

Commercial Processes: Pricing, Products and Projects

Feb 2020

CONTENTS

1. Background and Principles
2. Commercial Processes
3. Notes on all Five Tests
4. Key Process Controls
5. ANNEX 1: Openreach Role and Scope

Background and Principles

Background

The Commitments and the Governance Protocol strike a balance between greater Openreach independence and BT oversight. They:

- Were designed to address Ofcom’s concerns in 2017 that “*BT had retained control of Openreach’s decisions, while other telecoms companies have not been consulted sufficiently on investment plans that affect them*”.
- Ensure that as a parent company bearing the full economic risk, BT Group can fulfil its legal, regulatory and fiduciary duties. To do this, BT Group needs to understand the impact of Openreach commercial decisions on central business forecasts (and be the decision maker when necessary).
- Recognise the important role of the Openreach Limited Board, with the Openreach directors having legal, regulatory and fiduciary duties.
- BT’s Commercial processes need to respect this balance.

Openreach operates within the overall BT strategic framework

- **Its role and scope as a fixed network provider** (access and backhaul) is defined in the Commitments (see **Annex 1**). If Openreach wishes to expand into a market or launch a product that extends beyond what is defined in the Commitments, it will need to seek a BT Group view.
- **Pricing and Product** decisions form an important part of Openreach’s greater strategic independence and are primarily the preserve of Openreach. But sometimes Openreach will need to seek a BT Group view or a decision will also require approval by BT Group.

This document provides Guidance on when and how to involve BT Group

- It captures most common processes and touchpoints between Openreach and BT Group to clarify roles and responsibilities, to ensure there are **no surprises** and that decision-making runs smoothly.
- **It is not exhaustive.** BT Group CEO reserves the right to identify something as “material or strategic” requiring BT involvement and approval. The Openreach Board retains the right to escalate matters to the BT Board if it disagrees with the analysis of the BT Group CEO.

This Guidance Note is part of a series to support how BT and Openreach colleagues work under the Commitments governance arrangements. If anything in this Guidance Note conflicts with the Governance Protocol, the terms of the Governance Protocol will prevail.

Design Principles for Guidance Notes

Principles agreed between BT and Openreach	What this means in practice
Greater operational and strategic independence of Openreach	Ensuring that what we do gives effect to the aim of the Commitments in securing greater independence for Openreach from BT Group, treating Openreach differently where appropriate, and enabling Openreach to treat all its customers equally (see below)
Appropriate parent company economic control and oversight by BT	Recognition that BT remains one economic enterprise with one set of shareholders in which interest BT must act, and that finances need to be consolidated into one
Recognition of the important role of the Openreach board	Recognition of the role of the Openreach board in decision-making, provision of direction to, and oversight of, Openreach
Accountability	Clarity in roles, decision making and best practice governance. This includes recognition of the personal responsibility of everyone involved in the process for the effective and efficient working of the Commitments.
Efficiency	Following a clear and agile process, capable of evolution and timely escalation routes
Simplicity	Acting in a way that avoids duplication, minimises complexity and gets things done
Equal treatment	Ensuring that what we do enables and encourages Openreach to address the needs of all Openreach customers equally
Transparency	Demonstrate we are acting and behaving in line with the Commitments, including to Ofcom and other CPs. This includes operation of process and controls in a way that is auditable and capable of assurance.

Commercial Processes

When should Openreach take a commercial decision to BT Group?

- As part of its normal commercial business case governance process, Openreach will assess if it requires approval from BT Group. This will be the case **if any of “Five Tests” are met** (see next slide). Openreach will ensure evidence of applying these tests and the reasons for its decision are recorded (i.e. usually as part of the business case). If Openreach decide that it does not require any BT Group approval, this will be documented as part of the business case.
- In the event that it is unclear if one or more of the tests are triggered, then Openreach senior executives can ask for an opinion from:
 - a) an/the Openreach independent Non-Executive Director(s) ; and/or
 - b) the Group Regulatory Affairs Director (or Deputy) as Parent; who will check for consistency with the overall BT strategic framework and who can seek other Group input (e.g. Finance, Legal and/or Strategy) as appropriate before providing an opinion; and/or
 - c) the BT Group General Counsel (or Deputy) as parent, in the event the assessment relates to the risk profile.
- If, having asked for a BT Group view, Openreach decides BT Group involvement is not necessary, it will communicate this to BT Group. BT Group may ask to see and choose to review Openreach’s decision, using the evidence of the Five Tests and applying its own judgement.
- If BT Group wants to challenge the Openreach decision, in the first instance this would be between the relevant senior executives in BT Group and Openreach responsible for product, pricing or commercial policy.
- If the relevant senior executives in BT Group and Openreach cannot reach agreement, the matter may be escalated to Chair of Openreach Limited to discuss with BT Group Chief Executive (or escalated to BT Group Chairman for ultimate decision, if still unresolved).
- Openreach will then follow its internal approval processes.

All discussions should be documented. Ofcom will expect transparency as regards the decision-making process and outcomes.

The Five Tests - overview

Test	Authority to 'Decide'	Source	Glossary
1. Outside Defined Portfolio? Product outside the scope defined in the Commitments (3.2-3.4) (see also Annex 1)	ORB then BT Group CEO	CMT3.2-3.4, CMT Definitions of Products	CMT: the Commitments
2. Significant Financial Value?* 2a Any Commercial/Pricing decisions greater than £[redacted]m 2b Any Commercial/Pricing decisions between £[redacted]m and £[redacted]m 2c Any Commercial/Pricing decisions under £[redacted]m	ORB then BT Group CEO Openreach CEO Openreach MD CC&P	GP Part B 3.4 BT Group DoAs	GP: Governance Protocol ORB: the Board of Directors of Openreach Limited
3. Outside of Existing AOP/MTP defined spend limits? 3a Total Capex/Opex exceeds AOP by more than £100m (or MTP by £250m) 3b Total Capex/Opex exceeds AOP by up to £100m (or MTP by up to £250m)	ORB then BT Group Board ORB then BT Group CEO & CFO	GP Part B 3.5 - 3.6(a),(b)	Openreach MD CC&P: Openreach Managing Director, Customer & Commercial Propositions AOP: Annual Operating Plan produced by the Openreach executive
4. Significant Strategic Decision? Affect items in AOP/MTP identified as of significant strategic importance to BT Group	ORB then BT Group Board	GP Part B 3.6(d)	MTP: Medium Term Plan produced by the Openreach executive
5. Outside Risk Profile? May materially impact the risk profile of the AOP/MTP	ORB then BT Group CEO & CFO	GP Part B 3.6(c)	DoAs: Delegations of Authority

These are the main tests to be applied when deciding whether a decision from BT Group needs to be sought and at what level. There are other 'Unique Authorities' which may also apply involving specific circumstances (for example involving M&A, tax, equity/debt) whereby authority should be sought from the Unique Authority holder in BT Group. This is not covered in this Guidance Note.

Five Tests – detail (1)

Test 1 – Outside Defined Portfolio: *Does the proposal take Openreach outside of its portfolio, as defined in the Commitments (see Annex 1)?*

- Openreach may offer products outside of its defined portfolio with the authority of the BT Group.
- Before making a decision the BT Group CEO would need to consider the Group-level implications, including determining if Openreach offering the products in question would deliver the best outcome for BT Group shareholders.
- Excluded from Test 1 are those products associated with Infrastructure on Demand and the Grandfather Agreements made prior to the creation of Openreach in 2005.

Test 2 – Significant Financial Value: *Is the financial scale of the decision sufficient to need BT Group approval?*

This is based on the relevant BT Group DoA in operation at that point in time.* The calculation of the scale should reflect the size of the change, not necessarily the absolute value and follow the principles below:

- Discretionary volume pricing DoA values would be determined as the difference between the old price and the proposed price, multiplied by the existing volume of lines (i.e. excluding volume elasticities) over the period of either the contract (if related to a specified contract) or MTP time-period (i.e. 5 years), whichever is greater.
- Bespoke bid DoA values should be the value of the bid.
- DoA values should not be subdivided.
- Price changes mandated by Ofcom, or otherwise required to remain compliant with regulatory obligations, are out of scope. Openreach should communicate them to BT Group for information.
- For new products, or existing products requiring additional investment, the approval levels should follow the Investment DoA rather than the Customer Facing DoA.

* <https://intra.bt.com/bt/lgc/governance/doa/Pages/DoA-thresholds-summary.aspx>

Five Tests – detail (2)

Test 3 – Outside Existing Defined Limits on AOP/MTP Spend: *Does the proposal take Openreach outside its existing AOP/MTP envelope?*

- This test applies both at an investment programme and total level.
- It covers direct capex/opex arising from the decision, normally of an investment nature.
- It covers price changes where there is no direct capex but the increased sales volumes could require more capex/opex indirectly.

Test 4 – Significant Strategic Decision: *Does the outcome of the decision affect items of significant strategic importance to BT Group?*

These are decisions that have a direct impact on BT Group's:

- Funding position, including; share price, credit rating and its ability to raise capital
- Reputation or integrity
- Ethical standards
- Or have a material cross-CFU impact (for example, where the net impact across BT group might be negative (see slide 13))

These are decisions that could expose BT Group's overall strategy and value to risk (even where the case is positive for Openreach). It is important to check with BT Group so that it can ensure these risks are properly managed, and satisfy BT plc's fiduciary duties.

Five Tests – detail (3)

Test 5 – Outside Risk Profile: *Does the outcome of the decision drive or change legal or regulatory risk for BT Group?*

To trigger this test, the drive or change of risk should be material at a BT Group level.

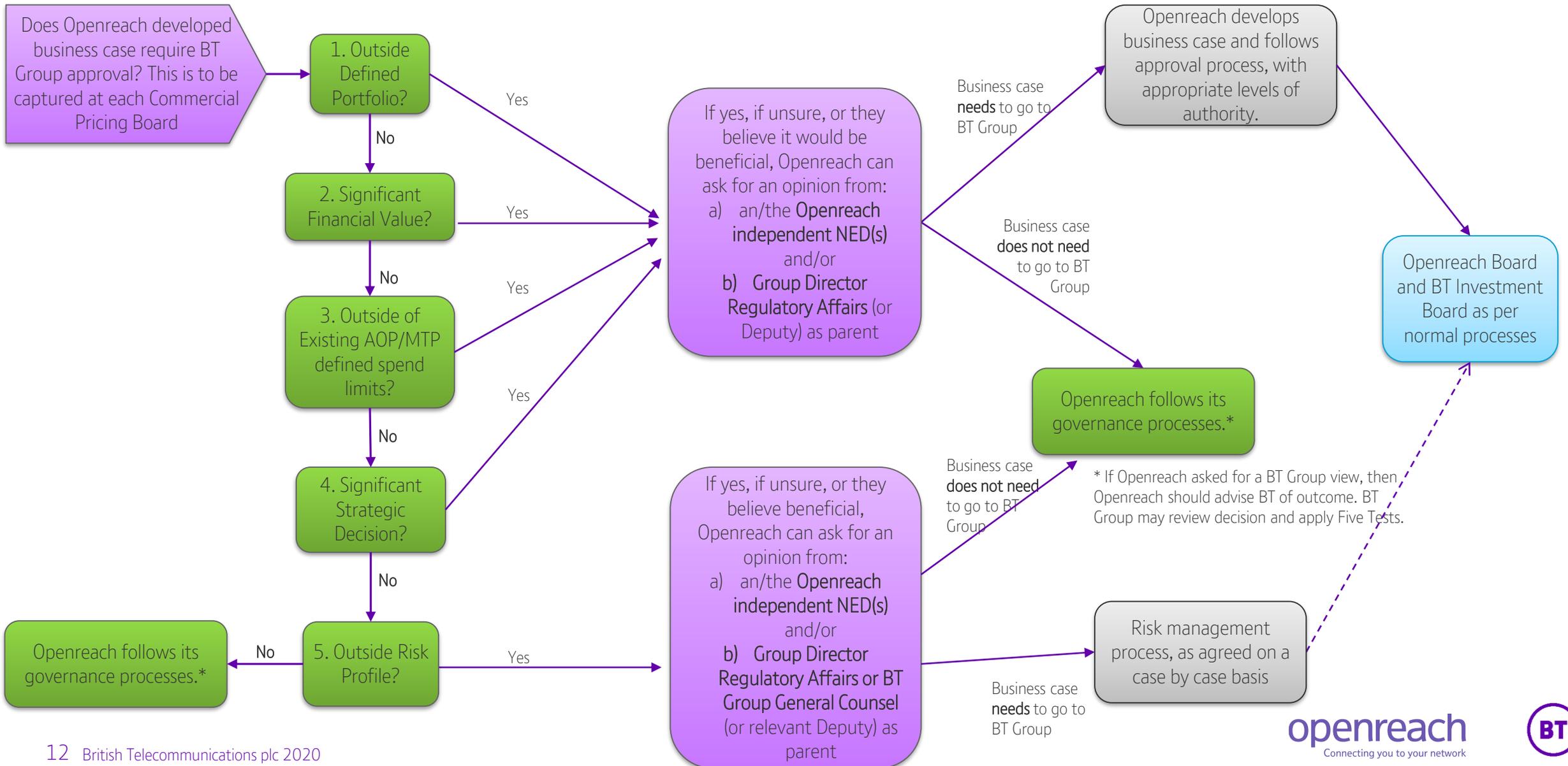
This includes:

- decisions that requires a financial provision to be made or changed
- decisions highly likely to be of concern to Ofcom
- decisions where external competition law advice is sought

This list is not exhaustive, with the BT CEO retaining ultimate discretion (which may be delegated) to determine this question. If in doubt, please discuss how best to proceed with the legal and regulatory teams.

Notes on all Five Tests

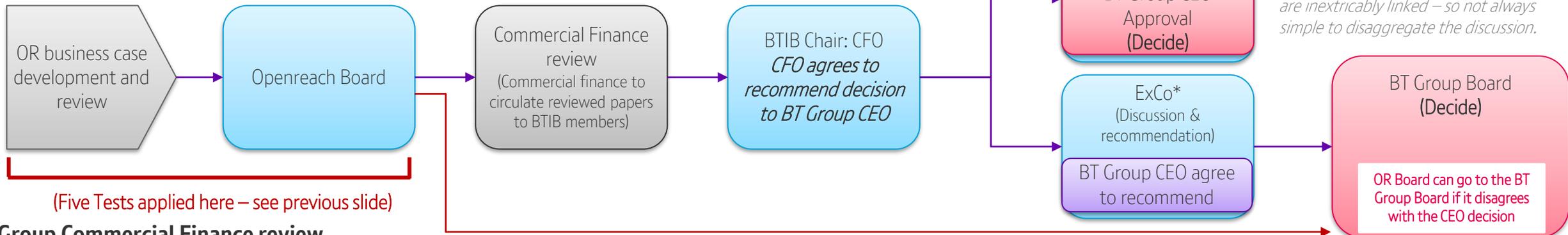
Applying the Five Tests



Openreach follows the standard process through the BTIB*

- Openreach completes the Five Tests, and, if appropriate, submits to Group for BT Investment Board (BTIB) review after review at the OR Board.
- Group Commercial Finance will review business cases in advance of the BTIB , in addition to:
 - » maintain formal BTIB Forward Plan with regular engagement with Openreach on items added, and to be added, to the Forward Plan and throughout the governance process, in line with the information sharing arrangements laid out in the Commitments
 - » undertake, as necessary, a downstream analysis of an Openreach business case brought to Group for review in order to provide an end to end view
- The BTIB recommends a decision to the BT Group CEO.
- The BT Group CEO, as the decision maker, may use the support of the ExCo discussion* as part of the decision making process.**
- If the Openreach Board disagrees with the BT Group CEO, it can take the matter for decision to the BT Group Board.

Governance process flow (can be iterative)



***Level of discussion at ExCo will vary with a focus on **strategic choices**. More detailed financial review expected at BTIB. Strategic choices and financial outcomes are inextricably linked – so not always simple to disaggregate the discussion.*

Group Commercial Finance review



What can be expected from BT Group?

- The table below shows the ‘indicative’ starting position BT Group is likely to take when exercising its parent company functions (generally on a financial basis).
- However, BT Group will take other strategic factors into account, including what is in the best interests of BT Group and its stakeholders (recognising that this is within the discretion of the BT Group CEO).
- Such decisions will be documented and transparent to the Openreach Board, OBARCC, BTCC and Ofcom.

Impact on Openreach	Net Impact on BT		Indicative position
	Downstream BT	Group in aggregate	
Positive	Negative	Positive	Accept
Positive	Neutral	Neutral	Accept
Positive	Negative	Negative (due to downstream impact)	Reject

There are areas of difference for Openreach within the Group process

1. Greater strategic and financial independence

- BT's ability to review and intervene in Openreach 's commercial decisions is limited by the five tests set out in this document. This is not the case for other CFUs.
- The BT Product Advisory Board (the PAB) governs delivery of the downstream BT Product Portfolio Strategy and managing escalations, responses to strategic events and cross-CFU optimisation opportunities for BT. Openreach is not subject to review by this board.
- The role of the Openreach Board in formally and transparently agreeing a commercial decision, such that any BT Group intervention is open to potential scrutiny by Ofcom.

2. Escalation

- If BT Group wants to challenge an Openreach decision as to whether BT Group involvement is necessary, in the first instance this would be between the relevant senior executives in BT Group and Openreach responsible for product, pricing or commercial policy.
- If the relevant senior executives in BT Group and Openreach cannot reach agreement, the matter may be escalated to Chair of Openreach Limited to discuss with BT Group Chief Executive (or escalated to BT Group Chairman for ultimate decision, if still unresolved). This escalation route is not available to CFUs.

Key Process Controls

Key Process Controls – Objectives

1. The governance of commercial processes respects Openreach's greater strategic independence whilst ensuring BT Group is able to fulfil its parent company role: Openreach decides whether to involve BT early in the decision making on an Openreach business case. It does this using the Five Tests with adequate evidence of how they formed their opinion.
2. BT Group approval of an Openreach business case is limited in line with its parent company role, fiduciary duties and agreed processes.
3. BT Group only amends or rejects an Openreach business case to avoid detriment to BT as a whole, in consideration of its fiduciary duties, by ensuring that if BT intervenes and rejects or amends an Openreach proposal its decision is in accordance with the Governance Protocol and informed by this Guidance Note.
4. Stakeholders can be assured that downstream BT does not have an opportunity to gain an unfair competitive advantage as a result of information supplied to BT Group:
 - a) by ensuring Information Sharing of Customer Confidential Information (CCI) or Commercial Information (CI) from Openreach is in line with the Commitments, and
 - b) by ensuring that if Openreach engages a BT Group function as a supplier to assist with development of its proposal/response [eg for technical/economic analysis], the individuals acting in a supplier capacity do not also advise or support any other CFUs on the same matter.

Key Process Controls – Openreach

The **Business Case Owner (BCO)** will ensure that:

1. Openreach considers whether any of the Five Tests trigger the requirement for authorisation outside of Openreach.
2. Openreach considers whether to ask OBARCC and/or BT Group for an opinion.
3. Openreach ensures that all discussions are documented and that the reasons to follow a specific approval route (within Openreach or BT Group) are recorded.
4. Any request by BT Group to review an Openreach decision follows the process set out in this Guidance Note.
5. No business cases are concluded by Openreach unless the Governance process set in this Guidance Note has been followed.
7. Any sharing of Openreach CCI and/or CI with BT is in line with the Commitments and only to the extent necessary for BT to fulfil its parent company functions.
8. Where appropriate Openreach should create Disclosure Records as per existing information sharing processes.

Evidence will be sought by the Commitments Monitoring Office (CMO) to confirm the key controls, and the underlying principles are respected.

Key Process Controls – BT Group

1. The **Group Director Regulatory Affairs** (or Deputy) will document any opinion provided to Openreach on whether BT Group involvement is required and list who else provided input.
2. If any BT Group function is engaged by Openreach as a supplier to assist with development of a business case, the relevant functional **Directors** will ensure the individuals acting in a supplier capacity do not also advise or support other CFUs on the same matter.
3. If BT Group intervenes and amends an Openreach proposal, it is in accordance with this Guidance Note.
4. BT Group Finance will ensure that Openreach matters are not added to the BTIB forward plan unless the Governance process set in this Guidance Note has been followed.
5. The Directors will ensure that any sharing of Openreach CCI and/or CI with BT is in line with the Commitments and only to the extent necessary for BT to fulfil its parent company functions.
6. Where appropriate BT Group should create Disclosure Records as per existing information sharing processes.

Evidence will be sought by Commitments Assurance Office (CAO) to confirm the key controls, and the underlying principles are respected.

ANNEX 1: Openreach Role and Scope

Openreach's role and scope as defined in the Commitments

- 1 Openreach is responsible for delivering PIA, copper (MPF), fibre (including Ethernet, WDM and dark fibre), and SMP regulated ancillary services, as well operating the last mile fixed access and backhaul network over which all these services are delivered
 - Exchange to end users: copper or fibre-based access between a BT Local Access Node and the network termination point on an End-User's premises
 - Exchange to exchange: backhaul¹ between a BT Local Access Node and another BT Local Access Node, a BT Core Node or a CP's point of handover (but not for the purposes of being used by a CP to replicate core network)
 - PIA remedy provides for access to existing physical infrastructure: currently between the end-user network termination point and the BT Local Access Node²
- 2 Openreach is primarily responsible for SMP products; non-SMP products may only be sold by Openreach if agreed by BT Group³
- 3 Openreach is responsible for SMP fixed technologies; wireless deployment decisions are made by BT Group
 - Proposals by Openreach to incorporate additional wireless inputs also require BT Group prior approval
- 4 Openreach's customers for network access services are Communication Providers (CPs); non-CP customers may be serviced by Openreach if agreed by BT Group
- 5 Any assets used or controlled by downstream BT CPs to provide network access using dark fibre or DPA does not form part of the assets which are managed and operated by Openreach
 - Subject to "material substitution" test that BT CPs do not provide products which substitute to a material degree for SMP products provided by Openreach
- 6 Openreach Ltd "manages and operates" access and backhaul assets that are and remain owned by BT Group
 - Including implementation of strategic programmes related to these assets (e.g. exchange closures and WLR3 withdrawal)
- 7 Capex or opex funding is ultimately decided by BT Group Board through the MTP process

1. Ethernet Backhaul products should not be longer than the greater of the straight-line distance between BT's local access node and the nearest BT core node or 15km – i.e. so that Ethernet backhaul is distinguished from "core network".
2. The PIA remedy may be used by CPs as an input into the provision of fixed residential and business broadband and fixed backhaul purposes (from BT exchanges with SMP) from the end of July 2019 onwards.
3. Openreach may continue to provide those non-SMP products which it supplied as at March 2017, at BT's discretion.

Openreach scope: product categories and technologies

Product Category	1 Local Access	2 Exchange Based Services	3 Backhaul (Exchange to Exchange)	4 Value Added Services
Technology Delivery	Fixed	Cable link	Fixed	Managed Install
	Wireless / FWA	Locate	Wireless	Project Services
	µwave	PoP Build	µwave	Managed Network Build
	Satellite	Other		Hosted Voice



Openreach product types within product categories

