

**Response to the CPSS and IOSCO's Consultative
Report of *Recovery and Resolution of Financial
Market Infrastructures* from Financial Competitive
Regime Perspective**

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- 1. All views in this submission are presented on behalf on the writer, and may not necessarily be construed as those of the People's Bank of China.**
- 2. For the writing tradition and reading convenience, this paper is drafted in English and Chinese. The meaning shall be construed as the same.**

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September 2012

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从金融竞争制度视角评述国际支付结算体系委员会
和国际证监会组织技术委员会联合公布的《金融市场
基础设施恢复和处置》征求意见稿

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- 1、 本文仅代表作者个人观点，并不必然代表中国人民银行观点。
- 2、 考虑到行文传统和阅读方便，文章以英文和中文书写，核心内容一致。

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I. General Comments

Dear Sir or Madam:

I welcome the opportunity to provide comments on the July 2012 consultative report on *Recovery and resolution of financial market infrastructures* by CPSS and IOSCO.

In contemplating the Financial Crisis, the international communities have reached many conclusions. The CPSS and IOSCO's consultative report of *Recovery and resolution of financial market infrastructures* will play an important role for banking supervisory system. However, unfortunately it should be perceived that the consultative report neither pays enough attention to the value of Financial Competitive Regime (FCR), nor considers broadly the relationship between the competition and the banking supervision.

This comment integrating FCR is submitted along with relevant suggestions and important events on Chinese FCR. It is hopeful that the Basel Committee and IOSCO can consider them in issuing the final document of *Recovery and resolution of financial market infrastructures*.

II. Introduction

1. Footnote 3, “(i) fair and open access by market participants....”
 - 1.1 **Comment:** Access grants participants the privilege to enter the financial market for competition.

III. Relationship and continuity between the Key Attributes and the Principles – main observations

2. Paragraph 2.2, “... to wind down its operations in an orderly manner.”
 - 2.1 **Comment:** Winding down the operation means exit gradually.
3. Paragraph 2.7, “Because the traditional bankruptcy process does not have the preservation of financial stability as an objective.... it is necessary to also have a resolution regime.”
 - 3.1 **Comment:** Even though there is the flaw in bankruptcy process as above mentioned, enforcing resolution regime should avoid distorting the competition in financial sector.

IV. Recovery and resolution approaches for different types of FMI

4. Paragraph 3.12, “... an auction process....”

4.1 **Comment:** Engaging an auction process should prevent the anticompetitive activities, such as bid rigging.

V. Important interpretations of the Key Attributes when applied to FMIs

5. Paragraph 4.17, “... acquisition....”

5. 1 **Comment:** Acquisition may result in high concentration, because it will reduce competition. In order to ensure a level playing field, acquisition should be subject to anti-monopoly review.

VI. Cooperation and coordination among relevant authorities (Key Attributes 7, 8 and 9)

6. Paragraph 5.2, “... market regulators....”

6.1 **Comment:** The market regulators include competition authorities, financial supervisors and etc.

VII. Conclusions

7. “It is vital that very robust arrangements exist for the recovery of FMIs and, if that fails, for their resolution.”

7.1 **Comment 1:** FCR should be viewed as an innovative arrangement.

7.2 **Comment 2:** To a large extent, future financial supervision should focus more on the recovery and resolution of systemically important financial instrument from financial anti-monopoly perspective. For example, London Interbank Offered Rate, a key component in the FMIs, was manipulated by a dozen international financial institutions, which results in the collapse of this globally used rate. Traditional Libor mechanism can’t function properly any more, and its recovery or resolution will affect the integrity and trust for the financial industry. Now Libor is still under anti-monopoly investigation by authorities from U.S., U.K., Swiss, Canada, Japan and EU.

8. “... for cooperation and coordination among authorities”

8.1 **Comment:** Authorities should include financial supervisors and competitive regulators.

VIII. Annex: Applicability of the Key Attributes to FMIs

9. Paragraph 2.3, “Objectives of a resolution authority”, (i) “pursue financial stability and ensure continuity of systemically important financial services”

9.1 **Comment:** Preserving a sound competition plays a critical role for the sustainable financial industry.

9.2 **Amendment:** “pursue financial stability, ensure continuity of systemically important financial services and **preserve a sound competition**”

10. Paragraph 2.3, “Objectives of a resolution authority”, (ii) “protect depositors, insurance policy holders and investors”

10.1 **Comment:** Protecting the financial consumers by ensuring the competitions is a global trend.

10.2 **Amendment:** “protect depositors, insurance policy holders, investors and **financial consumers**”

11. There are four objectives for a resolution authority in the annex.

In addition, to foster the competitive environment should be added as the fifth objective.

11.1 **Addition:** “foster a globally competitive environment”

12. Paragraph 11.3, “complexity, interconnectedness, level of substitutability and size”

12.1 **Comment:** Complexity, interconnectedness, level of substitutability and size are four factors related to the competition in financial market.

IV. Important Events about Financial Competition Regime in China

Chinese FCR, originating from the financial anti-trust, is composed of financial anti-monopoly, financial consumer protection¹, financial competitive supervision, financial competitive ecology and financial security strategy defense system.²

Ms. Mingxian Ge and Zhen Li initially introduced the conception of the financial anti-monopoly in the context of the Creative Function of the People's Bank of China in 2006.³ Zhen Li, working as the secretary for Deputy Yang Xiaoping of the 11th NPC, helped Mr. Yang propose protecting the financial consumers by analyzing the effect arising from high concentration in Chinese banking sector over the financial consumers during the first session of the 11th NPC in March 2008. This milestone is the first proposal relating to the financial consumer protection submitted to NPC in history. Zhen Li helped Mr. Yang proposed innovatively setting up the financial

¹ Because of the separate supervision model arising from the People's Bank of China, China Banking Regulatory Commission, China Securities Regulatory Commission and China Insurance Regulatory Commission, Chinese financial consumers are composed of banking consumers, security investors and insurance consumers. The coordination and cooperation mechanism between the financial supervisors plays a key role for the financial consumer protection.

² Zhen Li, "Establishing Wenzhou financial zone to explore a path to Chinese financial reform", the Study Times affiliated with the Party School of the Communist Party of China Central Committee, April 9, 2012. Available at: http://www.studytimes.com.cn:9999/epaper/xsb/html/2012/04/09/01/01_40.htm

³ Ge Mingxian and Li Zhen, "A First Exploration of China's Antitrust Regulations: A Discussion of the Creative Function of the People's Bank of China", *East Asia Law Review*, Volume 2, Issue 1.

competitive supervision during the second session of the 11th NPC in March 2009.⁴

Zhen Li submitted one proposal on establishing the FCR to the national decision makers in December 2010.⁵ Finance is the lifeline of the national economy, modern economy is institutional one, and sufficient and effective financial market competition will play a significant role in fulfilling national strategies such as containing inflation, transforming the mode of economic growth, macroprudential supervision, job creation and stepping out. In conclusion, in the coming economic development of the twelfth Five-Year Plan period, the FCR should be established as soon as possible. After three months, “The National Economic and Social Development Twelfth Five-Year Plan Compendium” was promulgated. The compendium adopts Zhen Li’s opinion and states the strategic principle of **Enhancing the Competition to Promote the Development**.

In March 2011, the fourth session of the 11th NPC was convened in

⁴ Yang Xiaoping, “Learning from the Financial Crisis, and Improving the Financial Competitive Supervision”, Available at: http://www.pbc.gov.cn/publish/redianzhuanli/1094/2009/20090706164513821618023/20090706164513821618023_.html

⁵ Zhen Li, “Enhancing the Financial Competition to Promote the Scientific Development in the 12th Five-Year National Plan”, *China Economic Herald*, December 21, 2010. Available at: http://www.ceh.com.cn:8080/epaper/ceh/20101221/B05/B05_56.htm

Beijing. During the period, Zhen Li helped Mr. Yang Xiaoping propose setting up Financial Competitive Regime. In the proposal Mr. Yang analyzed values of the FCR on Chinese economic development, suggested to amend the legal framework of the FCR, and sketched the new framework for the executive mechanism of the FCR.⁶

National People's Congress of China, an official journal of National People's Congress, published an article on "Establishing Financial Competitive Regime and Protecting Financial Consumers" in November 2011. This indicates China's supreme legislature recognizes the value of financial competitive regime for the first in the history.⁷

The 4th National Financial Work Conference was convened in China on January 6th, 2012. Premier Wen Jiabao attended and announced to reform financial institutions deeply and to break the monopoly effectively.⁸ In fact, financial anti-monopoly is the core value of the financial competitive regime.

⁶ Yang Xiaoping, "Proposal on Establishing Financial Competitive Regime", *Financial News*, March 11, 2011. Ou Yang and Dong Xiao, "Financial Representatives of NPC & CPPCC Discuss Over Domestic Issues", *Financial Analyst*, March 2011.

⁷ "Establishing Financial Competitive Regime and Protecting Financial Consumer", *National People's Congress of China*, issue 19, November 2011. Available at:

http://www.npc.gov.cn/npc/zgrdzz/2011-10/27/content_1677259.htm

⁸ "The National Financial Work Conference was convened in Beijing". Please visit China government website. Available at: http://www.gov.cn/lhd/2012-01/07/content_2038988.htm

On March 28th 2012 China State Council approved Wenzhou financial reform zone. From April 1st to 3rd Chinese Premier Wen Jiabao conducted a field research in Fujian province and emphasized **the Central Committee of the Communist Party of China and Central Government have already reached consensus over breaking the monopoly in financial sector**. In essence, the Wenzhou financial reform program encourages private capital into the financial sector with the ultimate intent to unprecedentedly break up bank monopoly by enforcing financial antimonopoly policy.⁹

On September 17th 2012, the People's Bank of China promulgated "The Financial Industry Development and Reform Twelfth Five-Year Plan" compiled by the PBC, the CBRC, the CSRC, the CIRC and the SAFE.¹⁰ Competition is emphasized and appears 16 times, which fully embodies the strategic principle of **Enhancing the Competition to Promote the Development**.

⁹ Zhen Li, "Establishing Wenzhou financial zone to explore a path to Chinese financial reform", the Study Times affiliated with the Party School of the Communist Party of China Central Committee, April 9, 2012. Available at: http://www.studytimes.com.cn:9999/epaper/xxsb/html/2012/04/09/01/01_40.htm

¹⁰ "The Financial Industry Development and Reform Twelfth Five-Year Plan", Available at: http://www.pbc.gov.cn/publish/goutongjiaoliu/524/2012/20120917155836347504341/20120917155836347504341_.html

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Committee, April 9, 2012. Available at:

http://www.studytimes.com.cn:9999/epaper/xxsb/html/2012/04/09/01/01_40.htm

一、总评

尊敬的女士和先生：

非常感谢有机会就国际支付结算体系委员会和国际证监会组织技术委员会 2012 年 7 月公布的《金融市场基础设施恢复和处置（“Recovery and resolution of financial market infrastructures”）》征求意见稿进行评论。

在深刻反思此轮金融危机后，国际社会达成了诸多共识。国际支付结算体系委员会和国际证监会组织技术委员会公布的《金融市场基础设施恢复和处置》征求意见稿将对银行监管体系发挥重要作用。但遗憾的是，该征求意见稿既未充分地关注金融竞争制度的重要作用，也未广泛地考虑金融市场竞争与银行监管的密切关系。

本评论从金融竞争制度的视角就征求意见稿的相关内容提出建议，并简要介绍了中国金融竞争制度重要事件。希望巴塞尔银行委员会和国际证监会组织在最终颁布的《金融市场基础设施恢复和处置》文本中能够采纳。

二、介绍

1. 脚注 3, “(1) 市场参与者公平公开的准入……”

1.1 评论: 准入赋予了参与者进入市场参与竞争的权利。

三、关键属性及原则的关系和持续性—主要观测

2. 第 2.2 段，“……以有序的方法逐步停止业务”

2.1 评论：逐步停业意味着退出市场。

3. 第 2.7 段，“因为传统破产程序没有将维护金融稳定作为一项目标……，具备处置制度很必要”

3.1 评论：尽管破产程序有以上所述的不足，但是实施处置制度应当避免扭曲金融市场竞争。

四、不同种类金融市场基础设施的恢复和处置途径

4. 第 3.12 段，“……拍卖程序……”

4.1 评论：实施拍卖程序应防止反竞争行为，例如操纵投标。

五、实施于金融市场基础设施关键属性的重要解释

5. 第 4.17 段，“……收购……”

5.1 评论：收购将减少竞争，导致高度集中。为了确保公平的竞争平台，收购应经过反垄断审查。

六、相关当局间的合作和协调（关键属性 7、8 和 9）

6. 第 5.2 段，“……市场规制者……”

6.1 评论：市场规制者包括竞争当局，金融监管部门以及其它。

七、结论

7. “存在金融市场基础设施复苏的健全制度安排非常重要。如果复苏失败，处置措施则非常关键。”

7.1 评论 1：金融竞争制度应当被视为一种创新的制度安排。

7.2 评论 2：在很大程度上，未来的金融监管应当从金融反垄断的角度更多地关注于系统重要性金融工具的复苏和处置。例如，作为金融市场基础设施重要组成部分的伦敦同业拆借利率被十余家国际金融机构操纵，导致了此全球性利率的彻底崩溃。传统的伦敦同业拆借利率机制不能再正常运行，其恢复或者处置将影响金融业的声誉和信任。目前，伦敦同业拆借利率正在接受来自美国、英国、瑞士、加拿大、日本和欧盟当局的反垄断调查。

8 “……当局间的合作和协调”

8.1 评论：当局应当包括金融监管部门和竞争当局。

八、附件：金融市场基础设施关键属性的可行性

9. 第 2.3 段，“处置当局的目标”，(1) “追求金融稳定，确保系统重要性金融服务的持续性”

9.1 评论：维持良性竞争对于可持续金融产业将发挥重要作用。

9.2 修改：“追求金融稳定，确保系统重要性金融服务的持续，维持良性竞争。”

10. 第 2.3 段，“处置当局的目标”，(2) “保护存款人、保险人和投资者”

10.1 评论：通过确保竞争来保护金融消费者是全球的趋势

10.2 修改：“保护存款人、保险人、投资者和金融消费者”

11. 在附件中处置当局有四项目标。此外，培育竞争环境应当增加作为第五项目标。

11.1 增加：“培育全球性的竞争环境”

12. 第 11.3 段，“复杂性、关联度、可替代水平和规模”

12.1 评论：复杂性、关联度、可替代水平和规模是关于金融市场竞争的四项要素。

九、中国金融竞争制度重要事件

中国的金融竞争制度起源于金融反托拉斯，其由金融反垄断、金融消费者保护¹¹、金融竞争性监管、金融竞争生态和金融安全战略防御体系等组成。¹²

2006 年，葛明欢女士和李震以人民银行职能创新为背景首次提出了金融反垄断概念。¹³ 2008 年 3 月，作为第十一届全国人大代表杨小平先生的秘书，李震协助杨先生通过分析中国银行市场的高度集中对金融消费者产生的影响，向十一届全国人大一次会议提出了保护金融消费者权的建议。这份具有里程碑意义的建议是全国人大历史上第一份有关金融消费者保护的建议。2009 年 3 月，李震协助杨先生向十一届全国人大二次会议建议创新地建立金融竞争性监管。¹⁴

2010 年 12 月，李震向国家决策层提交了建立金融竞争制度的建议。金融是经济的命脉，现代经济又是制度经济，而充分且有效的金融竞争对于遏制通货膨胀、转变经济发展方式、实施宏

¹¹ 在中国，由于“一行三会”的分业监管模式，金融消费者实际上包括了银行消费者、证券投资者和保险消费者等三个部分。监管部门之间的协调合作机制对于金融消费者保护至关重要。

¹² 李震，“设立温州金融试验区为金融改革探路”，载于《中共中央党校学习时报》，2012 年 4 月 9 日，第 1 版。网址：http://www.studytimes.com.cn:9999/epaper/xxsb/html/2012/04/09/01/01_40.htm

¹³ 葛明欢、李震，“中国金融反垄断规制初探——兼论中国人民银行职能创新”，载于《东亚法律评论》，第二卷第 1 期。

¹⁴ 杨小平，“反思金融危机 完善竞争性监管”，网址：http://www.pbc.gov.cn/publish/redianzhuanti/1094/2009/20090706164513821618023/20090706164513821618023_.html

观审慎监管、增加就业、执行“走出去”等国家战略有着不可或缺的重要作用。所以，在经济发展的第十二个五年规划阶段，应尽快考虑建立金融竞争制度。¹⁵ 三个月后，《国民经济和社会发展规划第十二个五年规划纲要》出台，《规划纲要》采纳了李震的观点，明确了“以竞争促发展”的战略准则。

2011年3月，十一届全国人大四次会议在北京召开。其间，李震协助杨先生提出了建立金融竞争制度的建议。杨先生在建议中分析了金融竞争制度对于中国经济发展的现实价值，建议修改金融竞争制度的法制框架，并勾勒了金融竞争制度执法机制的框架。¹⁶

2011年10月，《中国人大》杂志（2011年第19期）登载了“建立金融竞争制度 保障金融消费者权益”一文，标志着金融竞争制度在历史上首次得到中国最高立法当局的认可。¹⁷

2012年1月6日，中国召开了第四次全国金融工作会议。温家宝总理出席并宣称，“深化金融机构改革……切实打破垄断”。¹⁸ 事实上，金融反垄断是金融竞争制度的核心价值所在。

¹⁵ 李震，“以金融竞争促‘十二五’科学发展”，载于《中国经济导报》，2010年12月21日，B05。网址：http://www.ceh.com.cn:8080/epaper/ceh/20101221/B05/B05_56.htm

¹⁶ 杨小平，“关于建立金融竞争制度的建议”，载于《金融时报》，2011年3月11日。

欧阳、冬晓，“金融界部分两会代表委员为‘十二五’建言献策”，载于《中国金融家》，2011年3月，第3期。

¹⁷ “建立金融竞争制度 保障金融消费者权益”，载于《中国人大》杂志，2011年10月，第19期。网址：http://www.npc.gov.cn/npc/zgrdzz/2011-10/27/content_1677259.htm

¹⁸ “全国金融工作会议在京召开”。网址：http://www.gov.cn/jdhd/2012-01/07/content_2038988.htm

2012年3月28日，中国国务院批准温州金融综合改革试验区。4月1日至3日，温家宝总理在福建省调研时强调，中央已经统一思想要打破金融垄断。本质上看，温州金融改革计划鼓励民间资本进入金融领域，其最终目标就是通过实施金融反垄断政策来史无前例地打破银行垄断。¹⁹

2012年9月17日，中国人民银行对外发布了与中国银行业监督管理委员会、中国证券监督管理委员会、中国保险监督管理委员会和国家外汇管理局共同编制的《金融业发展和改革“十二五”规划》。²⁰ “竞争”字样在《规划》中出现了十六次，充分体现了“以竞争促发展”的战略原则。

¹⁹ 李震，“设立温州金融试验区为金融改革探路”，载于《中共中央党校学习时报》，2012年4月9日，第1版。网址：http://www.studytimes.com.cn:9999/epaper/xxsb/html/2012/04/09/01/01_40.htm

²⁰ “《金融业发展和改革“十二五”规划》发布”，网址：http://www.pbc.gov.cn/publish/goutongjiaoliu/524/2012/20120917155836347504341/20120917155836347504341_.html

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