Symposium Introduction: Electricity/Energy Markets in Africa and their Intersections with International Economic Law

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Electricity market reform, primarily characterised by the unbundling of vertically integrated public utilities and the introduction of competition, has been the model recommended and hailed by industrialised economies. A number of African countries have indeed undergone some form of power sector unbundling, allowing competition to varying degrees. Electricity generation in Africa's power sector is the segment that has attracted the highest interest and participation by private sector players – enter the independent power producers (IPPs). In a number of countries, IPPs have taken a particular interest in investing in renewable energy technologies such as solar and wind. There are benefits that accrue from allowing private sector participation, ranging from attracting alternative costs of financing, to fostering innovation and increasing security of supply. In order to backstop certain risks in the power purchase

agreements (PPAs) that IPPs enter into with off-takers, African governments have often issued sovereign guarantees, also referred to as contingent liabilities, to make these projects bankable. Materialization of such contingent liabilities can, however, have far-reaching consequences for states, if not properly assessed and monitored, as illustrated in this symposium's first article.

With the marked increase in the number of IPPs, several African governments have in recent years, also began scrutinizing the cost of electricity supplied by these privately owned generators and the terms of the PPAs. In order to attract investors and make the projects bankable, these agreements typically adopt a take-or-pay model – the IPP is paid whether they generate electricity or not. This model proved to be a significant challenge for some power utilities following outbreak of the COVID-19 pandemic. Electricity demand reduced significantly owing to a slow-down in economic activities, from the imposition of lock-downs, curfews and other pandemic containment measures. This in turn resulted in a decline in revenues for power utilities – but no respite in their payment obligations under the PPAs, which remained constant. Countries like Kenya and Ghana have considered reviewing/re-negotiating existing PPAs. An assessment of the legal and strategic considerations of doing so should however take into account the possible implications of such actions, states' obligations under international investment treaties, and the potential for compensation claims in international arbitration. The second article explores the possible scenarios that could unfold.

But are there no alternative financing mechanisms available for Africa's renewable energy sector? The challenge of low electricity access/energy poverty is all-too-real and urgent action is required to address it. The challenge in attracting private investors to sub-Saharan Africa (SSA) is the risk profile of the region, which is often termed high risk. Could climate finance be a solution? The third article suggests that development finance sources could mobilise finance from private and commercial sources for climate action generally, and also to meet SSAs low carbon electrification agenda. Blended finance can be used to improve the risk-return of investments to make them more attractive to private investors and to finance capacity building initiatives. Then again, the investment funding gap is so large, the financing raised through these mechanisms would not be sufficient. Is the singular pursuit of an accelerated transition to low-carbon and fossil-free energy development therefore to be a

one-size-fits-all approach?

Where does a discussion on a just energy transition fit within this context? Whereas some countries on the continent have an electricity-generation deficit, others are said to be in surplus. The sensible thing to do, in that case, is to strengthen the capacity of countries to engage in cross-border power trade, so as to optimize the available power generation resources and in the process, also increase electricity access for the continent's citizens. And what exactly would that cross-border trade in electricity entail or look like? The fourth article indicates that there already exist Regional Economic Communities which have established five regional power pools on the continent, to facilitate regional power trade. The power infrastructure - transmission lines and associated infrastructure - necessary to facilitate this trade is however, either wholly lacking, or inadequate. Once again, infrastructure funding remains a challenge and innovative project structuring models will be required to attract investment, if the dream of a unified African electricity market is to become a reality.

The final article explores the prospects of increased intra-Africa trade with the coming into force of the African Continental Free Trade Area (AfCFTA), and what this means for CO2 and greenhouse gases (GHGs) emissions on the continent. It is inevitable that Africa's industrialisation will result in higher emissions, though in amounts still far lower than the highest emitters (the United States, Europe and China are collectively responsible for almost 80% of global GHG emissions). Clean hydrogen presents a significant economic opportunity for Africa to industrialise its economies at net-zero. Exploiting hydrogen can facilitate the creation of an industrial economy, that overtime, will provide clean, affordable and sustainable energy sources to power industries which will be the catalyst for real growth and prosperity, creating meaningful and sustainable jobs. Africa cannot afford to be left behind in the hydrogen economy!

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