1 Product Liability and Product Safety

The Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, establishes the principle of objective liability or liability without fault of the producer in cases of damage caused by a defective product. If more than one person is liable for the same damage, it is joint liability. The producer (or the importer) is liable to compensate the death or personal injury and damages to property caused by the defective product, whether or not he is negligent.

The European company that introduces the COTS product in the European market, will be liable for the damages caused by the product (COTS) to the European consumers. If an European company incorporates and assembles COTS from outside the EU in a product, and that product is marketed in the EU, it will be liable for the damages caused to the European consumers. That is why it is very important to ask for secure and reliable COTS specially when buying outside the E.U. It can be certified by a neutral third party like certification bodies and technological institutes or regulate in a contract clause.

The Council Directive 92/59/EEC of 29 June 1992 on general product safety Product means any product intended for consumers or likely to be used by consumers, supplied whether for consideration or not in the course of a commercial activity and whether new, used or reconditioned.

The companies selling their COTS products in the E.U. have to comply with the above mentioned regulation, and must facilitate all the information needed for a correct and safe use of the product. The COTS users can always ask for the information to the COTS producer.

The new revised Directive on General Product Safety (2001/95/EC) has to be transposed into national legislation by 15 January 2004. The new Directive maintains the existing requirements, but in addition introduces a number of new or reinforced provisions.
2 EU Competition Law

The EU legislation on competition has to be taken into account in the following areas: restrictive agreements and concerted practices, abuse of a dominant position, and mergers.

3 Consumer Protection

The COTS are considered products not services, so COTS users in the European Union are consumers of a product. The directive on liability for defective products is applicable.

The European concept of Consumers does not include juridical persons. However, Member States are able to extend the level of protection and consider firms, companies, etc..., as consumers in their respective national laws.

4 Data Protection

In order to ensure a high level of protection within the EU, data protection legislation has been harmonised. The Commission also engages in dialogues with non-EU countries in order to insure a high level of protection when exporting personal data to those countries.

5 Contractual Matters

Generally speaking, national contract law regimes lay down the principle of contractual freedom. Accordingly, contracting parties are free to agree their own contract terms. However, the laws and court decisions of a particular state govern each contract. Some of these national rules are not mandatory and contracting parties may decide either to apply these rules or to agree different terms instead. Other national rules, however, are mandatory, in particular where there is an important disparity between the positions of the contracting parties. Normally these different national regimes do not create any problems for cross-border transactions, as parties can decide which law will govern their contract. By choosing one national law, they accept all the mandatory rules of that law, as well as those non-mandatory rules, which they do not replace by different terms. In the event that an European consumer (COTS user) buys directly from US company, US law will apply to that contract, it is a more restrictive and less protective system for the consumer (COTS user). In the same case if the European consumer (COTS user) bought it from an European distributor or agent of the US vendor, European legislation will apply, is it the only one related to the parties and the contract.