

**[I: WAITING PERIOD]** Let me now proceed to the issue of the waiting period which was not complied with by Claimant.

[R: JURISDICTIONAL] Respondent recalls the conclusions of the tribunal of *Enron v. Argentina*, which in § 88 of its award held that the waiting period requirement is very much a jurisdictional one and if the claimant does not comply with it, the claims have to be rejected on the jurisdictional basis.

[R: PROCEDURAL INAPPLICABLE] It could be objected that other tribunals – like *Lauder v. Czech Republic* or *SGS v. Pakistan* – did not treat the waiting period requirement in the same way and interpreted it as a merely procedural requirement. However, findings of this tribunals are inapplicable because there was strong evidence that the negotiations with state would lead to no settlement.

[A: PERIODS] In the present case, although Claimant notified Respondent with a written application for amicable settlement [11 September 2009] after the buy-out clause was invoked and the dispute crystalized [27 August 2009];

as could be inferred from § 14 of Uncontested facts Claimant submitted the dispute directly to the ICSID tribunal [28 October 2009] without waiting for six month for Respondents response as was obliged under Article 11 of the BIT.

Only two months expired, when the dispute was submitted to ICSID.

[C] Therefore, it can be concluded, that the jurisdiction of the tribunal is not established, if Claimant submits its claims before the end of the waiting period.