

AS CHAIR OF THE FEDERAL TRADE COMMISSION—and later as Procter & Gamble’s Chief Legal Officer, President and Advisor to the CEO—Deborah Majoras served or worked with a variety of stakeholders: activist investors, angry consumers, the President of the United States, shareholders of the world’s largest multinational consumer goods company. Now a member of the boards of American Express, Valero Energy and Brunswick Group, Majoras also offers insight into the factors that contributed to her success.

Majoras shares lessons from those experiences in conversation with Brunswick Partner Stuart Hudson, previously Senior Director of Strategy at the UK Competition and Markets Authority and now co-lead of the firm’s regulatory practice.

What led you into law, then into government service, then the corporate world?

None of it was planned, except going into law and starting at the law firm. What came after was hard work that led to opportunities.

I was very happy as a young Partner at Jones Day, where I worked for a gentleman named Charles James, who was being tapped to run the Justice Department’s antitrust division. Charles James came to me and said he wanted me to go with him and be his deputy assistant attorney general.

My now-husband and I had just signed papers to buy a house, and my first thought was, “Oh, dear. How are we going to pay for this house?” But it’s not something you say no to. This would really be a fantastic experience.

DEBORAH

Majoras

The former Chair of the US Federal Trade Commission on the changing global landscape in antitrust, her experiences with activist investors at Procter & Gamble, and the personal values that helped lead to her success.

I had no political bonafides. I never liked politics very much. I went in as a real novice, which had its advantages because I learned a lot very quickly, in particular about going in to lead people who have been there and presumably know a lot more about what they’re doing than you do. Quickly I learned the best way is to listen carefully, roll up your sleeves and start working constructively with people. It was a great learning experience.

Then my boss left, and I was up for the job to run the Antitrust Division, as was one of my colleagues. Hew [Pate] got the job, which was extremely disappointing at the time, especially in a public position. It hurt. But the attorney general asked me to stay and work with Hew in my current role, which I agreed to. I’m so glad I did; it was one of the greatest years of my career. He and I are very close friends today.

The career lawyers and others appreciated that even with that disappointment I hung in there, they knew I was in it for the mission and not just myself. After that I left government to return to the firm. But a year later, White House personnel called to see if I would put myself in the running to be chairman of the Federal Trade Commission. I had just gone back to the law firm, I literally still had my boxes all packed. I said, “Sure, I’d like to be considered.”

I later learned that when White House personnel approached President Bush to propose my name for the role, they told him how I’d been passed over at the Justice Department and handled it without storming off in a huff. It was meaningful to all of them; they wanted people who really wanted to be part of this mission. This is something I’ve told young people

Majoras, FTC Chair at the time, speaks at a 2006 news conference.



for years, “You’re not going to get everything you want. Tough things will happen in your career. People won’t think poorly of you because of that. What they’ll judge is how you react to it.”

A big challenge in global M&A is getting a deal cleared by multiple antitrust authorities globally. How did you think about that when you were on the other side of the table, as an enforcer?

My very first trial-by-fire when I arrived at the Antitrust Division was a merger being reviewed on both sides of the pond: GE’s acquisition of Honeywell. Right away my new team said, “You need to go to Brussels and you need to talk to Mario Monti (then-European Commissioner) about why their theory is not a strong theory of antitrust.”

It was the first time that the US and the EC had had a big disagreement about a particular merger. Of course it didn’t help that it was two US companies. Ultimately, Mario and I became good friends, and he said to me later, “Ah, my dear Debbie, we have come so far since that first day when we were much more impressed with you than with your arguments.”

I did not succeed in that first assignment—the deal was challenged. But it set the US agencies and the European Commission on a pretty good path. We said, we may disagree, but we ought to at least know each other better, understand where we’re both coming from, and be able to work together so that we can minimize the times when we might be giving conflicting advice or have a conflict in who challenges what. We developed a strong relationship, we saw up close and personal what each of us thought.

Many business leaders see this challenge getting bigger over time, for example with my old agency, the UK CMA, sometimes reaching a different outcome than the European Commission.

These are difficult decisions for antitrust authorities to make, particularly in merger cases, because you’re predicting what might happen in the future, and predicting’s hard, especially in dynamic markets—so some disagreement is not surprising.

For example, even within the United States, the FTC and the DOJ antitrust division don’t always agree on an approach. You have an FTC with commissioners from two different parties and you get some disagreement there, not always along party lines. When I was at the Antitrust Division, where we were all from the same party, we had big disagreements sometimes, but we all had to come together eventually and say, “OK, everybody’s been heard. Here’s the decision we’re going to make.”

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Internationally, there are two things antitrust agencies can do, around consistency and certainty. The first thing is that when we’re thinking about the greater good, we all want healthy economies, so we need strong healthy companies in all of our countries. Regulators from country to country should try to work toward as much consistency as you can get, because it’s a world economy. So if agencies do reach different decisions on a case, it’s very healthy to have some after-action thinking to understand why that happened, and I expect that’s been going on in a deal like Microsoft/Activision.

The other thing I’ve learned over time is I believe companies can handle just about everything except uncertainty. If you tell a company—and I don’t think this is good for companies or the economy —“there’s no merger that’s getting through,” they’ll go spend their time on other things or develop products organically. But uncertainty is really hard to deal with, enforcers need to be as clear as possible on what their position is. And the courts have a really important role to play in reminding us what the precedent is, because it’s not just about how the enforcers think about it.

Given all that, what advice would you give to companies considering mergers, but are worried about the antitrust risk?

People have told me, “We may as well forget it, no merger’s getting through.” I tell them some mergers will get through. No agency has unlimited resources, and in the United States the agencies have chosen to focus on very public consumer products, technology products including social media, and healthcare. Those areas have proven to be pretty suspect in the eyes of these enforcers. But some deals can and will get through.

It’s always important to think through how far you would take it. If you got challenged, would you go to court and fight for it? The answer is typically no. But in this environment, if people really want to get something done, they have to put on their seat belts and be ready to litigate it.

After leaving the FTC, you joined P&G, where you tangled with shareholder activists. How did it feel to be in that fight and what did you learn from it?

We had two activist shareholders in our stock during the time that I was at P&G. Those were definitely difficult days. When I got there in 2008 the Great Recession was just coming on, and P&G didn’t fare particularly well in that. We weren’t in the doldrums,

but we weren't winning the way the company knew it was capable of.

We had to look ourselves in the mirror and figure out how to fix it.

The first activist, Bill Ackman from Pershing Square, directly attacked the CEO: He insisted the CEO was the problem and needed to go. There were moments I'd be home on the sofa rocking back and forth like, "Oh, my god." I had only been at P&G a few years then. So many people depended on this great company. Failure wasn't an option. What do you do? Ultimately, our CEO did leave, and our previous CEO came back.

In law school you take a corporations class and you learn who the general counsel really represents. It's not the CEO, it's not the board—it's the corporation. That's all well and good when you're taking the bar exam, but what does that really mean? It was not an easy time, but I sought advice from outside counsel to make sure that legally we were doing the right things.

I tried very hard to do my job for the CEO and be as supportive as possible, but we were also accountable to the board. And we're answerable to the shareholders so we had to think about where they were coming from, Bill Ackman being only one of them.

As chief legal officer, you're constantly asking: What's the right amount of independence?

You're part of the company, but from a judgment standpoint, you have to maintain a level of independence so you can help advise and make the right decisions. Regardless of whether the CEO left or not, the company was moving in the right direction. Then we ended up with a second activist.

In some ways that was a little easier, it didn't feel quite so personal (because the CEO was not being directly attacked), but it was difficult in that it resulted in a proxy contest.

When Nelson Peltz first came into the stock with Trian [Fund Management], we had investors telling us we couldn't just roll over, so we pushed back. But the board was not prepared to invite Nelson to join the board, so he launched the proxy contest.

It was expensive and time-consuming. We were zigzagging around the country meeting with investors, making our case. We would have days where it was three cities, three different investors, and they're all screaming at us, "You're Procter & Gamble. This performance is unacceptable. You need to do better."

We were hearing the message loud and clear while also trying to make our points about the things we'd changed—we really were just about to turn the corner.

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STUART HUDSON is a Brunswick Partner and co-lead of the firm's Global Regulatory Practice, based in London.

In the end, we didn't win and we didn't lose; the vote was basically a draw. The shareholders spoke. We negotiated for Nelson to come onto the board. Ultimately, we had a very constructive relationship. We're all friendly.

Our view was, "It's time to bring you on as one vote and move on together." By then, the company was starting to take off again and has done extremely well since.

[Trian's homepage includes a quote from David S. Taylor, Chairman, CEO and President of P&G from 2015 to 2021, saying, "From day one, Nelson has been a focused, collaborative member of P&G's Board. I'm grateful for his service and the collaborative partnership we've developed over the past few years..."]

Because of how it ended, people often ask me, "Was it worth it to spend that money and time?" Nobody wants a proxy contest. But we did succeed in making sure we were all on equal footing.

In those high-profile situations, how important is the relationship between legal and communications?

You have to designate a few people from the C-Suite to handle communications. In our case it was myself, our then-CFO (now CEO) Jon Moeller and our chief marketing and communications officer Marc Pritchard. That was also the case during the proxy contest. We worked together very closely. We all had a set of advisors: Jon had banks, Marc had a communications firm and I had outside counsel. But daily we were all on the phone together outside and inside making sure we stayed on the same page.

From a communications standpoint, it's important that you have communications professionals who know you and know the culture of your company. They need to really understand what the company wants, what the end game is and what's important reputationally. When this ends, where's your reputation going to be? You really have to guard and protect that.

I was very proud after we ended the proxy contest when someone I respect very much in the legal profession said, "We don't know what all went on behind the scenes, Debbie. I'm sure it was tough and ugly and exhausting. But from the outside looking in, P&G acted like you always do, professionally and gracefully and with the interests of the company at heart."

That was, for me, the ultimate compliment in what was a long and arduous process. ♦