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OWNERSHIP AND INEQUALITY: POLICY INTERVENTIONS IN SOUTH AFRICA AND POSSIBLE WAYS FORWARD

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Introduction

Ownership of assets, including land, businesses, stocks, bonds and cash, plays an integral role in determining economic inequality and distribution of wealth within a society. High levels of asset inequality have been linked with slower growth (Deininger & Olinto, 2000) and higher levels of political instability – though causality can run both ways. Asset inequality can also contribute to the intergenerational persistence of wealth inequalities (Bowles & Gintis, 2002).

Over recent decades, research has shown that there has been both an increase in inequality and in the share of wealth held by the wealthiest in society (Piketty, 2014). Asset inequality is often particularly evident in the context of post-conflict, postcolonial and developing countries.

Various policies have been developed to deal with enhancing ownership equity and ownership dynamics, particularly in societies with high levels of inequality, or the historical dispossession of particular groups. While these policies typically span a range of assets, including land, this paper uses South Africa as a case study to discuss policies that have been designed to enhance ownership of firms and companies. This is done with a view to providing some suggestions for future options to enhance ownership diversity.

The paper first discusses ownership of firms in a South African context. It briefly looks at two types of policies that were developed to address diversity of firm and business ownership. They are legislation aimed at broad-based black economic empowerment (B-BBEE), and competition policy. The paper discusses some of the benefits, as well as challenges, experienced in implementation. It goes on to look at potential strategies to expand the breadth of ownership in South Africa, with a focus on worker ownership. The paper concludes by discussing the way forward.

The South African context

While there are different forms of wealth, including cash, land, housing and other property, and corporate equity, including shares of publicly traded funds, firm ownership typically plays a significant role in wealth composition. Equity and firm ownership are often more concentrated than other measures of wealth, including home ownership and income. South Africa is one of the most unequal societies in the world. As expected, the distribution of household wealth in South Africa is extremely skewed. A high proportion of wealth is held in business and company-related assets. This includes business assets, which make up 3.6% of total household assets, pensions and life insurance – unfortunately not disaggregated but which makes up 32.5% of assets and includes a proportion of stock-based holdings – and stocks and bonds, which is also not disaggregated but likely includes a high proportion of stocks (Chatterjee, Czajka & Gethin, 2020). Of this, the majority is held by the top 50% of the population, with higher proportions held by the wealthier. In particular, the top percentiles of the population hold the bulk of stocks and bonds (Chatterjee, Czajka & Gethin, 2020).

The distribution of wealth in South Africa suggests that a key factor to consider in policies to reduce inequality is how to expand ownership of businesses and shareholding to the broader population. This can be done on various levels. On one level, to expand the pool of business owners there needs to be consideration for expanding entrepreneurship and entry by new market participants. This is one of the arenas in which industrial policy and competition policy, as well as complementary policies such as targeted training, may play an important role. A second level is to expand the ownership of established businesses, including listed companies, to a wider range of participants.

While in many countries inequality typically has class dimensions, South Africa's post-apartheid context includes correlated racial dimensions. As such, policies focused on ownership distribution include those that focus on racial equity in ownership. Since democracy in 1994, South Africa has engaged in a series of policies and programmes to empower groups and individuals. These include policies focused on black economic empowerment (BEE) and other policies focused on ownership, such as competition policy. They have had some successes but also limitations. This paper discusses them next.

Black economic empowerment policies

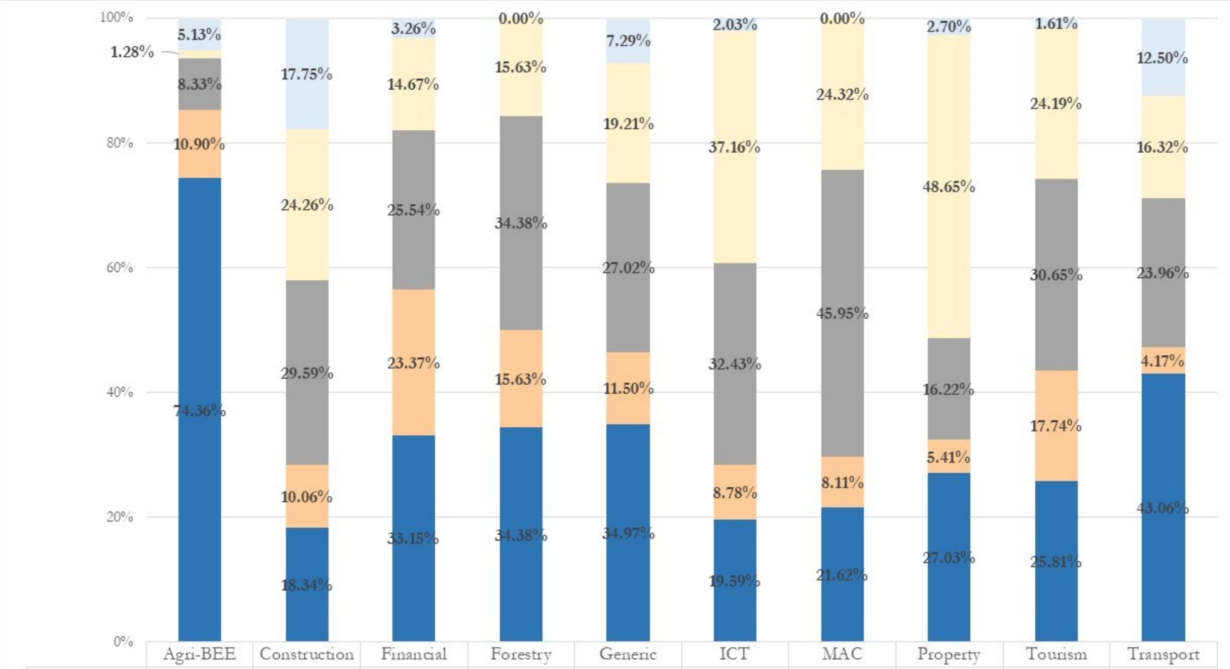
One of the objectives of the Reconstruction and Development Programme (RDP), launched by the first post-apartheid government, was democratisation of the economy through the deracialisation of business. It noted the following:

> The domination of business activities by white business and the exclusion of black people and women from the mainstream of economic activity are causes for great concern for the reconstruction and development process. A central objective of the RDP is to deracialise business ownership and control completely through focused policies of Black Economic Empowerment. These policies must aim to make it easier for black people to gain access to capital for business development. The democratic Government must ensure that no discrimination occurs in financial institutions. State and parastatal institutions will also provide capital for the attainment of BEE objectives. The democratic Government must also introduce tendering out procedures, which facilitate BEE. Special emphasis must also be placed on training, upgrading and real participation in ownership" (RDP 4.4.6.3, 1 March 1994).

In the initial post-1994 period, several transactions were undertaken to enhance black ownership, largely on an ad hoc and bilateral basis, outside of a specific framework (Deininger & Olinto, 2000). BEE was later codified through the publication of the Broad-based Black Economic Empowerment (B-BBEE) strategy in 2003 which was followed by the B-BBEE Act, No. 53 of 2003. The implementation framework – the B-BEE Codes of Good Practice – was published in 2007. The codes had three components: ownership, employment equity, and preferential procurement. The Act was amended in 2014. In addition to the generic codes, ownership requirements are also governed by various sector codes. These sector codes typically contain more extensive empowerment targets than the generic codes. Sectors with their own codes include finance, forestry, property, tourism, construction, information communications technology (ICT), marketing, advertising and communication, and agriculture.

The generic BEE codes have five key elements used to develop a score. Of these weights, ownership comprises a 25, while the remainder is made up of other components. These include management control, skills development, enterprise development, supplier development, preferential procurement, and socio-economic development. As such, apart from direct ownership, preferential procurement is also used as a tool to stimulate black-owned businesses. Large enterprises, with a turnover over R50 million, and smaller enterprises are treated differently. For example, the new codes state that large enterprise entities must achieve a minimum of 40% of annual net value targets. For qualifying small enterprises, the priority elements also include ownership. An Intellidex (2015) report noted that from 2000 to 2015, the 100 largest companies' BEE deals in the Johannesburg Stock Exchange (JSE) generated R317 billion in value for beneficiaries. This ranged by industry from a low 1.8% of value as a percentage of market cap, to a more substantial 11.8% in mining. Furthermore, as of 2020, most sectors achieved the ownership targets except for agriculture. As shown in Graph 1, with the notable exception of agriculture, the level of black ownership in large companies in many sectors is not insignificant. However, it is still far from reflective of the demographics of the country. Furthermore, the technical rules related to ownership. For example, the principle of 'modified flowthrough' commonly used in determining empowerment recognises a company as 100% black-owned if there is participation of at least 51%, even just once, in the structure of a measured entity. This means that the actual level of broad-based black shareholding in practice may be even smaller.

Graph 1: Percentage of companies with different levels of black ownership by industry



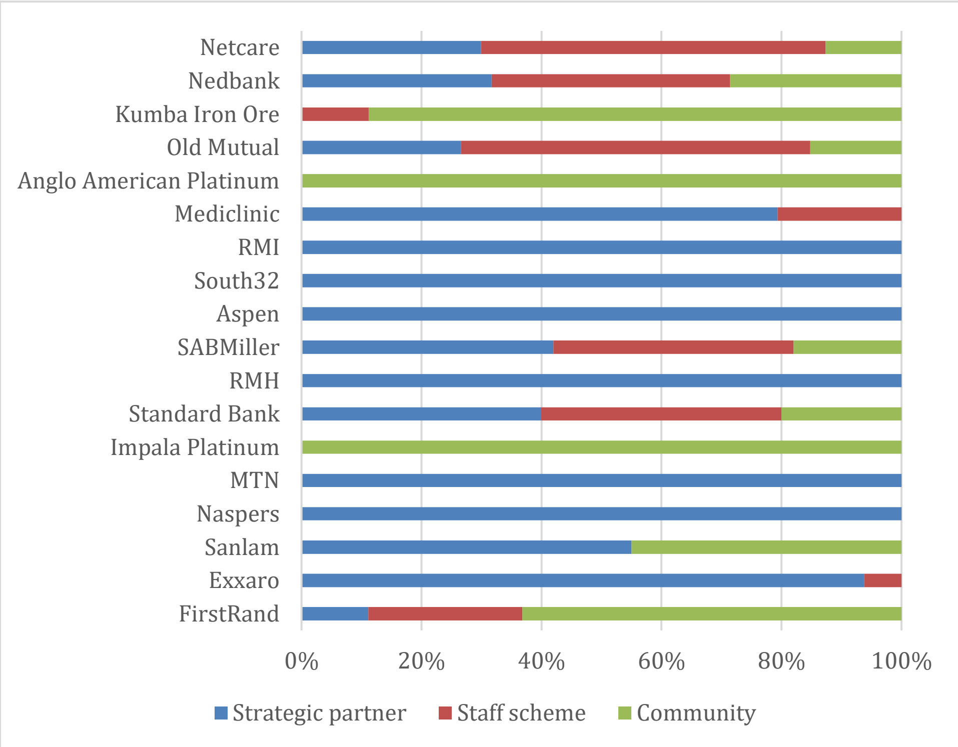
	Agri-BEE	Construction	Financial	Forestry	Generic	ICT	MAC	Property	Tourism	Transport
100%	5.13%	17.75%	3.26%	0.00%	7.29%	2.03%	0.00%	2.70%	1.61%	12.50%
51% < 100%	1.28%	24.26%	14.67%	15.63%	19.21%	37.16%	24.32%	48.65%	24.19%	16.32%
25% < 51%	8.33%	29.59%	25.54%	34.38%	27.02%	32.43%	45.95%	16.22%	30.65%	23.96%
10% <25%	10.90%	10.06%	23.37%	15.63%	11.50%	8.78%	8.11%	5.41%	17.74%	4.17%
0%<10%	74.36%	18.34%	33.15%	34.38%	34.97%	19.59%	21.62%	27.03%	25.81%	43.06%

Source: Reproduced by the authors from B-BBEE Commission, National Status and Trends on Broad-based Black Economic Empowerment, 10 June 2020

Besides the initial question as to the extent to which BEE policies have developed black ownership in South Africa, there are also questions as to the distributional effects of BEE, and the extent to which there is a concentration within the BEE shareholding as opposed to a broader base. Several BEE deals are with strategic investors, including individuals and investment houses, who often own multiple investments. Others are more broad-based with community and staff components. For example, in the Intellidex study, 16% of BEE shares were to staff schemes, 22% to broad-based community schemes, and 62% to "strategic investment partners".

With regard to the 20 largest deals by value between 2000 and 2015, five of them were with strategic partners alone, and nine had staff schemes. This has likely changed over time as company deals matured and new schemes were developed. Furthermore, strategic partners may include investment vehicles that benefit a broader base. However, a few large BEE investment groups still hold substantial amounts of the BEE shareholding.

Graph 2: Distribution of BEE ownership by owner type for 20 largest deals 2015–2020



Source: Data from Intellidex 2015, The Value of BEE Deals, Intellidex Research Report, available at https://www.intellidex.co.za/reports/the-value-of-bee-deals/

There were mixed structures in listed companies that announced BEE transactions in 2020 and 2021. However, several recent large transactions are still fairly limited in reach. Balwins Property, for example, is engaging in a deal to sell 10% of the company to a special purpose vehicle. The vehicle is 51% held by a single individual with sector expertise; 24% is likely to be held by an individual black female, and the remaining percentage is available for youth. As such, a large proportion of the deal is concentrated in a few individuals (Engineering News, 2021). Dis-Chem's founding family has announced it is selling 10% of the company in BEE transactions to two consortia (JSE SENS, 2021).

However, the majority of this (6.63%) is to Royal Bafokeng Holdings which has a range of large investments across the economy. As important, their proceeds benefit the Royal Bafokeng community. This deal does not have any component for the community at large, or for general workers, though a sizeable proportion will also be sold to senior executives. In contrast, other recent deals have been more focused on broader-based holdings and employees. For example, while the details of a second empowerment deal in the banking sector by ABSA for up to 8% of shares have not been released, initial statements note it will include employees across the group. In 2020, Momentum Metropolitan Holdings Limited announced a 3% deal to benefit permanent employees. There is criticism that, at least in the first decade after apartheid ended, black economic empowerment was narrow and focused more on elite partners as opposed to the broader population, including workers (Acemoglu, Gelb and Robinson, 2007). Subsequent iterations of BEE policies and scorecards have focused more on broad-based empowerment. There has been a greater emphasis on factors beyond ownership that potentially have broader reach, such as skills development programmes and procurement. However, absent from this emphasis is a focus on broad-based schemes. Elite ownership of companies in the economy may assist in deracialising the economy, and strategic investors may have a bigger voice in the direction of the company. While important, it does not go far enough in reducing asset inequality. Considering ways to enhance broad-based ownership of the economy is still important and relevant. Inclusion of employees can be a means to enhance this broader ownership. This will be discussed further in this paper.

Competition policy

Studies have shown a link between the distribution of ownership, market power and inequality. A key reason for this is that increases in market power led to increased rents to companies. They also lead to a decline in the surplus to consumers who are paying higher prices. Where consumers also have shareholdings in companies, there could potentially be a neutral impact if the losses to consumption are regained through profits from their shareholding. However, in practice the distribution of product consumers and the distribution of ownership are typically different. Wealthier individuals comprise a higher level of company shareholdings than they do of common consumption bundles. This may be particularly true in instances where historical factors have led to high levels of asymmetry in capital holdings across groups. This allows the distribution of shareholding to be skewed relative to the population.

A second strand of policy that impacts on ownership is competition policy. The basis for much competition policy and assessment relates to understanding the effects of changes of ownership and control on concentration and competition in the market. Competition policy traditionally impacts ownership in a range of ways, including by:

- regulating mergers that increase concentration in ownership.
- engaging in market studies that also would typically look at barriers to entry for new market participants.
- assessing and penalising large firms for exclusionary behaviour that impacts on smaller firms' entry or expansion in the market and thereby maintain concentration.

In South Africa, competition policy was actively developed to address concentration with a view to redressing the past. The preamble to the Competition Act notes, firstly, that apartheid and discrimination in the past have led to excessive concentration of ownership and control, and secondly, that the economy must be open to greater ownership by a greater number of South Africans. It also explicitly notes a balance of the interests of workers, owners and consumers, and is focused on development. As such, competition policy in South Africa has broader objectives than many other jurisdictions. This is clear throughout the Competition Act. For example, in South African competition law, regulation over ownership is engaged in through approval of mergers and acquisitions. This enables oversight to prevent unnecessary concentration of the economy.

The South African Competition Act allows for public interest considerations to be weighed up in instances in which there is public benefit to an otherwise uncompetitive merger. However, this is within the confines of specifically defined competition markets rather than the economy as a whole. Furthermore, recent amendments to the Competition Act have been made to enhance scrutiny of dominant firms' behaviour towards smaller companies, particularly those owned by historically disadvantaged individuals (HDIs). These amendments include prohibiting a dominant firm in designated sectors from treating small and medium businesses, or businesses owned by historically disadvantaged persons, in an unfair manner. This includes providing unfair prices or trading conditions.

The provisions regarding a dominant firm's price discrimination have been amended. Provisions now prohibit price discrimination in instances that impede small and medium businesses and firms controlled, or owned, by HDIs. These provisions are novel internationally. While they have not yet been tested in legal proceedings, they hold promise for creating a fairer playing field for new entry by smaller businesses, potentially stimulating competition and entrepreneurship.

In addition to formal competition decisions, certain mergers in recent years have also resulted in settlements with the Department of Trade, Industry and Competition (dtic). This has been done to allay concerns over the public interest effect of mergers on imperatives such as employment and economic empowerment, and on smaller suppliers.

By its very nature, competition policy seeks to prevent concentration of the economy. However, this is the case within a relevant product market. It does not consider an aggregation of ownership that involves corporate entities with market power in a range of different markets, and how this inhibits entry and growth of smaller participants. Neither does it consider the quantum of value beneficial owners hold in aggregate. However, in recent years, South Africa's competition authorities have considered less conventional ways concerning ownership.

BEE and ownership considerations in mergers

A merger in South Africa is considered regarding its effect on substantially lessening or preventing competition. If it does impact on competition, the next stages are to determine whether there is a technology, efficiency, or pro-competitive offset gain. It is also necessary to consider whether the merger should be justified or prohibited on public interest grounds. These include the:

- effect on an industrial sector or region;
- effect on employment;
- ability of small and medium businesses, or those owned by historically disadvantaged persons, to enter into, participate in, or expand in the market;
- ability to compete in international markets; and
- promotion of a greater spread of ownership, in particular to increase the levels of ownership by historically disadvantaged persons and workers in firms in the market.

There are two public interest considerations in a merger that are directly linked to promoting a greater spread in ownership. These clauses were amended and added to in 2018 but have not yet been tested extensively. This compares with other public interest justifications, such as employment, which have been more commonly used. However, the amendment was relevant in a recent case: the proposed acquisition by investment company ECP Africa Fund of Burger King (South Africa) and Grand Foods Meat Plant. Prior to the acquisition, Burger King SA was 68% owned by historically disadvantaged shareholders. The proposed 68% acquisition by international investors ultimately would lead to eliminating the shareholding of historically disadvantaged individuals. On this basis, the Competition Commission disallowed the merger even though the change in ownership would have no impact on competition. The prohibition appears aligned with public interest considerations. Enhancing ownership diversity in South Africa is a key policy objective; allowing the sale would dilute this. Furthermore, prohibition would encourage companies purchasing other companies to do so by entering partnerships with HDIs that will ultimately increase ownership diversity. However, this is not straightforward when viewed from the HDI owners' perspective.

A key issue is that where a black individual owns shares in a company they would be disadvantaged if they unable to realise their investment potential by limiting their sales to other black companies. This would reduce demand and effectively remove their ability to sell to international investors. In turn, restricting their disposal to a smaller pool of investors would likely reduce the monetary value of their shares. Furthermore, it would in many ways create an uneven playing field. For example, in the instance of two otherwise identical entrepreneurs, one of whom was classified as an HDI and the other not, the result may be that the value realised on the sale of the business by the black entrepreneur would be more limited than the non-black entrepreneur. This is because the HDI owner would only be able to sell to sellers with similar BEE credentials. This raises a question: Should such provisions apply more broadly? If yes, is competition policy the correct vehicle?

Would it be more appropriate to have general reform to the BEE codes to achieve a more consistent impact across the sector? As such, there are some questions as to whether competition authorities engaging on issues of ownership in this manner is constructive. Or might it actually be destructive of the value of ownership – ultimately impacting the same individuals the policy seeks to empower? In the case of Burger King, a settlement was arrived at in conjunction with the dtic. The settlement included:

- investment expansion commitments;
- increased number of outlets;
- increased number of permanent employees;
- supply commitments relating to local procurement; and
- a commitment to an employee-share ownership programme.

Each of these components is beneficial to society and useful to the public interest. But there is a question about whether this inadvertently raises the cost of doing business with companies with existing HDI shareholding relative to those without. What would this mean regarding the implications discussed earlier? A careful weighing up is required. The competition authorities need to make a judgment call that ultimately impacts on the shape of business and trade. Consideration of BEE in mergers is important. But there are questions as to how best to implement the law, so it is truly empowering in the long run and does not have unintended negative consequences. Going forward, unless more of an effort is made to promote broader BEE ownership, there are likely to be increased questions on the impact on competition of transactions where BEE consortia have investments across different asset bases. There is a concern in economies with limited large institutional investors that are concentrated in ownership. The concern is whether common ownership and interlocking directorships will have dampening effects on competition in particular sectors. This can be a result of facilitating tacit collusion,

or conscious parallelism, or by changing the incentives to compete. As such, the absence of broader efforts at expanding ownership could potentially result in further concentration of ownership of the South African economy.

This economy, which has historically rested in the hands of a few listed conglomerates, will potentially continue with additional conglomerates developing. While this does not appear to be an issue at present, it is something to be borne in mind if the goal is ultimately to deconcentrate the economy and not simply to deracialise it.

Conditions on international mergers

The Minister of Trade, Industry and Competition has intervened in various international mergers based on public interest considerations. This has typically occurred in instances where there were negligible competition impacts.

Notable examples include the merger between Walmart and Massmart;[1] the merger between AB InBev and SABMiller[2] and SAB Coca Cola, and the merger between Simba and Pioneer Foods. Some of the public interest conditions focused on broadening ownership in the economy through supplier and industry development schemes. In the conditions agreed in the most recent merger there was a strong focus on ownership with a B-BBEE condition designed to create worker ownership through a trust for 12.9% of the equity of Pioneer. This trust would not be encumbered and not funded through loans.[3] Table 1 summarises the aforementioned mergers.

[1] Competition Tribunal of South Africa, Reasons for Decision LM/73/Dec10 http://www.saflii.org/za/cases/ZACT/2011/42.html

[2] Competition Tribunal of South Africa, Reasons for Decision LM/211/Jan16 http://www.saflii.org/za/cases/ZACT/2011/42.html

[3] Competition Tribunal of South Africa, Reasons for Decision LM/108/Sept19 https://www.comptrib.co.za/open-file?FileId=52189

Table 1: Summary of impacts of three mergers considered by the Competition Tribunal

	Walmart/Massmart	AB InBev/SABMiller	Simba/Pioneer Foods
Industrial development/investment			
Investment			R5.5bn investment overall; R1bn in Pioneer
Supply chain development and local procurement	R100m	Yes	Yes
Enterprise development		R200m	R100m
Agricultural development		R610m	R300m
Social development			
South African societal benefits		R190m	R600m and R200m in education
Employment			
Moratorium on retrenchments	Yes (2 years)	Yes (5 years)	Yes (5 years)
Job creation commitment			500 jobs created
Ownership			
Worker ownership and B-BBEE			Increase to 12.9%
Worker appointment of director to board			Yes

Source: Author's own from Competition Tribunal Decisions cited above

Table 1 shows that the interventions have created some ad hoc industrial development and ownership benefits. However, this is not systematic. It only applies to specific circumstances in which there is a large international merger that results in a negotiated settlement with the government. It is therefore very limited and specific. As discussed, a key concern would be the impact of specific interventions in companies facing merger proceedings as opposed to more consistent policies being applied to a sector at large, and the gaps this would create in broadening ownership.

This does not mean competition policy should not play a role in ownership diversity. Well-implemented competition policy, through enforcement of statutes prohibiting abuse of dominance and exertion of market power, plays an integral role in reducing new entrants' barriers. It enhances diversity through creating a level playing field for entry.

This may be insufficient. Complementary interventions in areas such as financing and business development may be required. Regardless, well-enforced competition policy is essential.

Is shared ownership a way forward?

There are several considerations for how to increase broader ownership. One way is incentivising worker ownership and, in the case of resource-based companies, such as mining and certain types of tourism, extending ownership stakes to the surrounding community.

Given that worker ownership relates to employees, and that there is typically limited overlap in employment across firms, this immediately forces a more diverse shareholding across the economy. From a developmental perspective this can contribute to a reduction in inequality and more broadly-based wealth distribution. However, there are also market-based arguments for worker ownership. These include staff incentives, inducing loyalty or worker lock-in, and reducing asymmetries in information between workers and staff. Various research studies suggest that productivity and performance measures are higher for firms with profit-sharing and employee stock ownership than for comparable companies (Blasi et al, 2017). This paper proposes that incentivising worker ownership be considered in the context of ownership discussions.

Next the paper considers some of the models used for worker ownership and worker control in companies that have been and can be used internationally. This is followed by a discussion of worker ownership in South Africa.

Models for worker ownership

Worker ownership typically refers to models in which workers in a company have some stake in its ownership. There are two key elements considered in ownership. Firstly, control, including the right to hire and dismiss directors, and secondly, the distribution of residual earnings (Hansman, 1990). Worker ownership models vary.

They range from labour-managed firms or co-operatives to models where employees have a share in a company co-owned by non-worker shareholders. Some of the common models of ownership presently used include the following (Toscanol, 1983):

Co-operative ownership

In this model, labour has the controlling rights in a firm. The residual earnings from the firm are distributed based on labour input as opposed to capital contribution. This model is also termed labour-managed firms. The typical labour-managed firm as defined by the International Co-operative Alliance is based on seven principles, namely:

1. voluntary and open membership;
2. democratic member control;
3. member economic participation;
4. autonomy and independence;
5. education, training and information;
6. cooperation among cooperatives; and
7. concern for the community.

Partnerships and professional corporations common in service firms and the professions are also typically a form of worker co-operatives (Hansman, 1990).

Trust ownership and share vehicles

A second structure to provide employee shares is through employee ownership trusts (EOTs) or share plans through a separate legal entity or vehicle. EOTs hold shares for and on behalf of employees in the company. As a legal structure in the UK, EOTs have favourable tax incentives. A trust or separate legal structure can also be employee share option plans (ESOPs). ESOPs are plans or schemes to make it possible for workers to invest in their own company's stock. ESOPs can vary in structure and flexibility. They also vary in the extent to which workers share in the company – from employees owning the majority of a firms' stock to ones in which they own a small proportion. This means the firm is ultimately investor-owned but workers are beneficially compensated.

Funding for ESOPs typically can come from three sources:

1. employee funds, such as payroll deductions, bonus deductions and profit sharing plans;
2. employer contributions; and
3. external loans.

These can, for example, be structured so that dividends pay off the loan and the portion paid off is credited to employees (Gates & Saghir, 1995).

Direct ownership

Employees can be provided with direct ownership through individual employee stock ownership. In the US, this can be structured through a retirement plan in which employees make pre-tax contributions from their pay that are often matched by the firm. Employees receive beneficial shares in their own individual retirement account. When they leave or retire they are paid out the value of those shares (Freeman, Blasi, & Kruse, 2010). Sometimes firms subsidise employee stock purchase plans on offer. This can include, for example, share or stock options conditional on performance. A variation is profit-sharing. This allows employees a share of the company's profits without having ownership. There is also gain sharing in which workers are offered payment on the performance of work units.

Shared control

A second aspect of shared ownership relates to control of companies. This provides workers with a greater stake in the direction the firm takes and in the firms' decisions. The benefits of shared control include that decisions that contribute to inequality, such as exploitation of labour and extractive business decisions, can be addressed through worker representation at management and board levels. Examples include labour representation on boards of firms, and workers electing directors or representatives to boards.

Co-determination is another route with shared control. It typically means employees participate in regulation of working conditions, economic planning and decision-making. A key example is in Germany where co-determination is enshrined in law. If a company has more than five employees, the employees can elect works councils to represent their interests. In companies with over 500 employees, the employees are entitled to elect representatives to the board of directors (Page, 2018). The aim is to create a system with greater equality in capital and work, dialogue, consideration of social development, and control of economic power. This occurs at both the individual establishment level as well as at company and group level. Co-determination with Works Councils includes rights regarding social matters, such as working times and the provision of social facilities. It also includes rights concerning human resources, such as dismissals; and rights concerning economic planning, including information on mergers, shutting down of branches, and changes in location. At the supervisory board level, large companies require employee representatives at board level. This ranges from one-third for companies with more than 500 employees to half the board for companies with over 2 000 employees (Heiner, 2007). The European Union has employee representation for 18 out of 25 countries.

Existing policy tools used internationally

A key question is: How is greater worker ownership to be encouraged? The options include legislation mandating worker ownership in some form, and creating incentivisation. Given the benefits of worker ownership, various countries have created incentives for worker-owned businesses, including tax incentives, subsidies and preferential procurement.

Tax incentives

Several countries have tax incentives for employee stock ownership plans (ESOPs), including the United States and United Kingdom. In the US, for example, company contributions to ESOPs are tax-deductible. The income of an ESOP fund is tax exempt and there is deferred tax on distributions. Likewise, in the UK the disposal of shares to an EOT is exempt from capital gains tax as long as the trust is subject to certain conditions relating to fairness. Furthermore, EOTs can pay tax-free bonuses up to an annual threshold (Martin & Nutall, 2014).

Government subsidies and preferential policies

Various governments provide subsidies or preferential policies to stimulate employee ownership. For example, Italy subsidises worker co-operatives through tax exemptions and special credits. It grants construction co-operatives preferential treatment when they bid for government work. Government subsidies for ESOPs have also been used as instruments of privatisation. Examples include incentives in countries such as Jamaica, Chile, Poland, Hungary and Russia (Gates & Saghir, 1995).

However, more radical suggestions for enhancing worker ownership have recently been posited. In recent election cycles in the US and the UK, several candidates proposed policies to support worker ownership through mandatory employee ownership trusts for companies of a certain size. These models are based on the Meidner Plan, a plan which was developed but not implemented in Sweden in the mid-1970s, in which wage earners' funds were proposed. Companies would be required to pay share levies that would be used to issue share capital as a

percentage of profits. This would be housed in a fund that would be used to maintain investment. Up to 20% of returns would be used for social purposes. After this, they would be transferred to fund boards appointed and managed for public purposes. The purpose was to move from income distribution to asset distribution. This was watered down to use as a payroll tax. The scheme was wound up when a new government came in (Guinan, undated).

The Labour Party in the UK under Jeremy Corbyn developed an inclusive ownership funds proposal. This scheme would have any company with 250 or more employees create an inclusive ownership fund (IOF). This would require a donation of at least 1% of ownership each year into the IOF, up to a maximum of 10%. Dividend payouts would be at a flat rate to all employees up to a maximum of 500 British pounds each year, the remainder being used as a social dividend for public services and to reduce inequality.

In his campaign for nomination as the Democratic Party's 2020 US presidential candidate, Senator Bernie Sanders proposed a very similar structure. It would provide for publicly traded companies to provide 2% of stock to workers every year until 20% is owned by employees. The workers' share was to be overseen by a democratic employee ownership fund under a board of trustees elected by the workforce. As equal partners, employees would have guaranteed payment. They would have the right to control of 45% of the seats on the boards of large firms (Bernie Sanders, election isues). His rival in the hustings for nomination, Senator Elizabeth Warren, had similar proposals, including 40% of directors being elected by workers for companies with over US$1billion in revenue.

The entry of the gig economy has also led to discussions over fairer ways to benefit workers using new forms of ownership as countervailing tools. The introduction of Assembly Bill 5 in California would extend labour protection to independent contractors. It has increased civil society discussions over what has been termed a Co-operative Economy Act. They propose that structures termed co-operative labour contractors are created as an intermediary between employees and gig companies. The benefit would include negotiating power, ensuring a fair review and evaluation system, and transparent methods for communications (Herrera, Justie & Koonse, 2020).

In South Africa, the Department of Trade, Industry and Competition has attempted to incentivise worker ownership. The Companies Amendment Act Bill 2021 Background and Rationale note that the government is still looking to address the issue of worker representation on company boards, and that it will be dealt with in a future bill (Dept. of Trade, Industry & Competition).

As such, various formulations exist for incentivising or mandating worker ownership within countries. However, mandatory worker ownership is being further discussed. There is the potential for introducing new structures into the digital economy as it develops.

Considerations going forward for South Africa

In the context of post-Covid-19 reconstruction, as well as the disruptions to business due to digitalisation and the advent of platforms and the gig economy, there are new opportunities for considering ownership expansion to a wider cross-section of society. This can occur through large policy interventions or on a narrower basis with interventions focused on particular groups of workers or individuals. Worker ownership is one method to increase asset distribution that is typically broad-based. It has benefits for workers as well as companies and is widely being considered in policy discussions locally and internationally. When large companies incentivise worker ownership there are two approaches: 'the carrot' of favourable incentives, such as BEE points or tax incentives, and 'the stick' which is mandated by legislation where non-compliance can be penalised. Mandatory requirements for worker ownership can be crafted through various means, including amending company laws, or situating it within the larger BEE framework. Choosing which structure to have requires careful consideration.

One option is separate legislation that runs parallel to the codes. Another option is a reassessment of the codes and the weighting that maintains the incentivisation in the BEE framework. As BEE scores impact on procurement both with the state and private companies, this may provide an incentive to broaden ownership from a business perspective. Additional points within existing BEE codes could be assigned for ownership shares for workers. A change to BEE codes and levels may meet with some pushback from companies already engaged in transactions with strategic partners or the community but which have not incorporated workers into their structures. An alternative is a separate scale with its own reporting requirements that fall under another legislative framework. However, an additional structure with different requirements could be duplicative from an administrative perspective. This option should be carefully structured to ensure it is streamlined and effective. The efficacy of this type of legislated intervention will also differ based on the requirements. Some questions to consider include:

- What should the requirements of the financing structure of the worker ownership shares be?
- Should the framework be prescriptive regarding the extent to which shares are dividend-financed, financed through other means, or unencumbered? Highly leveraged shares dependent on dividend stream will have a longer timeframe for creating value for workers.
- Should there be any specification on lock-in periods?
- Should there be specifications on the type of vehicle used, for example a trust or direct shareholding?
- Will this be a once-off requirement under a similar principle to 'once empowered, always empowered'? Or would it require a continual shareholding by current workers?
- What about when workers retire?

While are often decided on a company-by-company or case-by-case basis, engaging in a mandatory framework requires deep thinking on these issues so that the framework is crafted in a beneficial manner. There are also several questions from a political economy perspective. For example, how should the workers' trust or share be managed? What is the role of trade unions? Is ownership sufficient if it is passive, or is a share in control also required?

Another alternative is creating strong incentives for companies to engage in employee share schemes on an entirely voluntary basis. This could, for example, be through clearly outlined tax incentive schemes which allow for subsidisation of shares for workers to be tax deductible. However, this needs to be carefully calibrated and considered. It should not end up subsidising companies and wealthier workers – for example, through share options for senior executives – at the expense of tax funded services to the poor.

Thinking about ways to incentivise worker ownership for different types of companies outside of standard large listed companies may also hold promise. For example, incentives for retiring sole proprietors or family businesses to sell to staff. An example would be through reductions in capital gains taxes. This approach may also assist in devolving ownership in different types of businesses.

Worker representation on company boards is also being considered from a government perspective. The impact of worker representation on businesses could potentially have interesting effects on distribution of the surplus as well as workers' engagement in the company's strategy and growth plans.

Competition policy should consider the impact of mergers on ownership – including worker ownership – and it should be seen as a positive public benefit. However, this benefit is limited and patchy in comparison to steadier sector-wide reforms.

Other policy areas include how to try to shape emerging sectors. Platforms that utilise workers as independent providers, such as delivery or transport apps, use the services of a range of small businesses. Co-operatives between these small businesses may be a way to harness the benefits of the gig economy. At the same time, they could be creating a structure that increases their bargaining power. They could negotiate for additional benefits of scale, such as group vehicle insurance deals. This may go some way to protecting workers in an environment of limited labour protection. Similarly, encouraging co-operatives may benefit the informal sector so that small business owners are able to combine and build scale.

Conclusion

South Africa has various policies that impact on ownership diversity, enhanced equity, and which provide a broader spread of ownership. However, there are challenges in the extent to which existing policies have led to ownership diversity that is truly broad-based. Going forward, policy should focus on types of ownership interventions that will spread ownership gains to diverse groupings, such as workers and communities.

Worker ownership is a useful tool. It can be mandated. But this may raise some complexity in an environment of existing BEE codes and overlapping legislation. Businesses that have already complied with BEE codes at some cost might push back. An alternative may be reshaping BEE codes to enhance the weight on worker ownership.

Softer touch regulation in the form of tax incentives should be considered, particularly where it may create real incentives for groups less compliant with BEE codes to share in ownership. An example here is family businesses. Alternative policies, such as competition policy, have a role to play but are likely to have a more dispersed effect than sector-wide policies.

Going forward, disruptions as a result of digitalisation and Covid-19 may mean there is scope for the introduction of new forms of ownership, such as co-operatives incorporating gig economy workers or informal workers.

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