Whistleblowing and anti-corruption

Speech by Giuseppe Recchi, Telecom Italia Chairman

LUISS – Rome, May 6, 2015
Thank you Professor and good morning everyone.

I would like to start by saying that whistleblowing is clearly a very current issue... it was introduced some time ago in American companies with the Sarbanes-Oxley Act and is today concerning Italian businesses, particularly multinationals... Italian multinationals, perhaps listed abroad and which therefore need to comply with the standards laid down by the Sarbanes-Oxley Act and transfer them to an internal control system that is also becoming valid in Italy. And they thus become the first step in the dissemination in an orderly system... in an Italian legal system. Let's say... there have always been some rather mixed feelings about this. Professor Severino opened this congress starting precisely from the semantics of the word, which can take on a rather negative meaning and, therefore, this too is one of its defining aspects. I would say, however, that the context is changing considerably, as businesses are increasingly realising the tangible value of transparency, first and foremost, and, above all, of the importance of having immediate, effective reporting with regards to the legal authority. Thus they take on an active role insofar as they benefit from the principle of reporting aspects of non-integrity. Therefore, the question is: to date, whistleblowing is carried out, actually, rather than a question.... the difference is.... that whistleblowing is carried out by those doing so because it is a legal obligation and by those implementing it because it represents a tangible advantage. And in America, the second aspect is now prevailing considerably, because it is rewarding for the company to report first and rewarding, in terms of... let's say, the cost of the sanction, rewarding in terms of reputation, and we know how easy it is to destroy a reputation and how difficult it is to built it, and then rewarding because the rules ask for this. So, the business can operate because they keep acting on the basis of a principle that before being legal, is moral, and it is the principle whereby... trust that exists within a system of people, is based on... is constructed around the respect for rules.

So, let's take a quick look at how this happens.... that is at the differences there are between Italy and the United States. Firstly we have a crucial point in the... in the set-up, because, like I was saying, because the moral principle is an important one but, like Mr Pignattone said, "moral alone cannot...", that is... if we only expect the moral motivation, very probably
the effectiveness of the action will be very low, hence, we can say, moral motivation will not take us far. Hence whistleblowing is none other than... we can say, the "reward" offered for a fruitful report, transforming this moral input into an effective pragmatism in seeking to achieve an objective. And, as I was saying, the differences between Italy and the United States are considerable, because to date, in Italy, if I, as an employee or stakeholder in the company, or supplier, in some way, in short... person aware of a fact that harms the principles of integrity of the company, know something, I need to report it to the internal control system, particularly if I am a company employee, I need to report to the company's internal control system, to the compliance system. Whilst the programme of "rewards" for whistleblowing requires me to go directly to the SEC. And this is why I then receive the reward from the SEC. And even SEC is driving so strongly in this direction that it has recently also regulated this issue so as to prevent internal confidentiality agreements between employees and companies, that is seeking to prevent a company from signing a contractual agreement with the employee to say "anything you know, first come to me and not to the authorities". So here we have a contradiction, because on the one hand, the SEC itself is telling me to strengthen internal compliance programmes, internal control, in all the various forms, whilst on the other, it is encouraging me to skip them, incentivating me to go directly to them. So this is a first, perhaps micro short-circuit of the system that should be managed where the obvious answer is the right balance between the use and effectiveness of whistleblowing, but the strength is in internal oversight, because if I destroy this or make it ineffective, I do not obtain benefits. Amongst other aspects, today companies are fully committed and have difficulty in finding all possible forms by which to build this culture of the internal rule system being sacred. The culture whereby "it is not worth my while to protect my colleague, because the common asset, which is the company in which we work, in its function of creating well-being for all of us working there, is a priority with respect to the amoral complicity between internal subjects". Thus, this is a question of business culture, business identity, which is achieved through rules, communication, setting an example, it is achieved with a whole series of scientifically-constructed architectures and implemented in such a way as to lead to the result. Therefore in Italy, then, amongst others... we... what do
we do? Today we borrow experiences from the Anglo-Saxon world and seek to supplement the provisions of the legislator - and I'm thinking about law 231 - and what is on the other hand envisaged by self-regulation, by corporate governance codes or internal rules set by each of us. And one of the key points is to manage to guarantee not only the confidentiality of the reports but also that of the reporting party. So, in the case also mentioned by the Ambassador, of... of America, where confidentiality is guaranteed, if you take a lawyer to represent you, or send a lawyer in representation, then it is a bit difficult in a company, and this is why this whistleblowing is often anonymous, nor particularly detailed, and not overly useful to an internal investigation.

I am talking about ourselves, before closing I would instead mention a major doubt we have, a big problem... which is more a problem for jurists. So I would tell of how a multinational constructs it... so, constructs a code of ethics and conduct that establishes that employees, collaborators, consultants, suppliers, all stakeholders, as you were saying, promptly report any violations of the code of ethics in connection with provisions of law or regulation, provisions of the code of ethics and internal procedures. There is a limit with which Top Management, particularly the example, the figure of the Chairman, who is the custodian of governance, rules and integrity, can manage to ensure that these procedures are respected, these rules are respected because then the investigation tools clearly stop at the limit set them by the code: that is, we cannot intercept, investigate, spy, etc. etc. Hence, in terms of the usefulness of whistleblowing, I believe it to be very useful. The procedure that is then implemented is, therefore, one that guarantees the receipt, classification, which communicates the results of the analyses, that initiates an audit, if necessary, that ensures the traceability and storage of documentation, that carries out the updates... that is, a whole series of steps that then produce an effect. To close the Telecom case, I do not know, there too, if it should be considered as metrics of efficiency or a shortage of whistleblowing culture, the metrics that counts how many reports are made, and what type of effects in terms of correcting procedures, to a greater or lesser degree, have been achieved. For example, we had fewer then ten, so we can interpret this in two ways: fantastic, because no one is reporting problems, or dramatic, because no one dares talk. So all the architecture I am
talking about must aim to encourage correct whistleblowing, because then the risk is that instead these few dozen become thousands, but you find yourself with any type of idiocies, if you'll allow me to say it.

The last point with which I would close is a point that... I believe to be open and I must leave it to the assessment of the jurists, that is... to my knowledge in criminal law in Italy, anonymous reports cannot be used as evidence. So how can I instead supplement this type of shortage? The fact that, amongst other things, the company procedure is univocal, seeks to... or rather, unfortunately has the fault of treating all aspects of compliance and integrity univocally, hence putting together whistleblowing, and other types of infringement, in a single procedure that is then not supported in the legal system and the possibility of implementing it. Thank you.