



**International
Competition
Network**

**ANTI-CARTEL
ENFORCEMENT
TEMPLATE**

**CARTELS WORKING GROUP
Subgroup 2: Enforcement Techniques**

Ireland

date of updating: 05/02//2007

ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

IMPORTANT NOTES:

This template is intended to provide information for the ICN member competition agencies about each other's legislation concerning hardcore cartels. At the same time the template supplies information for businesses participating in cartel activities about the rules applicable to them; moreover, it enables businesses which suffer from cartel activity to get information about the possibilities of lodging a complaint in one or more jurisdictions.

Reading the template is not a substitute for consulting the referenced statutes and regulations. This template should be a starting point only.

1. Information on the law relating to cartels

A. Law(s) covering cartels:	The Competition Act 2002, in particular Section 4, 6, 8, 31 & 45. www.tca.ie English and Irish
B. Implementing regulation(s) (if any):	
C. Interpretative guideline(s) (if any):	The various Notices and Decisions of the Authority are published and available at www.tca.ie/documents
D. Other relevant materials (if any):	

2. Scope and nature of prohibition on cartels

A. Does your law or case law define the term	The Competition Act 2002 essentially borrows Article 81 of the EU Treaty of Rome and says that "all agreements between
---	--

<p>“cartel”?</p> <p>If not, please indicate the term you use instead.</p>	<p>undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition in trade in any goods or services in the State or in any part of the State are prohibited and void". The word "Cartel" is not used.,</p>
<p>B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore cartels” – e.g.: price fixing, market sharing, bid rigging or production or sales quotas¹) and other types of “cartels”?</p>	<p>Yes. Section 6(2) of the Competition Act 2002 creates a presumption that agreements between competing undertakings, decisions of associations of undertakings etc. to fix prices, limit output or share markets or customers have as their object (not effect) the prevention restriction or distortion of competition. The penalties specific to Section 6(2) include a custodial tariff of up to a maximum of 5 years imprisonment on indictment as per section 8(1) of that Act. All other horizontal or vertical agreements attract only fines and not custodial sentences. This was the Irish Legislature's attempt at creating a per se 'hard-core' criminal offence.</p>
<p>C. Scope of the prohibition of hardcore cartels:</p>	<p>The prohibition under section 4(1) as criminalised by section 6 is not industry specific.</p> <p>A defence is available where "the agreement, decision or concerted practice or category of agreement, decision or concerted practice, having regard to all relevant market conditions, contributes to improving the production or distribution of goods or provision of services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit and does not</p> <p>(a) impose on the undertakings concerned terms which are not indispensable to the attainment of those objectives,</p> <p>(b) afford undertakings the possibility of eliminating competition in respect of a substantial part of the products or services in question".</p>
<p>D. Is participation in a hardcore cartel illegal per se?</p>	<p>Not quite per se but close. Please see the answer to 2/B above.</p>
<p>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</p>	<p>Participation in hardcore cartel activity is a serious criminal offence under the Competition Act 2002. There is also the possibility of bringing concurrent or subsequent civil actions against the perpetrators.</p>

3. Investigating institution(s)

<p>A. Name of the agency, which investigates cartels:</p>	<p>The Competition Authority.</p>
<p>B. Contact details of the</p>	<p>The Competition Authority,</p>

¹ In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as “hardcore cartels”. Hereinafter this terminology is used.

agency:	Parnell House, 14 Parnell Square, Dublin 1, Ireland, Telephone +353 1 804500 Fax + 353 1 804 5401 Email Cartels@tca.ie www.tca.ie English
C. Information point for potential complainants:	There are a number of ways to register a complaint. The most common way is via Make a Complaint online form (available at http://www.tca.ie/complaints/index.aspx#feedbackform) It is possible to contact the Competition Authority via: Email to: complaints@tca.ie Phone: 1890 220 224 (intl.:+353-1-8045400) Fax: +353-1-8045401 Or written complaints can be sent to: The Competition Authority, Parnell House, 14 Parnell Square, Dublin 1.
D. Contact point where complaints can be lodged:	See response to Question 3.C. above.
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	Investigative assistance is provided by the Garda Bureau of Fraud Investigation [Police] with 2 Detective Sergeants seconded to work as Authorised Officers of the Competition Authority. Additional manpower is provided as and when needed, e.g. large scale searches or for the arrest, detention and questioning of suspects.

4. Decision-making institution(s)² [to be filled in only if this is different from the investigating agency]

² Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

<p>A. Name of the agency making decisions in cartel cases:</p>	<p>The Competition Authority investigates alleged cartels and forwards completed investigation files to the Director of Public Prosecutions (the DPP). The DPP independently decides whether or not to initiate a prosecution on indictment. Minor offences can be prosecuted by the Competition Authority in the District (lowest) Court before judge only without reference to the DPP. Civil cases are taken by the Authority. In the event that there are proceedings [civil or criminal] the deciding body is the court.</p>
<p>B. Contact details of the agency:</p>	<p>The Director of Public Prosecutions, Office of the Director of Public Prosecutions, 14 - 16 Merrion Street, Dublin 2, Ireland. Tel: + 353 1 678 9222 Fax: + 353 1 661 0915 www.dppireland.ie Languages English and Irish www.courts.ie/ Languages English and Irish</p>
<p>C. Contact point for questions and consultations:</p>	<p>Office of the Director of Public Prosecutions, 14 - 16 Merrion Street, Dublin 2, Ireland. Tel: + 353 1 678 9222 Fax: + 353 1 661 0915 www.dppireland.ie</p>
<p>D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.</p>	<p>The Competition Authority polices the Competition Act and is responsible for enforcing Competition Law. Prosecutions on indictment are taken by the DPP and authorised officers (investigators) are mere witnesses who are called on by the DPP in the prosecution of the case. The Authority assists and supports the DPP in the prosecution of cartels before the courts.</p>
<p>E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?</p>	<p>Upon completion of a criminal investigation the agency submits a file containing the evidence to the DPP. In the event that a prosecution is initiated on indictment the DPP takes over responsibility of the case. The case is prosecuted in the name of the DPP. The Authority assists the DPP in that authorised officers are witnesses for the prosecution and will clarify outstanding matters and notify witnesses of forthcoming proceedings etc.</p>

5. Handling complaints and initiation of proceedings

A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]	Complaint, ex officio, leniency application.
B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?	In writing preferably but there is flexibility. There is a form [for convenience] available on the website which can be emailed or printed off and posted but its use is not obligatory www.tca.ie "Make a Complaint".
C. Legal requirements for lodging a complaint against a cartel:	There is no limitation; any party may make a complaint and that complaint will then be evaluated on its merits.
D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect?	The Authority has discretion over which complaints it investigates and how it chooses to investigate them.
E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?	There is no such obligation but given that the Competition Authority is a public agency that courtesy is always extended.
F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?	No

6. Leniency policy³

A. What is the official name of your leniency policy (if any)?	The programme is called "The Cartel Immunity Programme" and is available in full printed brochure form or at www.tca.ie "The Cartel Immunity Programme". Investigators also carry "business cards" which summarise the programme.
B. Does your jurisdiction offer full leniency as well as partial leniency (i.e.	Only full Immunity from prosecution is available under the Cartel Immunity Programme. It is not possible to offer any form of 'lenient' treatment in Irish Law. However, the DPP has a

³ For the purposes of this template the notion of 'leniency' covers both full leniency and a reduction in the sanction or fines. Moreover, for the purposes of this template terms like 'leniency' 'amnesty' and 'immunity' are considered as synonyms.

<p>reduction in the sanction / fine), depending on the case?</p>	<p>discretion as to whom he decides to prosecute or not prosecute. This is mentioned in the Cartel Immunity Programme at paragraph 6.</p>
<p>C. Who is eligible for full leniency]?</p>	<p>Only the first party to come forward qualifies for Immunity and then with a number of caveats; it must not have played the lead role in the cartel and it must provide full and timely cooperation to the prosecution.</p>
<p>D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation?</p> <p>In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?</p>	<p>No - The Cartel Immunity Programme states that the Competition Authority may recommend immunity to the DPP if the applicant is the first to come forward before the Competition Authority has gathered sufficient evidence to warrant a refferral of a completed investigation file to the DPP.</p>
<p>E. Who can be a beneficiary of the leniency program (individual / businesses)?</p>	<p>Both individual persons and bodies corporate may avail of Immunity.</p>
<p>F. What are the conditions of availability of full leniency:</p>	<p>The applicant must take effective steps, to be agreed with the Authority, to terminate its participation in the illegal activity.</p> <p>The applicant must do nothing to alert its former associates that it has applied for immunity under this programme.</p> <p>The applicant, including all its relevant past and present employees, must not have coerced another party to participate in the illegal activity and must not have acted as the instigator or have played the lead role in the illegal activity. The applicant must be able to show this to the satisfaction of the Authority.</p> <p>Throughout the course of the Authority's investigation and any subsequent prosecution, the applicant must provide complete and timely co-operation</p> <p>Provide full, frank and truthful disclosure of all the evidence and information known or available to it or under its control, including all documentary and other records, wherever located, relating to the offences under investigation with no misrepresentation of any material facts</p> <p>Co-operate fully, on a continuing basis, expeditiously and at its own expense throughout the investigation and with any ensuing prosecutions</p> <p>If the first applicant to request immunity fails to meet these requirements, a subsequent applicant that does meet these requirements can be considered for immunity.</p>

G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):	Partial Immunity is not available.
H. Obligations for the beneficiary after the leniency application has been accepted:	see 6/F above
I. Are there formal requirements to make a leniency application?	All applications for immunity must be made either in person or by telephone to the specially designated immunity officer.
J. Are there distinct procedural steps within the leniency program?	Yes. The Cartel Immunity Programme sets out the steps that must be taken. Qualified immunity is granted to a successful applicant and this becomes full immunity when the prosecution is complete and the immunity applicant has complied with the terms of the immunity programme.
K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?	See answer to 6/J above. The Immunity applicant will only receive full immunity from prosecution when the prosecution of the other cartel members is complete. With qualified immunity the immunity applicant knows that full immunity will be given once the terms of the Cartel Immunity Programme are adhered to in full.
L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications?	The Office of the Director of Public Prosecutions [DPP] was established by the Prosecution of Offences Act, 1974. This Act gives the DPP the sole discretion as to who to prosecute or not as the case maybe. It allows the DPP the discretion to grant Immunity. In the case of competition law, for the first time, the DPP sets down in writing the terms under which Immunity may be granted and in doing so appointed the Competition Authority as the DPP's agent in administering it. While the Competition Authority adminsters the programme it can only make recommendations to grant immunity to the DPP.
M. Does your legislation have a marker system? If yes, please describe it.	The Cartel Immunity Programme is not set down in legislation. The programme creates a marker system where applications for immunity are queued and dealt with in the order of receipt. An applicant will be allowed to place a "marker" with the designated immunity officer for a period to be determined by the designated officer in order to retain the applicant's place in the queue for immunity until such time as the applicant is in a position to complete its application for immunity.
N. Does the system provide for any extra credit⁴ for disclosing additional violations?	No
O. Is the agency required to keep the identity of the	Information [including the identity of the applicant] becoming available pursuant to the Immunity Programme will not be

⁴ Also known as: "leniency plus", "amnesty plus" or "immunity plus". This category covers situations where a leniency applicant, in order to get as lenient treatment as possible in a particular case, offers to reveal information about participation in another cartel distinct from the one which is the subject of its first leniency application.

<p>beneficiary confidential? If yes, please elaborate.</p>	<p>disclosed other than in accordance with the normal practices and procedures pertaining to criminal investigations and prosecutions. In particular, information may be disclosed:</p> <p>a) When there has been public disclosure by the applicant;</p> <p>b) Where disclosure is required by law;</p> <p>c) When disclosure is for the purpose of the administration and enforcement of the Act;</p> <p>d) When disclosure is necessary for the prevention of the commission of a criminal offence; and/or,</p> <p>e) When disclosure is made in the course of an investigation or subsequent proceedings</p>
<p>P. Is there a possibility of appealing an agency's decision rejecting a leniency application?</p>	<p>No -Discretion as to whether to grant immunity or not lies solely with the DPP and his decisions are ordinarily not reviewable by the Courts.</p>
<p>Q. Contact point where a leniency application can be lodged:</p>	<p>Applications for immunity are made to the Designated Immunity Officer at telephone number +353 87 763 1378 or in person to the Designated Immunity Officer at the Competition Authority, Parnell House, 14/15 Parnell Square, Dublin 1</p>
<p>R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?</p>	<p>As the initial grant of Immunity is "qualified" the granting of full immunity may be withheld where the applicant fails to meet the requirements set out. In any event [and as stated] the DPP, having sole discretion may withdraw Immunity at any time.</p>
<p>S. Does your policy allow for "affirmative leniency", that is the possibility of the agency approaching potential leniency applicants?</p>	<p>No, The Authority must be careful not to offer inducements to suspects.</p>

7. Investigative powers of the enforcing institution(s)⁵

<p>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids⁶, electronic or computer</p>	<p>The Competition Authority has: -</p> <p>The power to seek court sanctioned search warrants of business and private premises and to seize and retain original documentation including electronic data</p> <p>The Authority may summons the attendance of witnesses, may examine them on oath and require the production of materials</p>
---	--

⁵ "Enforcing institutions" may mean either the investigating or the decision-making institution or both.

⁶ "Searches/raids" means all types of search, raid or inspection measures.

<p>searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</p>	<p>[typically employees, third parties, telecoms, banks, etc.].</p> <p>The offences are arrestable offences and the police officers seconded to the Authority may arrest and detain suspects for interview.</p> <p>Authorised Officers may take both witness and cautioned suspect statements.</p>
<p>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</p>	<p>Residences, cars and briefcases may be searched on foot of a court warrant. Persons cannot be searched but they are obliged [on pain of an obstruction offence] to assist authorised officers during a search and that extends to handing over materials on their person. Searches are not confined to suspects business or private premises but may include any premises where there is reason to believe evidence may be found [e.g. an internet service provider or a market research company]</p>
<p>C. May evidence not falling under the scope of the authorisation allowing the inspection be seized / used as evidence in another case? If yes, under which circumstances (e.g. is a post-search court warrant needed)?</p>	<p>On all searches Authorised Officers are accompanied by at least one police officer and under the provisions of Section 9 Criminal Law Act 1976 "Where in the course of exercising any powers under this Act or in the course of a search carried out under any other power, a member of the Garda Síochána... finds or comes into possession of anything which he believes to be evidence of any offence or suspected offence, it may be seized and retained for use as evidence in any criminal proceedings ... for such period from the date of seizure as is reasonable or, if proceedings are commenced in which the thing so seized is required for use in evidence, until the conclusion of the proceedings ..."</p>
<p>D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</p>	<p>No, not as yet in relation to Cartel Investigations.</p>

8. Procedural rights of businesses / individuals

<p>A. Key rights of defence in cartel cases:</p>	<p>As enforcement in Ireland is ultimately settled by the courts a defendant has all the natural rights of defence. In advance of both civil and criminal proceedings the defence have a right of discovery or disclosure of all documents, materials or evidence whatsoever. The defence may challenge all of these at trial. These are common law provisions and precedents settled by the courts over time. They also have the right to cross-examine all witnesses and to challenge the prosecution on procedural flaws. In the course of investigations suspects are entitled to be represented by lawyers of their choice. In criminal inquiries such persons always receive a formal caution against self-incrimination.</p>
<p>B. Protection awarded to</p>	<p>There is a general prohibition on the disclosure of information</p>

<p>business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation?</p>	<p>that comes into the possession of the Authority, this is not necessarily restricted to "business secrets" though it includes them.</p> <p>Section 32 PROHIBITION ON UNAUTHORISED DISCLOSURE OF INFORMATION.</p> <p>(1) A person shall not disclose information that-(a) comes into the possession of the Authority by virtue of the exercise by it of its powers under this Act to obtain information, or (b) comes into the possession of the Authority in the course of a meeting of the Authority held in private at which he or she is present.</p> <p>(2) Subsection (1) shall not apply to- (a) a communication made by a member of the Authority, a member of staff of the Authority or an authorised officer in the performance of any of his or her functions under this Act, being a communication the making of which was necessary for the performance by the member or officer of any such function, or (b) the disclosure of information in a report of the Authority or for the purpose of legal proceedings under this Act or pursuant to an order of a court of competent jurisdiction for the purposes of any proceedings in that court, or (c) the disclosure by a member of the Authority, a member of staff of the Authority or an authorised officer to any member of the Garda Síochána of information which, in the opinion of the member or member of staff of the Authority or authorised officer, may relate to the commission of an offence (whether an offence under this Act or not).</p> <p>Breach of this provision is a criminal offence.</p>
--	---

9. Limitation periods and deadlines

<p>A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision in the merits of the case must be made?</p>	<p>None. The only time limitation is one that says that summary criminal proceedings must be commenced within two years of the date of commission of the offence, however, the Authority does not ordinarily seek summary prosecutions instead pursuing indictable cases.</p>
<p>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision in the merits?</p>	<p>None</p>
<p>C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a</p>	<p>The commencement of an investigation may not be challenged, it is a function of the Authority under Section 30 that "The Authority shall have .. the following functions: ... (b) to carry out an investigation, either on its own initiative or in response to a complaint made to it by any person, into any breach of this Act that may be occurring or has occurred". Regarding challenges</p>

decision regarding sanctions?	of a decision, there are none provided for in statute and the Authority does not make decisions, they are made by the courts. Aggrieved parties always have recourse to seek a Judicial Review or to appeal a decision of a court.
--------------------------------------	--

10. Types of decisions

A. Please list which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1.	Civilly - the finding of a breach and an instruction to cease and desist. This can only be done through the Courts.
B. Please list which types of decisions on the merits of the case can be made in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 10/A).	Criminally, the finding of a breach and the imposition of penalties by way of monetary fines of up to €4m or 10% of turnover [whichever is the greater] and/or up to 5 years in jail for persons. Again, this can only be done through the courts.
C. Can interim measures⁷ be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both⁸.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?	Yes, if the Competition Authority seeks an injunction whilst there is a blockade for example. Even though the Authority might commence civil proceedings in this instance, the DPP can still institute criminal proceedings at a later stage.

11. Sanctions for procedural breaches (non-compliance with procedural obligations)⁹

⁷ In some jurisdictions, in cases of urgency due to the risk of serious and irreparable damage to competition, either the investigator or the decision-making agency may order interim measures prior to taking a decision on the merits of the case [e.g.: by ordering the immediate termination of the infringement].

⁸ Only for agencies which answered “yes” to question 2.C. above

⁹ In some jurisdictions non-compliance with procedural obligations (e.g. late provision of requested information, false or incomplete provision of information, lack of notice, lack of disclosure, obstruction of

A. Grounds for the imposition of procedural sanctions / fines:	Failure to appear or to provide materials pursuant to summons [Section 31]. Obstruction or impeding of officers in the exercise of their powers [Section 45].
B. Type and nature of the sanction (civil, administrative, criminal, combined):	Both are summary criminal provisions with possible fines of €3000 and up to 6 months imprisonment.
C. On whom can procedural sanctions be imposed?	Persons only - not undertakings or bodies corporate.
D. Criteria for determining the sanction / fine:	Proof beyond a reasonable doubt.
E. Are there maximum and / or minimum sanctions / fines?	There are no minimum sanctions and the maximum are set at €3000 and 6 months imprisonment.

12. Sanctions on the merits of the case

A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined): On whom can sanctions be imposed?	<p>In civil cases, the Court can make a finding that there has been a breach of the Act and can make both interim and interlocutory orders.</p> <p>In criminal cases penalties can only be imposed by the Central Criminal Court (the criminal division of the High Court) or the District Courts for summary (minor) offences and they apply both to the undertakings and to culpable officers of the undertakings.</p> <p>Section 8 - An undertaking guilty of an offence under section 6 (being an offence involving an agreement, decision or concerted practice ...) shall be liable ...on conviction on indictment- (i) in the case of an undertaking that is not an individual, to a fine not exceeding whichever of the following amounts is the greater, namely, €4,000,000 or 10 per cent of the turnover of the undertaking in the financial year ending in the 12 months prior to the conviction, or (ii) in the case of an individual, to a fine not exceeding whichever of the following amounts is the greater, namely, €4,000,000 or 10 per cent of the turnover of the individual in the financial year ending in the 12 months prior to the conviction or to imprisonment for a term not exceeding 5 years or to both such fine (that is to say a fine not exceeding the greater of the foregoing monetary amounts) and such imprisonment.</p>
B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the	The court has discretion as to the sanctions that it will impose in a given case. There are no sentencing guidelines.

justice, destruction of evidence, challenging the validity of documents authorizing investigative measures, etc.) can be sanctioned.

violation, benefit gained from the violation]	
C. Are there maximum and / or minimum sanctions / fines?	See 12/A above
D. Guideline(s) on calculation of fines:	There are no sentencing guidelines.
E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?	As mentioned challenges must be made via the Judicial system but they usually do have the effect of suspending the implementation of the penalties until the outcome has been decided.

13. Possibilities of appeal

A. Does your law provide for an appeal from a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?	Because of the fact that cartel cases are dealt with by the courts the rights of appeal are determined not only by the evidence but by the conduct of the trial. The right of appeal is a natural right stemming not from statute but from precedent.
B. Before which court or agency should such a challenge be made? [if the answer to question 13/A is affirmative]	As hard core cartel cases in Ireland are determined in the High Court [or its criminal wing the Central Criminal Court] the only avenue of appeal is the Supreme Court