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TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Raul Pangalangan

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF

THE PROSECUTOR

*v. JEAN-PIERRE BEMBA GOMBO, AIMÉ KILOLO MUSAMBA, JEAN-JACQUES
MANGENDA KABONGO, FIDÈLE BABALA WANDU AND NARCISSE ARIDO*

Public

Defence Response to the request submitted by the Defence for Mr. Babala to admit additional items onto its list of evidence (ICC-01/05-01/13-1752-Conf) and its request to admit these items through the bar table (ICC-01/05-01/13-1781-Conf)

Source: Counsel for Jean-Pierre Bemba Gombo

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Introduction

1. The Defence for Mr. Jean-Pierre Bemba hereby files its response to the request submitted by the Defence for Mr. Babala to admit additional items onto its list of evidence,¹ and its subsequent request to admit these items through the bar table.²

2. The items are relevant and probative to issues in the case, and their admission would occasion no prejudice to the parties.

Submissions

3. The Prosecution has advanced various theories concerning the content of particular communications, which are based solely on patterns of contacts, reflected in call data records (CDRs) collected from different telecom service providers.

4. The Prosecution has, however, declined to call any evidence from the telecom operators in this case concerning the correct interpretation of such CDRs.

5. In contrast, the items tendered by the Defence for Mr. Babala are highly relevant and probative as concerns the actual interpretation which should be applied to Base Belgium call data records, in particular, the scenario in which:

- a. a number from a third country (Y), is set on call forwarding to a Belgium number (Z);
- b. A third number (X) calls Y, but is then forwarded to Z due to call forwarding.

6. This breakdown can be depicted as follows:

¹ ICC-01/05-01/13-1752-Conf.

² ICC-01/05-01/13-1781-Conf



7. According to Base Belgium, in such a scenario, if the target number is Z, then the call data record of Z will note Y as the caller and not X.³

8. Base Belgium also confirmed that in such a scenario, if Z does not answer the call, and the call is transferred to voice mail, then the network of Z will generate a text message, which is sent to Y concerning the missed call.⁴ It will be reflected in the CDR as a SMS between Z and Y.

9. Me. Kilenda is a subscriber to the Base Belgium network. These responses were generated in the ordinary course of business, by the technical services division of Base Belgium. The email correspondence bears sufficient indicia of reliability. The disclosed version of the email depicts the company logo,⁵ and the BASE.support@basecompany.be address can be verified from open sources as being the official email account for such support services.⁶

10. Finally, the Defence for Mr. Babala submitted its request several weeks before the close of evidence; the Prosecution was therefore on notice of the intention of the Defence to rely on this evidence, and had sufficient opportunity to take steps to preserve its position before the close of the case.

³ CAR-D22-0005-0003, « Dans le cas d'une déviation directe, votre propre numéro d'appel apparaîtra sur l'écran et dans le journal d'appel de votre collègue en tant que numéro appelant. Si il s'agit d'une déviation en cas de non réponse, vous verrez le numéro appelant initial dans votre journal d'appel. »

⁴ CAR-D22-0005-0003, « Non sauf en cas de déviation lorsque vous ne répondez pas à l'appel. »

⁵ CAR-D22-0005-0003

⁶ See for example, <https://www.base.be/business/fr/pme/service-clientele/Factures-paiements/ma-facture/facture-anormalement-%C3%A9lev%C3%A9e.html>

Relief sought

11. For the reason set out above, the Defence for Mr. Bemba requests the Trial Chamber to grant the two requests of the Defence of Mr. Babala.



Melinda Taylor
Counsel of Mr. Jean-Pierre Bemba

Dated this 18th day of April 2016

The Hague, The Netherlands