

**Response to the Basel Committee's Consultative
Document of *A framework for dealing with domestic
systemically important banks* from Financial
Competitive Regime Perspective**

Zhen Li*

Kunming Sub-branch of the People's Bank of China

- 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.**

For further information, please contact the author freely:

Business Telephone: 0086 871 3212220

Mobile Telephone: 0086 15987109277

Email: leezeng1220@gmail.com

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* Zhen Li is an economic analyst and attorney

从金融竞争制度视角评述巴塞尔银行委员会公布的 《国内系统性重要银行处理框架》征求意见稿

李 震*

【中国人民银行昆明中心支行】

- 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。

联系方式如下：

工作电话：0086 871 3212220

移动电话：0086 15987109277

电子信箱：leezeng1220@gmail.com

二〇一二年 八月

* 李震是经济师、律师

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I. General Comments

Dear Sir or Madam:

I welcome the opportunity to provide comments on the June 2012 consultative document on *A framework for dealing with domestic systemically important banks* issued by the Basel Committee.

In contemplating the Financial Crisis, the international communities have reached many conclusions. The Basel committee's consultative document of *A framework for dealing with domestic systemically important banks* will play an important role for banking supervisory system. However, unfortunately it should be perceived that the proposal 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 some key facts about Chinese FCR. It is hopeful that the Basel Committee can consider them in issuing the final document of *A framework for dealing with domestic systemically important banks*.

II. Introduction

1. Paragraph 2, "...the failure ... of ... global financial institutions".

1.1 **Comment:** The failure of global financial institutions should be regulated by enforcing bankruptcy rule or state aid code, but these measures will substantially lessen the competition in banking sector.

2. Paragraph 2, "...government guarantee... create competitive distortions".

2.1 **Comment:** Government guarantee, one of state aid forms, will distort the market competition. Effective and efficient enforcing FCR may mostly avoid distortion of competition.

3. Paragraph 3, "D-SIBs".

3.1 **Comment:** Dealing with D-SIBs will confront the "too-big-to-fail" question, which can be effectively settled by enforcing FCR, because FCR covers an entry, exit and market conduct in the financial market.

4. Paragraph 5, "...promotes a level-playing field".

4.1 **Comment:** The goal to promote a level-playing field should

5. Paragraph 7, “...more intensive supervision”.

5.1 **Comment:** In the context of financial crisis, financial competitive supervision, focusing on preserving the competition, is an innovative approach complementary to risk based supervision.

III. The Principles

6. Principle 1

- 6.1 **Comment:** National authorities can lock the range of D-SIBs by assessing the degree of concentration of banking sector, because high level of concentration arising from high market share can lead to high systemic risk.

7. Principle 2, “the potential impact of ... a bank’s failure”.

- 7.1 **Comment:** The failure of a bank affects both on financial competition and on financial consumers.

8. Principle 5, “...factors: (a), (b), (c) and (d)”.

- 8.1 **Comment:** All of the above factors are the dictators for the condition of competition in the financial sector. Please see *“Response to the Financial Stability Board's Consultative Document of Effective Resolution of Systemically Important Financial Institutions from Financial Competitive Regime Perspective”*.¹

¹ Zhen Li, “Response to the Financial Stability Board's Consultative Document of Effective Resolution of Systemically Important Financial Institutions from Financial Competitive Regime Perspective”, September 2011. Available at: http://www.financialstabilityboard.org/press/c_110909fff.pdf

9. Principle 5, “...other measures....”

9.1 **Comment:** Enforcing FCR belongs to other measures.

10. Principle 7, “National authorities....”

10.1 **Comment:** National authorities include financial supervisors and competition regulators. In practice, the mechanism for these authorities to cooperate and coordinate plays a critical role in the jurisdiction.

11. Paragraph 25, “...important structural changes....”

11.1 **Comment:** If the market structure changes significantly, financial anti-monopoly review is the key to maintain the effective competition in the banking sector. A merger of major banks is taken as an example in paragraph 25. In market economy, in order to avoid distortion of competition, the banks merger should pass the financial antimonopoly review.²

12. Paragraph 31, “...the degree of concentration in the banking sector....”

12.1 **Comment:** The goal to measure the degree of concentration in the banking sector is to judge the condition of competition.

² Zhen Li, “Optimizing Chinese Anti-Monopoly Law in Financial Industry-Lessons from Lloyds Banking Group Merger and Acquisition”, *Financial and Economic Law Review*, No. 21, June 2010: 93-103

The higher the level of concentration, the more likely D-SIBs will occur. For example, Chinese banking market is dominated by the banks of ICBC, ABC, BOC and CCB, whose comparative advantage arise from the government support. The degree of concentration in banking sector is relatively high. As a result, if Chinese authorities put forward the D-SIBs list, these banks will inevitably be named.

13. Paragraph 38, “...applying the D-SIB framework... will help ensure a level playing field....”

13.1 **Comment:** In addition, enforcing FCR will contribute to preserving a level playing field.

14. Paragraph 42, “...resolution strategies....”

14.1 **Comment:** Resolution strategies will potentially affect the competition in financial market. Orderly resolution, such as a healthier bank merges the failing bank³, can eliminate the competition in banking sector. As a result, the resolution mechanism forms an integral part of FCR.

³ Zhen Li, “Optimizing Chinese Anti-Monopoly Law in Financial Industry-Lessons from Lloyds Banking Group Merger and Acquisition”, *Financial and Economic Law Review*, No. 21, June 2010: 93-103

IV. Key Facts about Financial Competition Regime in China

Zhen Li submitted one proposal on establishing the FCR to the national decision makers in December 2010.⁴ 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 11th NPC was convened in Beijing. During the period, Zhen Li helped Deputy Mr. Yang

⁴ 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

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.⁵

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.⁶

The 4th National Financial Work Conference was convened on January 6th 2012 in China. Premier Wen Jiabao attended and announced to reform financial institutions deeply and to break the monopoly effectively.⁷ In fact, financial anti-monopoly is the core value of the financial competitive regime.

⁵ 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.

⁶ “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

⁷ “The National Financial Work Conference was convened in Beijing”. Please visit China government website. Available at: http://www.gov.cn/ldhd/2012-01/07/content_2038988.htm

On 28th March 2012 China State Council approved Wenzhou financial reform zone. From on 1st April through 3rd April 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.⁸

⁸ 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

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http://www.ceh.com.cn:8080/epaper/ceh/20101221/B05/B05_56.htm
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12. “The National Financial Work Conference was convened in Beijing”. Available at: http://www.gov.cn/ldhd/2012-01/07/content_2038988.htm

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一、总 评

尊敬的女士和先生：

非常感谢有机会就巴塞尔银行委员会 2012 年 6 月公布的《国内系统性重要银行处理框架（“A framework for dealing with domestic systemically important banks”）》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。巴塞尔委员会公布的《国内系统性重要银行处理框架》将对银行监管体系发挥重要作用。但遗憾的是，《国内系统性重要银行处理框架》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主要事件。希望巴塞尔银行委员会在最终颁布的《国内系统性重要银行处理框架》中能够采纳。

二、介 绍

1. 第 2 段，“全球性金融机构……的失败”。

1.1 评论：全球性大型金融机构的失败应当通过执行破产规定或者国家救助规则进行规范，但是这些措施将会巨大地减弱银行业市场竞争。

2. 第 2 段，“政府担保……产生扭曲”。

2.1 评论：作为国家援助形式之一的政府担保会扭曲市场竞争。切实实施金融竞争制度可以最大限度地避免扭曲竞争。

3. 第 3 段，“国内系统性重要银行”。

3.1 评论：处理国内系统性重要银行将会面临“大而不倒”问题，其可通过实施金融竞争制度有效解决，因为金融竞争制度覆盖了金融市场的准入、退出和行为。

4. 第 5 段，“……促进公平竞争”。

4.1 评论：促进公平竞争的目标应通过有效实施金融竞争制度来实现。

5. 第 7 段，“……更加严格的监管”。

5.1 评论：金融危机之下，专注于确保竞争的金融竞争性监管是

与风险监管互为补充的创新方式。

三、原 则

6. 原则 1

6.1 评论：国内当局可测评出银行业集中度来锁定国内系统性重要银行的范围。因为，源自于高市场份额的高度集中会导致高系统性风险。

7. 原则 2，“银行失败的潜在影响”。

7.1 评论：银行失败会对金融竞争和金融消费者产生影响。

8. 原则 5，“(a)、(b)、(c)、(d)等四要素”。

8.1 评论：以上这些要素都是金融市场竞争状况的指标。请阅“从金融竞争制度视角评述金融稳定理事会发布的《系统重要性金融机构有效处置》征求意见稿”。⁹

9. 原则 5，“其它措施”。

9.1 评论：实施金融竞争制度属于其它措施。

10. 原则 7，“国家行政部门”。

10.1 评论：“国家行政部门”应当包括金融监管机构和竞争当局。实践中，在管辖权范围内建立部门间的合作与协调机制至关重

⁹ 李震，“从金融竞争制度视角评述金融稳定理事会发布的《系统重要性金融机构有效处置》征求意见稿”，载于“金融稳定理事会”，2011 年 9 月。网址：http://www.financialstabilityboard.org/press/c_110909fff.pdf

要。

11. 第 25 段，“重要结构变化”。

11.1 评论：如果是市场结构发生重要变化，金融反垄断审查对于维护金融市场的有效竞争就显得非常关键。第 25 段所举例子是“主要银行并购”。在市场经济中，为避免竞争被扭曲，银行并购必须通过金融反垄断审查。¹⁰

12. 第 31 段，“银行业集中度”。

12.1 评论：测量银行业集中度的目的是判断银行市场竞争状况。集中度越高，国内系统性重要银行出现的可能性越大。例如，在中国银行市场中，工商银行、农业银行、中国银行、建设银行享有源自政府支持的竞争优势，占有绝对的市场份额，银行业集中度较高。所以，如果中国当局提出国内系统性重要银行名单，那么这些银行必名列其中。

13. 第 38 段，“实施国内系统性重要银行处理框架……将有助于确保公平竞争的平台”。

13.1 评论：此外，实施金融竞争制度有助于确保公平竞争平台。

14. 第 42 段，“处置战略”。

¹⁰ 李震，“完善中国大陆金融反垄断制度—劳埃德银行集团并购案启示”，载于《月旦财经法杂志》，2010 年 6 月，第二十一期，第 93 页。

14.1 评论：“处置战略”会潜在地影响金融市场竞争。例如健康银行合并失败银行的有序处置会减少银行业的竞争。¹¹ 所以，处置措施形成了金融竞争制度不可或缺的部分。

¹¹ 李震，“完善中国大陆金融反垄断制度—劳埃德银行集团并购案启示”，载于《月旦财经法杂志》，2010年6月，第二十一期，第93页。

四、中国金融竞争制度主要事件

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。¹² 三个月后，《国民经济和社会发展的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，李震协助杨小平代表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。¹³

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

¹² 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

¹³ 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。

融竞争制度在历史上首次得到中国最高立法当局的认可。¹⁴

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”。¹⁵ 事实上，金融反垄断是金融竞争制度的核心价值所在。

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。¹⁶

¹⁴ “建立金融竞争制度 保障金融消费者权益”，在于《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

¹⁵ “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

¹⁶ 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

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<http://www.iosco.org/library/pubdocs/pdf/IOSCOPD357.pdf>
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