IN THE MATTER OF

UBIKO MILLING COMPANY

COMPLAINT, SETTLEMENT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (a) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5972. Complaint, Mar. 24, 1952—Decision, Aug. 6, 1952

Where a corporation engaged in the manufacture and competitive interstate sale and distribution of animal feed products of various types, including both concentrate and complete feeds, under the trade name "Life Guard", which, during the year ending October 31, 1949, sold about 65,558 tons thereof, amounting to $4,150,000 in gross sales;

In selling its said feed products, primarily to retail dealers, in the area composed of Southern Ohio, West Virginia, Virginia, Western Pennsylvania, New Jersey, Kentucky, Tennessee, the two Carolinas, Georgia and Florida, through its so-called "Dealer Profit Selling Plan", pursuant to which it paid discounts, refunds or rebates automatically to dealers who qualified thereunder and who had not become delinquent in their payments during the twelve month period applicable thereto—

Discriminated in price between different purchasers by selling to some at higher prices than it sold products of like grade and quality to others actively engaged in competition with one another in their resale, through the use of a sliding scale pursuant to which annual purchases of a minimum of fifty to one hundred tons entitled a dealer to a discount of 50¢ a ton, and larger purchases ranging up to 500 tons or more entitled him to larger discounts up to $1.00 a ton;

Effect of which discriminations in price might be substantially to lessen competition or tend to create a monopoly in the line of commerce in which it was engaged and to injure, destroy and prevent competition between it and other manufacturers and sellers of animal feed products; and to injure, destroy and prevent competition between favored customers who received the benefits of such discriminations and competing dealer purchasers who did not receive such benefits:

Held, That such plans, acts and practices were in violation of the provisions of Sec. 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act.

Before *Mr. James A. Purcell*, hearing examiner.

Mr. Fletcher G. Cohn and *Mr. Robert F. Quinn* for the Commission.

Dinsmore, Shohl, Sawyer & Dinsmore, of Cincinnati, Ohio, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Antitrust Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission,

having reason to believe that the respondent named in the caption hereof, and hereinafter more particularly described, has violated, and is now violating, the provisions of section 2 (a) of said Act, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Ubiko Milling Company, hereinafter referred to as "respondent Ubiko Company," is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its offices and principal place of business located at 5216 Vine Street, Cincinnati, Ohio.

PAR. 2. The respondent Ubiko Company, for several years last past and more particularly since June 19, 1936, has been engaged, and is now engaged, in the manufacture, sale and distribution of animal feed products of various types, including both concentrate and complete feeds. Said animal feed products thus manufactured, sold and distributed by respondent are generally sold under trade name, and known as, "Life Guard" feeds.

During the year ending October 31, 1949, respondent sold approximately 65,558 tons of said feeds, primarily to retail dealers, which amounted to gross sales of $5,151,000. Respondent's feed is sold in the area comprised of Southern Ohio, West Virginia, Virginia, Western Pennsylvania, New Jersey, Kentucky, Tennessee, South Carolina, North Carolina, Georgia and Florida. Respondent does not maintain or operate any warehouses except at Cincinnati, Ohio.

Said respondent sells and distributes in commerce, as "commerce" is defined in the Clayton Antitrust Act, as amended by the Robinson-Patman Act, said animal feed products to retail dealers located in various States of the United States. Respondent causes said animal feed products, when sold, to be transported from its manufacturing plant or warehouse, each of which is located in Cincinnati, Ohio, across State lines to its dealer purchasers thereof, located in various States of the United States other than the State of Ohio, where such shipments originate. Respondent maintains, and has maintained during all the times mentioned herein, a course of trade in said products, in commerce between and among the several States of the United States.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent, particularly since June 19, 1936, has been engaged in substantial competition with other persons, partnerships, firms and corporations which likewise manufacture animal feed products and sell and seek to sell and distribute said products in commerce between and among the several States of the United States to retail feed dealers, except insofar as such competition has been, or may be, affected by the acts and practices hereinafter alleged.

PAR. 4. In the course and conduct of its business, as aforesaid, respondent, since some time prior to 1943, and particularly since 1947, has been, and is now, discriminating in price between different purchasers of its animal feed products of like grade and quality by selling such products to some of its purchasers at higher prices than it sells the said products of like grade and quality to others of its purchasers who are in competition one with the other in the sale of said products within the United States.

Some of the purchases, which were, and are, involved in such discriminations, were, and are, in commerce and the animal feed products so involved, were and are sold for use, consumption or resale within the United States.

PAR. 5. Among the aforesaid price discriminations are those which were, and are, accomplished by a plan instituted and used by respondent for some time prior to 1943, when it was temporarily discontinued, but which in its general tenets and outline was resumed in 1947, and which has been utilized continuously, and is now being utilized, by the respondent in the sale and distribution in the aforesaid commerce of respondent's animal feed products. The plan presently is known as the "Dealer Profit Sharing Plan."

The nature of said plan, especially since its resumption in 1947, is that some of respondent's dealers are paid by the respondent an annual discount, refund or rebate on their purchases of the respondent's aforesaid animal feed products made during a period of time extending from November 1 to October 31 of the following year. Such discount, refund or rebate is computed on the basis of the number of tons of "Life Guard" feeds purchased during the said period. There is a sliding scale whereby the rate of discount, refund or rebate per ton is proportionally higher according to the total tonnage of such feeds purchased during the aforesaid period. Any dealer who purchases 50 tons of said feeds and who also meets the requirement of maintaining a record of prompt cash payments for feeds purchased during the aforesaid period, receives from the respondent the minimum volume discount, refund or rebate of 50 cents per ton on all of his purchases of said feed from respondent during this period. If a dealer's purchases do not aggregate this required minimum during the aforesaid period of 50 tons or if he becomes delinquent in his payments during the period, he does not qualify for any discount, refund or rebate on his purchases regardless of the volume of same. Also, even though a dealer should promptly pay all of his purchases during the period, unless he has purchased 50 tons of said feeds during such period, he receives no discount, refund or rebate on his purchases.

Respondent's dealers who meet the requirements of maintaining a good record of prompt cash payments for feeds purchased during the said period, and who during said period also purchase more than the minimum requirement of 50 tons of said feeds, obtain discounts, refunds or rebates computed on the following schedule of purchases during the period:

Rebate per ton:	*Tons purchased per year*
50 cents per ton on	50 to 100 tons.
60 cents per ton on	100 to 200 tons.
70 cents per ton on	200 to 300 tons.
80 cents per ton on	300 to 400 tons.
90 cents per ton on	400 to 500 tons.
$1.00 per ton on	500 tons or more.

A discount, refund or rebate applies only on Ubiko manufactured feeds and is payable only on a full year's business; no discount, refund or rebate is payable on any part year. The discounts, refunds or rebates are paid automatically according to the aforesaid schedule as quickly as possible after November 1 of each annual period, without any further obligation or action by, or on behalf of such dealers.

During the annual period from November 1, 1948, to October 31, 1949, respondent granted discounts, refunds or rebates under the aforesaid plan in a total amount of approximately $40,722.87.

Respondent does not enter into any agreements with its animal feed dealers whereby said dealers are required to sell "Life Guard" feeds to the exclusion of competitive brands of feeds produced and sold by other manufacturers, and most of the dealers to whom respondent sells its animal feed products purchase and sell one or more competitive brands of such products.

PAR. 6. The effect of the discriminations in price, as alleged herein, and of any part or fraction thereof, may be substantially to lessen competition or tend to create a monopoly in the respondent in the line of commerce in which it has been and is now engaged, and to injure, destroy, or prevent competition between the respondent and other manufacturers and sellers of animal feed products, and in the line of commerce in which the customers of the respondent, their dealer purchasers, are engaged, may be to injure, destroy or prevent competition between those customers, who in purchasing respondent's products receive the benefits of such discriminations which respondent grants, as hereinbefore set forth, and those competing dealer purchasers from the respondent who do not receive such benefits.

PAR. 7. The foregoing described plan, acts and practices of respondent are in violation of the provisions of subsection (a) of section 2 of the Clayton Antitrust Act, as amended by the Robinson-Patman Act, approved June 19, 1936.

CONSENT SETTLEMENT [1]

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes, approved October 15, 1914 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission, on the 24th day of March 1952, issued and subsequently served its complaint on the respondent named in the caption herein, charging it with violation of subsection (a) of section 2 of the Clayton Act, as amended.

The respondent, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of answer to said complaint heretofore filed and which, upon acceptance by the Commission of this settlement, is to be withdrawn from the record, hereby:

1. Admits all of the jurisdictional allegations set forth in the complaint.

2. Consents that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondent, in consenting to the Commission's entry of said findings as to the facts, conclusions, and order to cease and desist, specifically refrains from admitting or denying that it has engaged in any of the acts or practices stated therein to be in violation of law or that such acts and practices, if engaged in, would be in violation of law.

3. Agrees that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful,

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[1] The Commission's "Notice of Acceptance of Consent Settlement and Order to File Report of Compliance", follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was on August 6, 1952, accepted by the Commission, subject only to the condition that the respondent comply with the requirements of the following paragraph with respect to the filing of a report showing the manner and form in which it has complied with the order to cease and desist; and subject to such condition said consent settlement was ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

It is accordingly ordered, That the respondent, Ubiko Milling Company, a corporation, shall within sixty (60) days after service upon it of this notice and order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in the consent settlement entered herein.

the conclusion based thereon, and the order to cease and desist, all of which respondent consents may be entered in final disposition of this proceeding, are as follows:

COMMISSION'S FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Ubiko Milling Company, hereinafter referred to as "respondent Ubiko Company," is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its offices and principal place of business located at 5216 Vine Street, Cincinnati, Ohio.

PAR. 2. The respondent Ubiko Company for several years last past and more particularly since June 19, 1936, has been engaged, and is now engaged, in the manufacture, sale and distribution of animal feed products of various types, including both concentrate and complete feeds. Said animal feed products thus manufactured, sold and distributed by respondent are generally sold under trade name, and known as "Life Guard" feeds.

During the year ending October 31, 1949, respondent sold approximately 65,558 tons of said feeds, primarily to retail dealers, which amount to gross sales of $4,151,000.00. Respondent's feed is sold in the area comprised of Southern Ohio, West Virginia, Virginia, Western Pennsylvania, New Jersey, Kentucky, Tennessee, South Carolina, North Carolina, Georgia and Florida. Respondent does not maintain or operate any warehouses except at Cincinnati, Ohio.

Said respondent sells and distributes in commerce, as "commerce" is defined in the Clayton Antitrust Act, as amended by the Robinson-Patman Act, said animal feed products to retail dealers located in various States of the United States. Respondent causes said animal feed products, when sold, to be transported from its manufacturing plant or warehouse, each of which is located in Cincinnati, Ohio, across State lines to its dealer purchasers thereof, located in various States of the United States other than the State of Ohio, where such shipments originate. Respondent maintains, and has maintained, during all the times mentioned herein, a course of trade in said products in commerce between and among the several States of the United States.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent, particularly since June 19, 1936, has been engaged in substantial competition with other persons, partnerships, firms and corporations which likewise manufacture animal feed products and sell and seek to sell and distribute said products in commerce between and among the several States of the United States to retail feed dealers,

except insofar as such competition may have been affected by the acts and practices hereinafter stated.

PAR. 4. In the course and conduct of its business, as aforementioned, respondent, since some time prior to 1943, and particularly since 1947, has been, and is now, discriminating in price between different purchasers of its animal feed products of like grade and quality by selling such products to some of its purchasers at higher prices than it sells the said products of like grade and quality to others of its purchasers who are in competition one with the other in the sale of said products within the United States.

Some of the purchases, which were, and are, involved in such discriminations, were, and are, in commerce and the animal feed products so involved, were and are sold for use, consumption or resale within the United States.

PAR. 5. The aforesaid price discriminations were, and are, accomplished by a plan instituted and used by respondent for some time prior to 1943, when it was temporarily discontinued, but which in its general tenets and outline was resumed in 1947, and which has been utilized continuously, and is now being utilized, by the respondent in the sale and distribution in the aforesaid commerce of respondent's animal feed products. The plan presently is known as the "Dealer Profit Sharing Plan."

The nature of said plan, especially since its resumption in 1947, is that some of respondent's dealers are paid by the respondent an annual discount, refund or rebate on their purchases of the respondent's aforesaid animal feed products made during a period of time extending from the date of the initial purchase by each of respondent's dealers to the same date one year thereafter. Such discount, refund or rebate is computed on the basis of the number of tons of "Life Guard" feeds purchased during the said period. There is a sliding scale whereby the rate of discount, refund or rebate per ton is proportionally higher according to the total tonnage of such feeds purchased during the aforesaid period. Any dealer who purchases 50 tons of said feeds and who also meets the requirement of maintaining a record of prompt cash payments for feeds purchased during the aforesaid period, receives from the respondent the minimum volume discount, refund or rebate of 50 cents per ton on all of his purchases of said feed from respondent during this period. If a dealer's purchases do not aggregate this required minimum during the aforesaid period of 50 tons or if he becomes delinquent in his payments during the period, he does not qualify for any discount, refund or rebate on his purchases regardless of the volume of same. Also, even though a dealer should promptly pay all of his purchases during the period, unless he has

purchased 50 tons of said feeds during such period, he receives no discount, refund or rebate on his purchases.

Respondent's dealers who meet the requirements of maintaining a good record of prompt cash payments for feeds purchased during the said period, and who, during said period also purchase more than the minimum requirement of 50 tons of said feeds, obtain the aforesaid discounts, refunds or rebates computed on the following schedule of purchases during the period:

Rebate per ton:	*Tons purchased per year*
50 cents per ton on	50 to 100 tns.
60 cents per ton on	100 to 200 tons.
70 cents per ton on	200 to 300 tons.
80 cents per ton on	300 to 400 tons.
90 cents per ton on	400 to 500 tons.
$1.00 per ton on	500 tons or more.

A discount, refund or rebate applies only on Ubiko manufactured feeds and is payable only on a full year's business; no discount, refund or rebate is payable on any part year. The discounts, refunds or rebates are paid automatically according to the aforementioned schedule as quickly as possible after the end of each respective dealer's annual period, without any further obligation or action by, or on behalf of such dealers.

During the annual period from November 1, 1948 to October 31, 1949, respondent granted discounts, refunds or rebates under the aforesaid plan in a total amount of approximately $40,722.87.

Respondent does not enter into any agreements with its animal feed dealers whereby said dealers are required to sell "Life Guard" feeds to the exclusion of competitive brands of feeds produced and sold by other manufacturers, and most of the dealers to whom respondent sells its animal feed products purchase and sell one or more competitive brands of such products.

PAR. 6. The effect of the discrimination in price, as stated herein, and of any part or fraction thereof, may be substantially to lessen competition or tend to create a monopoly in the respondent in the line of commerce in which it has been and is now engaged, and to injure, destroy, or prevent competition between the respondent and other manufacturers and sellers of animal feed products, and in the line of commerce in which the customers of the respondent, their dealer purchasers, are engaged, may be to injure, destroy or prevent competition between those customers, who in purchasing respondent's products receive the benefits of such discriminations which respondent grants, as hereinbefore set forth, and those competing dealer purchasers from the respondent who do not receive such benefits.

COMMISSION'S CONCLUSION

The foregoing described plan, acts and practices of respondent are in violation of the provisions of subsection (a) of section 2 of the Clayton Antitrust Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Sec. 13).

ORDER TO CEASE AND DESIST

It is ordered, That the respondent, Ubiko Milling Company, a corporation, directly or indirectly, through any corporate or other device, through its officers, agents, representatives or employees, or by any other means or methods in the sale of animal feed products, including both concentrate and complete feeds, whether sold under the name of "Life Guard" or any other name or designation, in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Directly or indirectly discriminating in price between different competing purchasers of animal feed products, including both concentrate and complete feeds of like grade and quality, where the aforesaid products are sold for use, consumption or resale within the United States, by employing in any manner, or by any means, any arrangement or plan, regardless of designation, whereby allowances, discounts, rebates, refunds, compensation or consideration of any nature or description are granted or paid in any manner to competing dealer purchasers of such products when such allowances, discounts, rebates, refunds, compensation or consideration are compiled or computed at varied or different rates or percentages dependent upon the quantity or amount of the products purchased.

UBIKO MILLING COMPANY,
By (S) S. P. THOMPSON,
Vice President.

MAY 22, 1952.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record this 6th day of August, 1952, subject only to the condition that the respondent shall, within sixty (60) days after service upon it of a copy of this consent settlement, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in said consent settlement.

IN THE MATTER OF

EARLY & DANIEL CO.

COMPLAINT, SETTLEMENT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (a) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5973. Complaint, Mar. 24, 1952—Decision, Aug. 6, 1952

Where a corporation engaged in the manufacture and competitive interstate sale and distribution of animal feed products of various types, under the brand name "Tuxedo"; which, during the year ending March 31, 1949, sold about 240,000 tons or 4,800,000 sacks of said feeds, amounting to $13,254,000 in gross sales;

In selling its said feed products, primarily to retail dealers, through its "Tuxedo volume rebate schedule", pursuant to which it paid to dealers who qualified—who, for the period ending May 31, 1949, numbered only about 356 of some 2,000 dealer purchasers—dividends, discounts, rebates or refunds—

Discriminated in price between different purchasers by selling to some at higher prices than it sold products of like grade and quality to others actively engaged in competition with one another in their resale, through use of a sliding scale whereby any dealer who purchased an annual minimum of 120 tons or 2,400 sacks, or their equivalent, of said feeds received, in the form of cash or credit memoranda, applicable on past or future purchases, discounts, rebates or refunds at the rate of 25¢ per ton upon purchases ranging from 2,400 to 3,599 hundred-pound sacks or its equivalent, and proportionally higher rebates ranging up to $2.50 per ton upon purhases up to 60,000 sacks or more;

Effect of which discriminations in price might be substantially to lessen competition or tend to create monopoly in the line of commerce in which it was engaged and to injure, destroy and prevent competition between it and other manufacturers and sellers of animal feed products; and to injure, destroy and prevent competition between customers who received the benefits of such discriminations and competing dealer purchasers who did not:

Held, That such plans, acts and practices were in violation of the provisions of Sec. 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act.

Before *Mr. James A. Purcell*, hearing examiner.

Mr. Fletcher G. Cohn and *Mr. Robert F. Quinn* for the Commission.

Dinsmore, Shohl, Sawyer & Dinsmore, of Cincinnati, Ohio, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Antitrust Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission, having

reason to believe that the respondent named in the caption hereof, and hereinafter more particularly described, has violated and is now violating the provisions of section 2 (a) of said Act, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Early & Daniel Co., hereinafter referred to as "respondent Early & Daniel," is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its general offices and principal place of business located at Chamber of Commerce Building, city of Cincinnati, State of Ohio.

PAR. 2. The respondent Early & Daniel, for several years last past and more particularly since June 19, 1936, has been engaged and is now engaged in the manufacture, sale and distribution of animal feed products of various types. Said animal feed products manufactured, sold and distributed by respondent are known as "Tuxedo" brand feeds. The said feeds are usually sold by the respondent in 100 lb. sacks, primarily to retail dealers in animal feed products. During the year ending May 31, 1949, respondent sold approximately 240,000 tons or 4,800,000 sacks of said feeds, which amounted to gross sales of $13,254,000.

Respondent's manufacturing plants are located in Cincinnati, Ohio; Sumter, South Carolina; and Tampa, Florida. It likewise owns and operates some 13 warehouses for the storage and distribution of said feeds, located in the following States: Delaware, Virginia, West Virginia, Ohio, Kentucky, North Carolina, South Carolina, Tennessee, and Florida.

Said respondent Early & Daniel sells and distributes, in commerce, as "commerce" is defined in the Clayton Antitrust Act, as amended by the Robinson-Patman Act, said animal feed products to retail dealers located in various States of the United States. Respondent causes said animal feed products, when sold, to be transported and shipped from its respective manufacturing plants and warehouses in the several States of the United States, across State lines, to the purchasers thereof, located in various States of the United States other than where such shipments originate. Respondent maintains and has maintained during all times mentioned herein a course of trade in said products, in commerce, among and between the several States of the United States.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent, particularly since June 19, 1936, has been engaged in substantial competition with other persons, partnerships, firms and corporations which likewise manufacture animal feed products and which sell and seek to sell and distribute said products in commerce between

and among the several States of the United States to retail feed dealers, except insofar as such competition has been or may be affected by the acts and practices hereinafter alleged.

PAR. 4. In the course and conduct of its business, as aforesaid, since on or about January 1, 1938, respondent has been, and is now, discriminating in price between different purchasers of its animal feed products of like grade and quality by selling such products to some of its purchasers at higher prices than it sells these said products of like grade and quality to others of its purchasers who are in competition one with the other in the sale of said products within the United States.

Some of the purchases, which are involved in such discriminations, were, and are, in commerce and the animal feed products so involved were and are sold for use, consumption or resale within the United States.

PAR. 5. Among the aforesaid price discriminations are those which were and are accomplished by a plan instituted by the respondent on or about January 1, 1938. Since then, this plan, known as the "Tuxedo Volume Rebate Schedule" has been utilized continuously and is still utilized by the respondent in the sale and distribution in the aforesaid commerce of its animal feed products.

The plan is that some of respondent's dealers are paid an annual discount, refund or rebate on their total purchases of such feeds for the period beginning June 1 each year and ending May 31, of the following year. Such discount, refund or rebate is computed on the basis of the total number of tons of "Tuxedo" feeds purchased during the period. There is a sliding scale whereby the rate of discount, refund or rebate per ton is proportionally higher according to the total number of 100 lb. sacks of such feeds which are purchased during the period. Any dealer who purchases a minimum of 120 tons, or 2,400 such sacks, or their equivalent of said feeds, during the aforesaid period is the recipient of the minimum volume discount, refund or rebate at the rate of 25 cents per ton or 1¼ cents per sack on such purchases from respondent during said period. Should a dealer's total purchases not aggregate this required minimum, such dealer receives no volume discount, refund or rebate on his purchases. As respondent's dealers purchase larger volume quantities of said animal feeds, they obtain discounts, refunds or rebates which are computed at a higher rate per ton, according to the following schedule of total purchases during such period:

100-lb. sacks (or equivalent):	*Rebate per ton*
Under 2,400	None
2,400–3,599	$0.25
3,600–4,799	.50
4,800–7,199	1.00
7,200–9,599	1.10
9,600–11,999	1.20
12,000–17999	1.30
18,000–23,999	1.50
24,000–35,999	1.75
36,000–47,999	2.00
48,000–59,999	2.25
60,000 or more	2.50

For the period ending May 31, 1949, of the approximately 2,000 dealers to whom respondent sold such feeds, only about 356 received volume discounts, refunds or rebates under the aforesaid schedule, in the total amount of $224,636. To such dealers, respondent paid discounts, refunds or rebates in the form of cash or credit memoranda on past purchases or which could be applied on future purchases by them.

Respondent does not enter into any agreements with animal feed dealers whereby said dealers are required to sell "Tuxedo" brand feeds to the exclusion of competitive brands of feeds produced by other manufacturers. Most of the dealers to whom respondent sells its animal feed products purchase and sell one or more competitive brands of such products.

PAR. 6. The effect of the discriminations in price, as alleged herein, and any part or fraction thereof, may be substantially to lessen competition or tend to create a monopoly in the respondent in the line of commerce in which it has been and is now engaged, and to injure, destroy or prevent competition between the respondent and other manufacturers and sellers of animal feed products, and in the line of commerce in which the customers of the respondent, their dealer purchasers, are engaged, may be to injure, destroy or prevent competition between those customers, who in purchasing respondent's products receive the benefits of such discriminations which respondent grants, as hereinbefore set forth, and those competing dealer purchasers from the respondent who do not receive such benefits.

PAR. 7. The foregoing described plan, acts and practices of respondent are in violation of the provisions of subsection (a) of section 2 of the Clayton Antitrust Act, as amended by the Robinson-Patman Act, approved June 19, 1936.

CONSENT SETTLEMENT [1]

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission, on the 24th day of March 1952, issued and subsequently served its complaint on the respondent named in the caption herein, charging it with violation of subsection (a) of section 2 of the Clayton Act, as amended.

The respondent, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of answer to said complaint heretofore filed and which, upon acceptance by the Commission of this settlement, is to be withdrawn from the record, hereby:

1. Admits all the jurisdictional allegations set forth in the complaint.

2. Consents that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist, It is understood that the respondent, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrains from admitting or denying that it has engaged in any of the acts or practices stated therein to be in violation of law or that such acts and practices, if engaged in, would be in violation of law.

3. Agrees that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful,

[1] The Commission's "Notice of Acceptance of Consent Settlement and Order to File Report of Compliance", follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was on August 6, 1952, accepted by the Commission, subject only to the condition that the respondent comply with the requirements of the following paragraph with respect to the filing of a report showing the manner and form in which it has complied with the order to cease and desist; and subject to such condition said consent settlement was ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

It is accordingly ordered, That the respondent, Early & Daniel Co., a corporation, shall within sixty (60) days after service upon it of this notice and order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in the consent settlement entered herein.