Mr. Badreddine was enrolled at the Lebanese American University from 1997 until 2005 at various times

²⁶ A Personal Unlock Key (PUK) code is used to override a Personal Identification Number (PIN) code. A PIN code may be used to lock or unlock a SIM card to avoid non-authorized mobile phone use.

²⁷ SMS CST-0120; R91-801748, para. 144.

²⁸ R91-801452, paras. 795-797.

²⁹ R91-801452, para.207.

³⁰ Of note is a text message received referring to the user of PMP 3966663 as “Mr. Issa or Badr”.

³¹ R91-801452, para. 200)

and identified himself as ‘Mustafa Badreddine (Safi Badr)’ and ‘Safi Badruddin’. However, no official University records existed in the name Sami Issa or Safi Badr.

- On 23 November 2005, the SMS CST of PMP 3966663 records that the phone user sent two SMS messages indicating that a “close relative” had died. The texts, when compared against documentary evidence, are consistent with the fact that Mr. Badreddine’s sister-in-law died on 23 November 2005 in Harouf.

a) Relevance and Probative Value of 10 CSTs of the SMPs and the SMS CST of SMP 3121486

28. The Prosecution will present evidence which would permit a finding that the contacts of the SMPs include business associates related to the operation of the Samino jewellery shops and political associates of Mr. Badreddine. An examination of the CSTs of the two PMPs and the SMPs would permit a finding that the phones were consistently co-located during periods of concurrent operation, and that overall, the SMPs consecutively moved in concert with the PMPs from January 2003 to August 2006. The CSTs further record no contact between the SMPs and the PMPs.
29. Further, the contacts of some of the SMP CSTs provide evidence which the Prosecution submits will support their attribution to Mr. Badreddine. For example:
- The CSTs for SMP 3103195, SMP 3476683, and SMP 3121486 show contact with PMP 3831170, a mobile which the Prosecution alleges was used by the Accused Ayyash.
 - The CSTs of SMP 3476683 and SMP 3121486 record contact with phones attributable to members of Mr. Badreddine’s family;³²
 - The CST of SMP 3442593 records contact with a phone number attributed to the assistant of a friend of Mr. Badreddine, during which period Mr. Badreddine and the friend were making each other’s acquaintance.³³

³² R91-801452, paras. 422-432, 469-484 and 521-534.

³³ R91-801452, para. 580.

- The CST of SMP 3442593 also shows increased contact between that phone and phone numbers associated with members of Mr. Badreddine's family during the period surrounding the death of a Badreddine family member on 23 November 2005.³⁴

30. The Prosecution relies on the CSTs of the SMPs for comparison against the PMPs that operated during the overlapping periods as illustrated in the diagram below:

Mobile Number	2003 to 2006			
PMP 3833354	1-Jan-97 to 29-Jun-07; 9-Jan-08 to 20-Feb-08			
PMP 3966663	26-Jan-02 to 08-June-09			
SMP [redacted] 128	7-Jan-03 to 4-Mar-04			
SMP 3293944 35		9-Mar-04 to 9-Mar-05		
SMP 3103195		8-Mar-05 to 26-Mar-05		
SMP 3476683		28-Mar-05 to 27-Jun-05		
SMP 3121486		25-Jun-05 to 28-Sep-05		
SMP 3442593		5-Sep-05 to 28-Nov-05		
SMP [redacted]		22-Nov-05 to		

³⁴ R91-801452, para. 815.

³⁵ SMP 3293944 also overlaps with Green 3140023, as noted in table 1.

Mobile Number	2003 to 2006		
074		25-Jan-06	
SMP [redacted] 473		27-Jan-06 to 06-Apr-06	
SMP [redacted] 491		07-Apr-06 to 09-Jun-06	
SMP [redacted] 429			09-Jun-06 to 13-Aug-06

31. The Prosecution tenders two CSTs in relation to the number 3293944. CST-0376 presents the records for the time the Prosecution alleges the phone was used by Mr. Badreddine. CST-0202 shows that after 9 March 2005, the phone was in contact with a completely different set of telephone numbers.³⁶ Further, cell sectors used before and after 9 March 2005 significantly differ, which in the Prosecution's submission is consistent with a change in user.
32. The Prosecution further requests the admission of the SMS CST for SMP 3121486. The SMS CST records that the phone received two text messages on 30 August 2005 and 10 September 2005 from PMP 3831170, which the Prosecution alleged was used at the relevant time by the Accused Ayyash.³⁷

b) Probative Value of Combined CST

33. The Prosecution also requests the admission of a combined CST³⁸ which offers a consolidated record, in chronological order, of calls placed by mobile phones the

³⁶ Only seven numbers were common to both periods. See R91-801452, para. 370.

³⁷ See R91-801452, paras. 519-520.

³⁸ R91-805295.

Prosecution alleges is attributable to Mr. Badreddine.³⁹ The Prosecution tenders it for use during the testimony of Mr. Donaldson, as it presents an accessible visual representation of the co-location of the mobile phones through their cell site usage.

c) Relevance and Probative Value of CSTs and SMS CSTs for Third Parties

34. The Third Party Phone CSTs comprise the records of eight phones in contact with phones attributable to Mr. Badreddine.⁴⁰ The SMS CSTs contain the SMS content of seven phones in contact with Mr. Badreddine.⁴¹
35. For five of the Third Party Phones,⁴² the Prosecution requests the admission of reduced SMS CSTs. These SMS CSTs contain text messages selected by Prosecution analysts Stanford, PRH431 and PRH512 as detailed in their statements.⁴³ In contrast with the other SMS CSTs being tendered, the reduced SMS CSTs are not comprehensive records of the SMS content of the relevant phone over the queried period. Rather, the analysts included text messages exchanged with Mr. Badreddine⁴⁴ and used keyword searches to locate messages relevant to the identification of the user – for example, the name of the user, family members, and birthdates.
36. The reduced SMS CSTs were produced to provide a more manageable document for use during court proceedings, and moreover, serve to present the relevant texts the Prosecution relies upon without unnecessarily placing on the record the entirety of the individuals' SMS history.⁴⁵
37. The CDRs and SMS contents, together with witness evidence, permit a finding as to the identity of the users of the Third Party Phones, including family members, and personal acquaintances and business associates of Mr. Badreddine. It is the position of

³⁹ These are, specifically, the CSTs for 3966663, 3833354, Green 3140023, [redacted]128, 3293944, 3103195, 3476683, 3121486, 3442593, [redacted]074, [redacted]473, [redacted]491 and [redacted]429.

⁴⁰ [redacted] and [redacted].

⁴¹ [redacted] and [redacted].

⁴² [redacted] and [redacted].

⁴³ ERNs 60304121-60304136, 60305389-60305396 and 60304795-60304803.

⁴⁴ On his PMPs 3966663 and 3833354.

⁴⁵ The full SMS CST for [redacted] is at D0291213-D0292240; the full SMS CST for [redacted] is at D0288931-D02990601.

the Prosecution that the identity of the Third Party Phone users, considered in conjunction with the high volume of contact the Third Party Phones had with the PMPs, provides further evidence in support of the attribution of the two PMPs to Mr. Badreddine. Further, in some circumstances, the CSTs and SMS CSTs for the Third Party Phones provide evidence linking the alias “Sami Issa” to Mr. Badreddine.

38. The relevance of each group of Third Party Phone is described as follows:

(a) **July 2006 War:** The CSTs for [redacted], [redacted], and [redacted] show that the phones were in contact with each other, as well as with SMP [redacted]⁴²⁹, during the July 2006 War. The top contact of [redacted] is [redacted]; other evidence will show that the phone number [redacted] was used by Mr. Badreddine’s niece.⁴⁶ During the July 2006 war, the CSTs record that all three phones were in the proximity of an apartment north of Beirut, in Sahel Alma, Jounieh. The CSTs support the inference that Mr. Badreddine’s niece and other persons in frequent contact with Mr. Badreddine stayed at this apartment during the 2006 July War. Further, the Prosecution will tender evidence stating that Sami Issa purchased this apartment in Jounieh through a broker, which was sold prior to the 2006 July Lebanese War to a Samino employee.⁴⁷ Read in conjunction with the CSTs, the evidence is capable of supporting a finding that Sami Issa is an alias of Mustafa Badreddine.

(b) **Death of Mr. Badreddine’s Sister-in-Law:** The Prosecution will tender evidence in support of a finding that the sister-in-law of Mr. Badreddine died on 23 November 2005 in Harouf.⁴⁸ The CST for [redacted],⁴⁹ a telephone number other evidence will show is associated with the family of a brother of Mr. Badreddine,⁵⁰ demonstrates that the phone user travelled from Beirut to the vicinity of Harouf on 23 November 2005. The SMS CST for [redacted]⁵¹ also provides an SMS

⁴⁶ R91-801452, para. 757.

⁴⁷ R91-801452, paras. 817-844.

⁴⁸ R91-801452, paras. 948-949.

⁴⁹ CST-0206

⁵⁰ R91-800997, p. 2.

⁵¹ SMS CST-0217

stating that the user of [redacted] was in Harouf on 23 November 2005 due to a death.⁵²

(c) ***Family travel from Beirut International Airport:*** The call data reflects that [redacted] was a primary contact of four SMPs used by Mr. Badreddine during 2004 and 2005,⁵³ and that its user was in the vicinity of Beirut International Airport on 30 May 2005 and on 3 June 2005. The Prosecution will present evidence permitting a finding that Mr. Badreddine's wife and son travelled to, and returned from, the Kingdom of Saudi Arabia on those dates.⁵⁴ Read together with this other evidence, the CST permits the inference that a close associate of Mr. Badreddine transported his family to and from the Airport on these dates.⁵⁵ Further, the CST for [redacted] shows that the phone was in contact with PMP 3966663 on three occasions between 30 May and 3 June, as well as with the user of [redacted].⁵⁶ The CST for [redacted] permits the inference that Mr. Badreddine's family used this phone while they were in the Kingdom of Saudi Arabia and that they called Mr. Badreddine and his associates with this phone number.

(d) ***Samino Jewellery:*** The call data shows that [redacted] and [redacted] were frequent contacts of Mr. Badreddine's PMPs.⁵⁷ Considered in conjunction with other evidence,⁵⁸ the CST for [redacted] and the SMS CST [redacted] support the inference that the phones were used by female friends of Sami Issa, who were employed by Samino Jewellery. Further, the SMS content of [redacted],⁵⁹ a phone

⁵² The SMS CST of PMP 3966663 shows that two text messages were sent out on 23 November 2005 stating that a close relative had died.

⁵³ Read in conjunction with the CSTs for SMP 3293944, SMP 3103195, SMP 3476683 and SMP 3121486: R91-801452, para. 786.

⁵⁴ R91-801798; R91-801799.

⁵⁵ R91-801452, paras. 786-794.

⁵⁶ R91-801452, paras. 786-794.

⁵⁷ [redacted] was the third top contact of PMP 3966663 between 2004 and 2006; [redacted] is the fifth highest contact of PMP 3966663 and the sixty-eighth highest contact of PMP 3833354: R91-801452, para. 78.

⁵⁸ The Prosecution will present evidence that the registered subscriber of [redacted] was the business owner of Samino Jewellery. R91-800466, p.1. See also R91-801027, para. 4.

⁵⁹ SMS CST-0136.

in contact with the PMPs attributable to Mr. Badreddine,⁶⁰ supports a finding that this number was used by an employee of the Samino Jewellery.⁶¹ This group of call data also supports the inference that Sami Issa, an owner of Samino Jewellery, was the user of PMP 3966663 and PMP 3833354.

- (e) **University Friends.** The SMS contents of [redacted] and [redacted],⁶² both in contact with PMP 3966663,⁶³ when read together with other evidence,⁶⁴ permit a finding that these two numbers were used by two university friends of Sami Issa over the relevant time.
- (f) **Female Acquaintance.** The SMS content of [redacted],⁶⁵ read together with witness evidence,⁶⁶ supports a finding that this phone was used by a female friend of Mr. Badreddine.⁶⁷ The SMS CST records enquiries made to the telephone service directory regarding the variations of names [redacted] Badreddine [redacted] and is therefore relevant to establishing a link between the Badreddine and Issa identities.
- (g) **Bodyguard of Sami Issa.** The CST and SMS CST for [redacted],⁶⁸ read with other evidence,⁶⁹ support the finding that this number was used over the relevant time by an employee and bodyguard of Sami Issa. The CST, read in conjunction with other evidence, including the CST for Green 023, permits the inference that the user of the phone accompanied Mr. Badreddine on certain dates leading up to the

⁶⁰ Including witness evidence. See R91-300093.

⁶¹ The phone number [redacted] was in regular contact with PMP 3966663 and in occasional contact with PMP 3833354 between 2003 and 2009: R91-801452, paras. 94 and 226.

⁶² SMS CST-0137 for [redacted] and SMS CST-0133 for [redacted].

⁶³ R91-801452, para. 84-85.

⁶⁴ R91-300193, p.19.

⁶⁵ SMS CST-0139.

⁶⁶ R91-800281, p.1 ; R91-804395, paras. 9-10 ; R91-800128, p.1.

⁶⁷ The phone number [redacted] was the highest contact of PMP 3966663 and the 15th highest contact of PMP 3833354 from 2001 to 2009: R91-801452, para. 76.

⁶⁸ CST-0360 and SMS CST-0132.

⁶⁹ R91-801031, p. 29; R91-801775, p. 20.

14 February attack, and provides relevant corroborative evidence to other aspects of the user's evidence.⁷⁰

3. The CSTs Bear Sufficient Indicia of Reliability

(a) **The Underlying Material is Reliable**

39. The CDRs, SMS content records and cell site information used to produce the CSTs and SMS CSTs are the business records of Alfa, Touch and Ogero. The CDRs contain aspects of each call placed in a GSM network, including cell ID. The SMS content records contain details of text messages sent by Touch phones, including the content. The cell site information used in the production of the CSTs⁷¹ comprises lists of numerical cell ID codes and their corresponding, recognizable short-form alphanumeric names.
40. The underlying material was provided on DVDs and hard drives, either through the issuance of a Request for Assistance ("RFA") to the relevant CSP, via the Lebanese Prosecutor General, and the Ministry of Telecommunications, or directly from the CSP.⁷² The Trial Chamber recognized that the collection of the CDRs by the UNIIC and Prosecution was provided for by law.⁷³ The Appeals Chamber held that "the Trial Chamber did not err in holding that the UNIIC and the Prosecutor could legally request and obtain the CDRs without judicial authorisation."⁷⁴

(b) **The CSTs and SMS CSTs Are Reliable Extracts of the CDRs and SMS Content Records, Respectively**

41. The CSTs for the two PMPs, SMP 3293944 and [redacted]117 were partially produced from individual text files.⁷⁵ These text files recorded call data relating to one

⁷⁰ R91-801452, para. 91.

⁷¹ The cell site information, detailed in Annex B, was the subject of F2004, Prosecution Motion for the Admission of Cell Site Evidence, corrected version filed 23 June 2015.

⁷² See Annex C, column "Details on Reliability" for details on how the data was collected.

⁷³ 6 May 2015 Decision, paras. 108-110.

⁷⁴ 28 July 2015 Decision on Appeal, para. 36.

⁷⁵ See Annex A. The CSTs for the PMPs were supplemented with IMEI and Cell ID information from the SQL database; the CST for SMP 3293944 was supplemented with call data for 1 September 2004 to 10 March 2005.

telephone number, for a specified period of time. Consistent with the evidence of witness Ms. Kamei, the CSTs were produced by copying, sorting, and formatting the relevant data, using Microsoft Excel.⁷⁶

42. The remaining CSTs and SMS CSTs were produced from bulk CDRs.⁷⁷ As described by Ms. Kamei, such CSTs were created from the Structured Query Language database (SQL database),⁷⁸ using specific queries or stored procedures to extract the relevant call data for the target phone number. The results would be copied and inserted into an Excel spreadsheet and sorted and formatted, using Microsoft Excel.⁷⁹
43. Subsequently, the producing analyst queried cell site information to convert the numerical cell ID codes included in the CDRs into more easily recognizable cell names.⁸⁰
44. The production of the CSTs and SMS CSTs was a standardized and mechanical process. The reliability of the CSTs as representations of the underlying material can be tested by comparing the CSTs to the underlying material.⁸¹
45. The underlying material which forms the basis of the CSTs and SMS CST has been disclosed to the Defence and is detailed in Annexes A and B. Annex A lists each CST and shows the SQL bulk data used to produce each portion of the CST or SMS CST. Annex B lists the cell site information and the call and SMS content data records, and links these to their sources, including responses to RFAs, witness statements, or investigator's notes.⁸² These sources are listed in Annex C,⁸³ which also includes the

⁷⁶ Transcript, 20 July 2015, pp. 56:19-60:10.

⁷⁷ See Annex A for details on the sources used.

⁷⁸ Annex C, witness statement of PRH111.

⁷⁹ Transcript, 20 July 2015, p. 74; 21 July 2015, p. 74:15-20.

⁸⁰ See transcript of 20 July 2015, pp. 47 and 53, and statement of Ms. Kamei on the production of CSTs, exhibit P00516 MFI, ERN 60303208-60303242, at para. 27. The materials referred to by Ms. Kamei were the subject of F2004, Prosecution Motion for the Admission of Cell Site Evidence, 15 June 2015.

⁸¹ "The mere fact that a party created a document or record does not make it inadmissible or inherently unreliable." See 13 January 2014 Decision, para.10.

⁸² The investigator's notes demonstrate chain of custody and provide further information on the provenance of the data.

⁸³ The Prosecution has collected the chain of custody related materials listed in Annex C in a confidential disclosure folder and will disclose it to the Trial Chamber and the Parties after submitting this motion for filing via Legal Workflow.

statement of witness PRH111, the Database Administrator responsible for the implementation, maintenance and repair of the SQL database. The Prosecution will present the evidence of witness PRH111, together with expert evidence confirming the accuracy and reliability of his work.⁸⁴

4. The Admission of the CSTs and SMS CSTs Does Not Prejudice Fair Trial Rights

46. The CSTs and SMS CSTs present the relevant portions of the CDRs and SMS content, respectively. As held by the Trial Chamber, no practical utility could exist in admitting into evidence all the CDRs from which the CSTs are derived.⁸⁵ CDRs are “voluminous, and, without extraction of the relevant data into a readable format, meaningless.”⁸⁶
47. The probative value of the CSTs and SMS CSTs is not outweighed by any prejudicial effect.⁸⁷ The Prosecution has made available to the Defence its CDR holdings for the period between 1 January 2003 and 31 December 2006 in SQL format,⁸⁸ and the underlying materials for the CSTs and SMS CSTs have been provided to the Defence.
48. Further, Defence Counsel had the opportunity to cross-examine the analysts who produced the CSTs, and the Prosecution will present evidence from the CSPs on the generation, storage, and retrieval of the underlying material, and on the Prosecution’s handling of the underlying material once received.⁸⁹
49. Finally, the Trial Chamber held that, although “the collection of telephone data *may* constitute a restriction to the right to privacy”, [it was] satisfied that [the collection of CDRs by the UNHCR and the Prosecution] “was provided for by law, was necessary

⁸⁴ Witness PRH542.

⁸⁵ 6 May 2015 Decision, para. 113.

⁸⁶ 6 May 2015 Decision, para. 113. See also *Prosecutor v. Ayyash et al.*, Case No., STL-11-01/PT/TC, F1252, Decision on Call Data Records and Disclosure to Defence (On Remand from Appeals Chamber), 4 December 2013 (“Trial Chamber Decision of 4 December 2013”), para. 4.

⁸⁷ 13 January 2014 Decision, para.6.

⁸⁸ In compliance with Trial Chamber Decision of 4 December 2013.

⁸⁹ This includes the evidence of witness PRH111, and Expert witness PRH542.

in the circumstances, and was proportionate to the pursuance of a legitimate aim.”⁹⁰

The Appeals Chamber confirmed the Trial Chamber’s findings on appeal.⁹¹

5. Conclusion

50. The Prosecution respectfully submits that the CSTs and SMS CST are relevant, probative, display the requisite indicia of reliability, and do not prejudice the fair trial rights of the Accused. They are therefore admissible pursuant to the Rules.

B. The Statements are Admissible Pursuant to Rule 155

51. Rule 155(C) provides that, while the admission of a witness statement *in lieu* of oral testimony without cross-examination remains exceptional, it is permitted when it is in the interests of justice and contributes to a fair and expeditious trial.⁹²

1. The Statements are Relevant and Have Probative Value

52. In her statement, Ms. Habraken describes querying the SQL database for the SMS content of Blue and Green network numbers for specified time periods, and the negative results produced. Ms. Habraken provides evidence relevant to the Chambers’ assessment of the conduct of the Network phones, including Green 023.
53. The statements of PRH431 and PRH521 describe the selection of SMS messages for inclusion in the reduced SMS CSTs produced for [redacted] and [redacted], respectively. Witnesses PRH431 and PRH521 detail the methodology they used to select the text messages included in the reduced SMS CST, as described above in paragraph 35. Their statements are relevant to and probative of the reliability of the reduced SMS CSTs with which they assisted in producing.

⁹⁰ 6 May 2015 Decision, para. 108. *See also* at paras. 66-110.

⁹¹ Decision on Appeal of 28 July 2015, paras. 49, 51, 56, 57 and 58.

⁹² STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/T/TC, Second Decision on the Prosecution Motion for Admission of Written Statements under Rule 155, 30 January 2014, para. 5.

2. The Evidence Does Not Go to the Acts and Conduct of the Accused and Display Sufficient Indicia of Reliability

54. The Statements do not concern the acts and conduct of the Accused as charged in the indictment. They are limited to describing the SMS content holdings of the Prosecution, and to establishing the reliability of the reduced SMS CSTs.
55. Further, the Statements comply with the requirements of the Practice Direction and displays the necessary indicia of reliability.⁹³

3. Admitting the Statement Would be in the Interests of Justice

56. The Prosecution has already led the evidence of Ms. Kamei on the production of the SMS CSTs; Christian Carnus, whose statement also concerned the production of SMS CSTs, was made available for cross-examination.⁹⁴ The Defence found it unnecessary to cross-examine Ms. Stanford. As Prosecution analysts followed a common methodology when producing the SMS CSTs, the Statements are similar in format and content, with the differences limited to the specific SMS CSTs produced.
57. While the statements of PRH512 and PRH431 are not on the Rule 91 Exhibit List, the witnesses have been on the Rule 91 Witness List since November 2012, and the statements were disclosed shortly after their production, on 27 February 2015 and 27 March 2015, respectively. The Prosecution is therefore not seeking to add these witness statements to the Rule 91 Exhibit List prior to their admission.
58. In light of these considerations, and the fact that the Statement contains evidence of a cumulative nature to the evidence of Ms. Kamei,⁹⁵ the Prosecution respectfully submits that the admission of the Statement pursuant to Rule 155 would contribute to an expeditious trial, without impacting the rights of the Accused.

⁹³ Practice Direction on the Procedure for Taking Depositions under Rules 123 and 157 and for Taking Witness Statements for Admission in Court under Rule 155, 15 January 2010.

⁹⁴ See transcript, 20 and 21 July 2015, for the testimony of Ms. Kamei; transcript, 22 July 2015, pp. 77-81, regarding Mr. Carnus.

⁹⁵ Rule 155(A)(i)(a).


C. Confidentiality of the Motion and its Annexes

59. The Motion and its Annex contain confidential information. Specifically, they contain telephone numbers used by third parties to the proceedings. The Prosecution requests the Trial Chamber to maintain the confidential status of the attached Annexes until the Trial Chamber decides otherwise, either upon motion of the Prosecution or after having given the Prosecution the opportunity to be heard on the issue of lifting its confidential status.

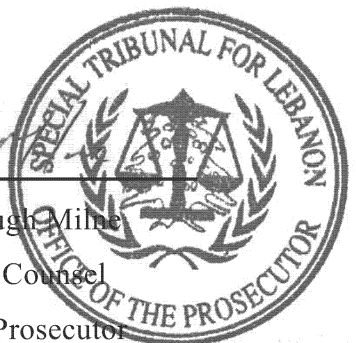
III. RELIEF REQUESTED

60. For the above reasons, the Prosecution respectfully requests the Trial Chamber to:
- a) **GRANT** leave to exceed the word limit of 6000 words by 1177 words;
 - b) **GRANT** leave to add the CST for SMP [redacted]429 as detailed in Annex A, to the Prosecution's Rule 91 Exhibit List;
 - c) **ADMIT** into evidence the exhibits listed in Annex A and the Statements of Ms. Habraken, PRH512, and PRH431 as detailed in Annex D; and
 - d) **ORDER** that this Motion and its Annexes remain confidential until the Trial Chamber decides otherwise, either upon motion of the Prosecution or after having given the Prosecution the opportunity to be heard on the issue of lifting the confidential status.

Respectfully submitted,



Alexander Hugh Milne
Senior Trial Counsel
Office of the Prosecutor



Dated this 7th day of October 2016
Leidschendam, the Netherlands

Word Count: 7156

