

## Janusz Ordover, 1946-2021

02 November 2021 Alex Wilts



The antitrust community is mourning the loss of celebrated economist Janusz Ordover, who died on 30 October at the age of 75.

Ordover had a distinguished career in antitrust, serving as deputy assistant attorney general for economics in the Department of Justice's antitrust division during the George HW Bush administration. He was also a senior consultant at Compass Lexecon and an economics professor at New York University, where he had taught for several decades.

Born in Poland, Ordover received a degree from Warsaw University's department of political economy in 1966. After a year at McGill University in Montreal, Canada, Ordover came to the US in 1968 and received his PhD in economics from Columbia University in New York in 1973. He then began teaching at NYU.

In addition to his time at the DOJ, Ordover over the years advised the World Bank, the Organization for Economic Co-operation and Development, and the Inter-American Bank for Development on issues related to privatisation, regulation and competition policy.

Economists and lawyers who worked with Ordover described him as a brilliant thinker who helped transform competition policy. But they were also quick to discuss his kindness, wit and sense of humour.

"Janusz was a towering figure in antitrust and a delightful colleague," said Compass Lexecon senior consultant Richard Gilbert. "For all of us who knew Janusz, we will also remember him for his charming and unpretentious personality."

Jon Orszag, senior managing director at Compass Lexecon, said Ordover pushed the boundaries of economic thought with a level of wit and charm that few could match.

"His articles on vertical integration, predation, access to bottleneck facilities, and the nexus of competition policy and IP rights made significant contributions to our understanding of those issues," Orszag said, describing Ordover as "the dearest of friends and mentors".

“No words can describe how important he has been to my life and career,” Orszag said. “Janusz was the sweetest of humans with the kindest of hearts.”

While at the Antitrust Division from 1991 to 1992, Ordover was a member of the White House de-regulation task force, while also guiding economic analyses for antitrust cases and acting as a liaison between the DOJ and various regulatory agencies.

He also helped draft the 1992 Horizontal Merger Guidelines for the DOJ and Federal Trade Commission – which economist and Compass Lexecon senior consultant Daniel Rubinfeld called a “significant moment in antitrust enforcement”.

Ordover and economist Robert Willig “really took the lead on the economic side” for the 1992 guidelines, said Rubinfeld, who was also part of the NYU faculty with Ordover for the past 20 years.

The 1992 [guidelines](#) were the first to use the phrase “unilateral effects”, stating that these were possible when a significant share of sales in the market is “accounted for by consumers who regard the products of the merging firms as their first and second choices.” In 2003, Ordover helped found the economic consultancy Competition Policy Associates, which was called Compass. His consultancy later combined with Lexecon when it was acquired by the latter’s owner FTI Consulting in 2006.

Dennis Carlton, a senior managing director of Compass Lexecon, said he probably met Ordover more than 40 years ago when they were both young academics attending the same conferences.

“I was delighted when Lexecon and Compass joined forces so that we could be in the same economic consulting firm together,” Carlton said. “Janusz was welcoming to everyone and always had a funny story. He loved a good meal, but what I loved when I ate with him was his conversation and being in the presence of someone who instantly generated friendliness.”

Latham & Watkins partner Daniel Wall said Ordover “was one of a kind, combining a powerful intellect with a self-effacing and impish charm that endeared him to everyone”.

“His tangible contributions to the development of antitrust economics, in particular the 1992 Horizontal Merger Guidelines, changed the way we look at so much,” Wall said. “But Janusz will be remembered and missed for the man himself. He brought the light into every room he entered.”

Wall recently worked with Ordover on a case brought by travel agents seeking to unwind the [merger](#) between AMR Corporation and US Airways Group, which ultimately formed American Airlines Group. Latham & Watkins represented American Airlines and had retained Compass Lexecon to provide economic consulting. Following a trial in March 2019 – in which Ordover testified as an economic expert – the US Bankruptcy Court for the Southern District of New York [found](#) that the travel agents had failed to carry “their ultimate burden to show that the effect of the merger has been to substantially lessen competition”.

Michael Katz, a senior consultant with Compass Lexecon, said even Ordover’s expert reports “showed a level of humility not often seen in such documents”.

During his career, Ordover advised the governments of Poland, Czech Republic, Russia, Hungary, Argentina and others on regulation and competition matters, as well as on privatisation strategies.

He also assisted Sony and BMG on the merger of their music divisions; advised Coca-Cola in connection with the European Commission's investigation into its distribution practices; and helped MGM Mirage and Mandalay Resort Group in connection with their merger.

More recently, Ordover worked on Bayer's \$66 billion [acquisition](#) of Monsanto, for which he led the Compass Lexecon team providing economic advice and analysis on the deal in 2018. The transaction at the time involved the largest-ever merger divestiture negotiated by the US antitrust agencies

Daniel Swanson, a partner at Gibson Dunn & Crutcher, said he was "deeply fortunate" to have seen Ordover "in action in many antitrust matters of great moment and to have had the honour of putting him on the stand as an expert witness many times".

"Courts and juries responded well to him – they believed him not just because he was brilliant, though he was, but also because he was a genuinely kind, sincere person who believed in what he was saying," Swanson said.

Jan McDavid, senior counsel at Hogan Lovells, said Ordover was "indispensable" to many of the matters they handled together on behalf of clients, including for Carnival in its acquisition of P&O Princess Cruises in 2003, which at the time formed the world's largest cruise operator.

Christine Varney, who led the Antitrust Division during the Obama administration, said she had known Ordover for 20 years and that his work influenced the DOJ's thinking as it developed theories around merger enforcement while she was assistant attorney general.

There was “no one better in his field and certainly no one more kind and generous”, said Varney, who is now a partner at Cravath Swaine & Moore. She added that Ordover was “always pushing the edge” and was “always open to new things”.

Rachel Brandenburger, a senior adviser and foreign legal consultant to Hogan Lovells, called Ordover “a brilliant economist and a wonderful human being”.

That the European Commission invited Janusz to become its first chief economist – although he declined – shows that “he was held in the highest esteem across the Atlantic as well as in the US,” Brandenburger said.

Nicholas Levy, a partner at Cleary Gottlieb Steen & Hamilton in London, said he first worked with Ordover in 2001, “when he developed a novel vertical leveraging theory that helped persuade the European Commission to challenge the *General Electric/Honeywell* transaction.”

“Endlessly creative and huge fun, he was a giant among industrial economists,” Levy said. “Our world is a poorer one without him, but all the better for having had him among us for so long.”